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February 28, 2013

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:

On February 27, 2013, Jennifer McKee and the undersigned, on behalf of the National Cable & Telecommunications Association (NCTA), along with Mary McManus of Comcast and Grace Koh of Cox, met with Deena Shetler, Eric Ralph, Elizabeth McIntyre, Jamie Susskind, Rachel Kazan, Ken Lynch, William Layton, Luis Reyes, and Ben Childers of the Wireline Competition Bureau, Jack Erb, of the Office of Strategic Planning and Policy Analysis, and Michael Brown and Julian Cooperman, contractors from Computech, regarding the mandatory data request in the above-referenced dockets. We discussed the following issues during the meeting:

Burden. NCTA reiterated concerns that the mandatory request would impose extreme burdens on cable operators.¹ We noted that concerns we had raised prior to the adoption of the data request generally were not addressed in the version of the request that was included in Appendix A of the order released in December 2012.² Comcast and Cox explained the significant efforts that personnel at those companies have started to undertake to prepare a response to the data request, including determining: whether they possess each element of the requested information or whether it would need to be created specifically for this process; where it is stored within the company if it exists or how it could be created if it does not exist today; what personnel would be needed to undertake these tasks and how much of their time would be

¹ See, e.g., Letter from Jennifer K. McKee, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 (Nov. 29, 2012); Letter from Steven F. Morris, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 (Nov. 28, 2012); Letter from Steven F. Morris, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 (Nov. 16, 2012); Letter from Steven F. Morris, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 (Oct. 24, 2012); Letter from Steven F. Morris, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 (Oct. 10, 2012).

² *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-153 (rel. Dec. 18, 2012).

required; and whether there are other significant costs, such as new software or third-party contractors, that would be required. Both companies emphasized that they have not previously been subject to any recordkeeping or reporting obligations in connection with these services and that gathering, creating, compiling, and submitting the requested data would require significant time commitments from staff that otherwise are responsible for operating businesses.

PRA Process. NCTA identified a number of concerns related to the Paperwork Reduction Act (PRA) process that the Commission commenced in a notice published in the Federal Register on February 12, 2013. First, we noted that it would be difficult for respondents to accurately estimate the burden associated with the data request given that the Commission has not released any information about the data entry system it is developing for collection of the data. To the extent that the Commission's new data system is still in the early stages of development, it appears that the Commission may have commenced the PRA process prematurely.

NCTA also pointed out that the Commission has not provided the instructions that respondents will need to follow or any information about the format in which data must be submitted and that such information is absolutely necessary to develop an accurate estimate of the burden associated with the data request. As just one example, during the meeting staff suggested that the maps required in Question 5 must be submitted in a GIS-compatible "shapefile" format. That requirement does not appear anywhere in Appendix A and for some companies such a requirement may create additional expense.³ It is not clear how the Commission expects companies to estimate the burden of, let alone comply with, requirements that have not been identified in writing.

NCTA also expressed concern about a lack of transparency on the Commission's part in connection with the PRA process. The Commission's February 12 notice specifically sought comment on the accuracy of the Commission's estimate that responding to the data request would require over 6000 respondents to spend over 850,000 hours compiling and submitting data. But the Commission has provided no breakdown of those estimates among the various categories of respondents (incumbent LECs, competitive providers, wireless carriers, and purchasers) and has refused NCTA's requests that it release the supporting documentation for those estimates.⁴ Given the complete absence of any support for the figures included in the

³ We note, for example, the significant concerns that incumbent LECs have raised in connection with the seemingly simple requirement to provide a shapefile that identifies carrier study areas, which have been frozen since 1984. *See Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, DA 13-282 (rel. Feb. 26, 2013) (modifying rules to enable price cap LECs to submit less granular boundary data than originally required). The mapping data that the Commission has identified in Question 5 would seem to be substantially more complex than the boundary data at issue in the *Connect America Fund* docket.

⁴ In prior cases, the Commission has been willing to release such information upon request. *See* Comments of the National Cable & Telecommunications Association, GN Docket No. 09-191 (filed April 11, 2011). No explanation was provided in the meeting as to how the public interest is served by limiting the public's access to the Commission's estimates in this case.

notice, there is no basis on which anyone reasonably could conclude that the Commission has estimated the significant burden of this data request with any accuracy.

Mapping. Comcast and Cox expressed particular concern about the requirement in Question 5 to submit a map identifying all fiber routes “connecting your network to End User Locations” as well as “all Nodes on your network used to interconnect with third party networks, and the year that each Node went live.” Both companies explained that they do not use maps with that level of detail in the normal course of their business and that it would be tremendously burdensome to create such maps solely for the purpose of the Commission’s mandatory data request.⁵ For example, because of the costs associated with verifying the physical location of interconnection points with other companies, one company explained that it would cost roughly \$4 million to create such a map covering just one large city.

NCTA also raised concerns about the security risks that would be created by requiring companies to create extremely detailed maps that they do not currently possess and then aggregating those maps at the Commission. The resulting product – a map of the entire U.S. telecommunications network, including every single location where two or more providers connect – obviously would be a target for hackers and others who might be intent on disrupting communications services in the United States. Given recent concerns identified by GAO regarding data security lapses at the Commission that caused “sensitive information” to be placed at “unnecessary risk of inadvertent or deliberate misuse” or “improper disclosure,”⁶ and in light of the complete lack of information provided so far regarding the data system that will be used for submitting and storing this data, we encouraged the staff to revisit the mapping requirement.

Location Type. Comcast and Cox also raised concerns about the requirement in Question 4(d) to identify the “location type” for each location where the company provides a dedicated service. The staff suggested that it was important for providers to identify the type of customer (wireless carrier v. other types of businesses) and the type of structure (building, cell tower, etc.) so that the Commission will be able to determine whether competition develops differently for different types of commercial customers. The companies explained that they do not necessarily know or record the type of structure where service is delivered or how a customer intends to use that service and that recreating such data (e.g., through site visits or requests to the customer) could be quite a burdensome exercise.

⁵ In addition to being burdensome, the requirement to identify when a particular piece of equipment “went live” also seems to be completely irrelevant to any analysis the Commission would need to undertake in this docket.

⁶ Government Accountability Office, *Information Security, Federal Communications Commission Needs to Strengthen Controls over Enhanced Secured Network Project*, Report No. GAO 13-155 (rel. Jan. 2013) at 9 (“FCC did not effectively implement appropriate information security controls in the initial components of the ESN project. . . . As a result, FCC limited the effectiveness of its security enhancements and its sensitive information remained at unnecessary risk of inadvertent or deliberate misuse, improper disclosure, or destruction.”).

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Additional Issues. NCTA explained that the issues raised in this meeting were not intended to be an exhaustive list of the concerns that the cable industry has identified with the data request. We expressed our willingness to continue working with the staff to help develop less burdensome methods of collecting relevant data. We also expressed strong support for the staff's plan to engage in significant outreach to the thousands of companies that will be required to comply with this mandatory data request.

Respectfully submitted,

/s/ Steven F. Morris

Steven F. Morris

cc: Deena Shetler
Eric Ralph
Elizabeth McIntyre
Jamie Susskind
Rachel Kazan
Ken Lynch
Jack Erb
William Layton
Luis Reyes
Ben Childers