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November 16, 2012

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: Special Access for Price Cap Local Exchange Carriers, WC Docket No. 05-25  
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent  
Local Exchange Carrier Rates for Interstate Special Access Services, RM-10593**

Dear Ms. Dortch:

On November 14, 2012, Jennifer McKee and the undersigned, on behalf of the National Cable & Telecommunications Association (NCTA), met by phone with Deena Shetler, Eric Ralph, Betsy McIntyre, William Layton, and Jamie Susskind of the Wireline Competition Bureau, regarding the upcoming mandatory data request in the above-referenced dockets. In particular, we discussed logistical considerations in connection with the submission of confidential data and the review of such data by third parties.

As NCTA has explained previously, the data to be included in the mandatory data request is highly competitively sensitive and our member companies have significant concerns about sharing this data with third parties, particularly contractors or attorneys for companies against which they are competing.<sup>1</sup> We encouraged the Bureau staff to establish a process by which parties responding to the data request could easily elect to treat all information submitted as highly confidential, rather than requiring parties to tag each data point with a confidentiality designation. Such an approach has been used for years in the context of the Form 477, where parties can simply check a box on the form indicating that the entire submission is confidential.<sup>2</sup> We also encouraged the Bureau staff to establish stringent protections for review of any data that is submitted. In particular, we expressed support for making such information available for review only at Commission headquarters, with no opportunity for third parties to print or download that data.

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<sup>1</sup> See, e.g., Letter from Steven F. Morris, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 (filed Oct. 24, 2012) (NCTA October 24 Letter) at 3.

<sup>2</sup> See Instructions for Local Telephone Competition and Broadband Reporting (FCC Form 477) at 5, 19, at <http://transition.fcc.gov/Forms/Form477/477inst.pdf>.

With respect to the timing of the release of any confidential data, we reiterated our view that the earliest the Commission should release any data is at the time it issues a new Notice of Proposed Rulemaking (NPRM) in this proceeding.<sup>3</sup> Releasing data for review at the time an NPRM is issued would satisfy the Commission's obligation to provide notice and a reasonable opportunity to comment pursuant to the Administrative Procedure Act (APA) and would balance the Commission's interest in providing interested parties with access to information that forms the basis for its decisions with the interest of companies submitting that data in preserving its confidentiality. In response to the staff's suggestion that, rather than issuing another NPRM, the Commission could instead adopt rules pursuant to the *2005 Special Access NPRM* in this docket,<sup>4</sup> we proposed that confidential data could be released at the time a decision is made not to issue a new NPRM. Such an approach would protect the confidentiality of the data to the greatest extent possible, consistent with the Commission's obligation under the APA to provide interested parties a meaningful opportunity to review and comment on the data.

Respectfully submitted,

/s/ **Steven F. Morris**

Steven F. Morris

cc: D. Shetler  
E. Ralph  
B. McIntyre  
W. Layton  
J. Susskind

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<sup>3</sup> NCTA Oct. 24 Letter at 3 n.6.

<sup>4</sup> *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) (*2005 Special Access NPRM*). We note that the *2005 Special Access NPRM* clearly stated that it "does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13." *Id.* at ¶ 133. Consequently, absent a new NPRM, the Commission would seem to have no ability to adopt rules that impose any information collection requirements on any party.