

May 24, 2013

**VIA ECFS**

***EX PARTE***

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW, Room TW-A325  
Washington, DC 20554

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

Dear Ms. Dortch:

On May 22, 2013, Gil Strobel of Lawler, Metzger, Keeney and Logan, LLC, representing Sprint Nextel Corporation, Colleen Boothby of Levine, Blaszak, Block and Boothby, LLP, representing the Ad Hoc Telecommunications Users Committee, Joe Cavender, of Level 3 Communications, LLC and the undersigned, representing Cbeyond, Inc., EarthLink, Inc., Integra Telecom, Inc., Level 3 Communications, LLC and tw telecom inc., met with Suzanne Tetreault, Diane Griffin Holland, Marcus Maher, and Claude Aiken of the Office of General Counsel and with Lisa Gelb, Deena Shetler, Tim Stelzig, and Betsy McIntyre of the Wireline Competition Bureau.

During the discussion, we explained that the Commission has provided sufficient notice to incumbent LECs that received forbearance from dominant carrier regulation in the provision of packet-based special access services (“Forbearance ILECs”) that the Commission is considering reversing forbearance and applying new rules for packet-based special access services adopted in the above-referenced proceeding to the Forbearance ILECs. *First*, we explained that the Commission’s consideration of the pending petition to reverse forbearance granted to the Forbearance ILECs is an adjudication proceeding.<sup>1</sup> The Wireline Bureau’s public

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<sup>1</sup> See Petition of Ad Hoc Telecommunications Users Committee, BT Americas, Cbeyond, Computer & Communications Industry Association, EarthLink, MegaPath, Sprint Nextel, and tw telecom to Reverse Forbearance from Dominant Carrier Regulation of Incumbent LECs’ Non-TDM-based Special Access Services, WC Dkt. No. 05-25 & RM-10593 (filed Nov. 2, 2012) (“*Petition*”).

notice seeking comments on the petition for forbearance satisfied the notice requirements for an adjudication.<sup>2</sup>

*Second*, we explained that, even if it is the case that granting forbearance somehow removed the Forbearance ILECs' packet-based special access services from the scope of the above-referenced proceeding, the Forbearance ILECs have subsequently received adequate notice that the Commission is considering applying new rules to such incumbent LECs' packet-based special access services. This is because (1) the Forbearance ILECs have received actual notice in the form of the *Public Notice* seeking comments on the petition to reverse forbearance and the *Petition* itself, (2) application of new rules to the Forbearance ILECs' packet-based special access services is a logical outgrowth of the discussion in the *2012 Data Request FNPRM*,<sup>3</sup> and (3) failure to provide notice would be harmless error.

In addition, we explained that, if the Commission were to conclude that, out of an abundance of caution, it should release a supplemental notice of proposed rulemaking so as to give the Forbearance ILECs yet another chance to comment on reversal of forbearance and the application of new rules governing packet-based special access services to the Forbearance ILEC, the Commission should release such supplemental NPRM as soon as possible. Addressing this formality should not delay the timely application of new rules to the Forbearance ILECs.

Please do not hesitate to contact me if you have any questions or concerns regarding this submission.

Respectfully submitted,

/s/ Thomas Jones

cc: Meeting participants

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<sup>2</sup> Wireline Competition Bureau Seeks Comment on Petition to Reverse Forbearance from Dominant Carrier Regulation of Incumbent LECs' Non-TDM-based Special Access Services, DA 13-232 (rel. Feb. 15, 2013) ("*Public Notice*").

<sup>3</sup> See, e.g., *Special Access for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd. 16318, ¶ 67 (2012) (stating the Commission plans to conduct a "market analysis of the special access market designed to determine where and when special access [including packet-based special access] prices are just and reasonable," to determine "whether any market participants have market power and, if so, where such market power exists," and "how to construct (where required) targeted regulatory remedies" for the abuse of market power).