

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
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
)	
Protective Order for Special Access Data Collection)	
)	

**COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA) urges the Commission to provide strong protection for highly confidential and proprietary data that it may receive in response to its mandatory data request in the special access proceeding.¹ Such data should be available only to Commission staff until the Commission determines that it may rely on it in crafting new rules and, when it is made available to approved individuals, it should be subject to stringent procedures to protect against inadvertent disclosure to individuals involved in competitive decisionmaking.

Seven years after commencing this proceeding, the Commission last year adopted a mandatory data request so that it could perform an analysis of competition in the special access marketplace.² As NCTA has explained in numerous pleadings, the mandatory data request seeks

¹ *Wireline Competition Bureau Seeks Comment on Protective Order for Special Access Data Collection*, WC Docket No. 05-25, Public Notice, DA 13-1470 (Wireline Comp. Bur., June 28, 2013).

² *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012).

an overwhelming amount of data, including information on every rate element billed to every customer in every building across America.³ While some of this information, such as locations where service is offered, may be publicly available, much of the requested data is highly competitively sensitive and our member companies have significant concerns about sharing it with third parties, particularly contractors or attorneys for companies against which they are competing.⁴

NCTA's preference would have been for the Commission to develop a less burdensome data request that requires the submission of far less confidential information. Short of that, there are a number of steps the Commission can take to minimize the potential for competitive harm that would result from disclosure of this information to competitors.

First, given the highly competitively sensitive nature of the information that the Commission is seeking, the Commission should not make this data available to any outside parties until it has done an internal review of the material and has made an initial determination of which information it might rely on in taking final action in the special access proceeding. Similar to the data that companies submit on the FCC Form 477, any data that is not already publicly available should be available initially only for Commission staff to review. After the Commission has reviewed the data and determined that it is relevant and necessary to any final decision it may make in the proceeding, at that time it could make the relevant highly

³ Comments of the National Cable & Telecommunications Association, WC Docket No. 05-25, OMB Control No. 3060-XXX (Apr. 15, 2013); Letter from Steven F. Morris, Vice President and Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 (Mar. 22, 2013); Reply Comments of the National Cable & Telecommunications Association, WC Docket No. 05-25 (Mar. 12, 2013); Letter from Steven F. Morris, Vice President and Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 (Feb. 28, 2013).

⁴ Letter from Steven F. Morris, Vice President and Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25, RM-10593 (Oct. 24, 2012); Letter from Steven F. Morris, Vice President and Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25, RM-10593 (Nov. 16, 2012).

confidential data available for review by outside parties, i.e., those not involved in competitive decision-making for any special access provider or competitor, subject to protective order.

Following this approach would protect the confidentiality of the data to the greatest extent possible, consistent with the Commission's obligation under the Administrative Procedure Act to provide interested parties a meaningful opportunity to review and comment on the data.

Conversely, allowing parties immediately to access confidential data in this proceeding would potentially harm competing providers while providing no countervailing public interest benefit in cases where the Commission determines that a subset of this data is not relevant and ultimately does not rely on it in the proceeding. Furthermore, delaying competing providers' access to the data may ameliorate some of the potentially harmful effects because some of the data becomes less competitively sensitive as time passes.

Second, stringent procedures should be adopted for reviewing any highly sensitive data to reduce the potential for inadvertent disclosure to individuals involved in competitive decisionmaking. Specifically, to the extent the Commission makes such information available for review by third parties, they should be allowed to conduct this review only at Commission headquarters, with no opportunity to print or download that data.

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NCTA appreciates the Commission's need to conduct an analysis of the special access marketplace to determine whether, and how, the pricing flexibility rules should be revised. In doing so, however, the Commission must take care to protect the competitively sensitive data that it is requesting. While we continue to encourage the Commission to scale back the mandatory data request and thereby limit the quantity of competitively sensitive data that it collects, at a minimum it should take the steps recommended above to limit the opportunity for competitive harm.

Respectfully submitted,

/s/ Steven M. Morris

Steven F. Morris
Jennifer K. McKee
National Cable & Telecommunications
Association
25 Massachusetts Avenue, NW – Suite 100
Washington, DC 20001-1431

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