



November 29, 2012

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

Re: *Special Access for Price Cap Local Exchange Carriers,*
WC Docket No. 05-25

Dear Ms. Dortch:

This *ex parte* letter responds to several recent filings in this docket urging the Commission to exclude data concerning “best efforts” business class broadband services from its proposed mandatory data request because these services “are not a substitute for the dedicated broadband services at issue in” this proceeding.¹ While there are certainly differences between the various services available to business – including differences between dedicated special access services and non-dedicated broadband services – as described below, these cable business broadband services are aggressively marketed as alternatives to ILEC special access. Accordingly, the Commission should reject these competitors’ arguments.

Even a cursory review of cable company web sites demonstrates that these companies heavily market non-dedicated broadband services to business customers, particularly small and mid-size businesses, by advertising them as superior substitutes to ILEC special access services.

To be clear, USTelecom is referring here to non-dedicated services that cable companies expressly market and sell to business customers, not services marketed solely for residential use. Each of the major cable companies has web sites exclusively targeted to business customers and a suite of services that they market to such customers under names such as “Comcast Business Class,” “Time Warner Cable Business Class ©,” “Cablevision Optimum Business ©,” “Charter Business,” and “Cox Business Internet.” While cable companies today do include dedicated services as part of their suite of business offerings, they heavily market their “best efforts” high-speed services to small and mid-size business customers.

Anyone who spends any time listening to the radio or watching television has been exposed to advertising by cable companies urging business customers to switch from “telephone

¹ See, e.g., *Ex parte Letter from Thomas Jones, Counsel for Cbeyond, Inc., EarthLink, Inc., and Integra Telecom, Inc.*, WC Docket No. 05-25 (Nov. 21, 2012); *Ex parte Letter from Thomas Cohen, Counsel, American Cable Association*, WC Docket No. 05-25 (Nov.26, 2012).

“The success of this strategy is demonstrated in Frost & Sullivan survey results showing 23.5 percent of medium sized businesses using a cable MSO as at least one of their network providers.”⁷

“The mid-market today is a competitive and increasingly crowded ‘jungle’ for service providers.”⁸

Cable’s “best efforts” services may not be identical to ILEC special access – in fact they differ in many ways, including speed, price, and whether or not the connections are point-to-point. But the fact that one can identify distinguishing characteristics between services, such as “best efforts,” is beside the point, as is the fact that customers in other market segments may also purchase the service. Rather, the critical question is whether these services are offered by the cable companies and accepted by some customers as competitive alternatives to ILEC special access. Obviously, their marketing efforts demonstrate that the cable companies believe these services are viewed as alternatives by at least some business customers. And once collected, the data will show that they are.

Of course, this is precisely why CLECs such as Cbeyond, EarthLink and Integra have urged the Commission not to collect such data from cable companies. Indeed, the competitors’ push to exclude this data essentially asks the Commission to pre-judge the ultimate question of this entire inquiry – the scope and competitiveness of the business services marketplace.

Moreover, the Commission has acknowledged that an appropriate market analysis must not be limited to where competition exists today, but must also be “multi-faceted and forward-looking” and must examine “factors such as the potential for competitive effects, market entry, and potential competition...”⁹ And as the Commission itself stated just weeks ago:

“...although many cable operators are relatively new entrants competing in the marketplace for the provision of telecommunications services to business customers, cable operators have expansive – and in some areas ubiquitous – network facilities that can be upgraded to compete in telecommunications services markets at relatively low incremental cost.”¹⁰

⁷ Frost & Sullivan Report at p. 9.

⁸ Frost & Sullivan Report at p. 7.

⁹ *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, *Report and Order*, FCC 12-92, ¶101 (August 22, 2012).

¹⁰ *Petition for Declaratory Ruling to Clarify 47 U.S.C. §572 in the Context of Transactions Between Competitive Local Exchange Carriers and Cable Operators*, WC Docket No. 11-118, *Order*, FCC 12-111, ¶ 28 (Sept. 17, 2012).

This recognition simply underscores the need to ensure that data concerning cable networks capable of providing business class services are fully and accurately captured to enable a forward-looking market analysis.

Finally, while USTelecom believes that it is indisputable that these non-dedicated business class services compete with special access, any doubt that remains must ultimately come down on the side of including such services within the scope of the data request. A decision to exclude such data at the initiation of this inquiry would severely undermine the Commission's ability to conduct a meaningful, fact-based statistical analysis of the market for business services.

Please do not hesitate to contact me if there are questions concerning this *ex parte* letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Glenn T. Reynolds".

Glenn T. Reynolds

cc: Michael Steffen
Angela Kronenberg
Christine Kurth
Priscilla Hill Argeris
Nick Degani
Julie Veach
Deena Shetler
Eric Ralph
Nick Alexander
Elizabeth McIntyre
Kenneth Lynch
Jack Erb
William Layton
Travis Litman
Luis Reyes
Matthew Porter

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Customers can enjoy additional savings by bundling their Internet service with digital television and digital voice offerings. This can mean even greater savings over the cost of T1/Integrated T1 and xDSL connections.

T1 service providers offer 1.544 Mbps download and upload speeds to their customers via a dedicated, point-to-point, or integrated connection to a digital circuit. However, T1 connections can be significantly more expensive than cable broadband or wideband connections. Monthly service fees can range from \$500 to \$1,000 per month.

Bandwidth and Speed

When it comes to bandwidth and speed, cable broadband is the one who wins the battle. Cable is capable of offering a speed that is almost 65 times faster than T1 & xDSL. **The speed and bandwidth battle is always won by the Cable Broadband.**

Cost

When it comes to cost, Cable is less expensive than T1 & xDSL. With the various package deals currently available, you can manage to reduce your phone bills to a great extent. Whether you are bundling or not Cable Broadband is a less expensive option that delivers far greater speeds. Therefore, in the pricing category Cable Broadband Service emerges as a winner.

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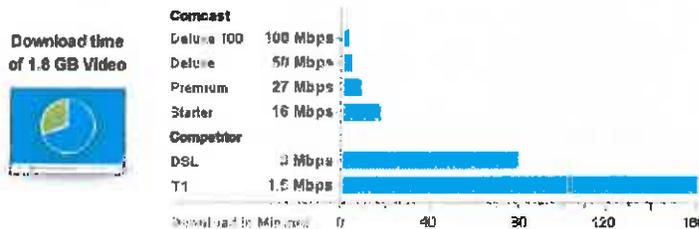
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