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

TO: Chief, Wireline Competition Bureau

PETITION FOR RECONSIDERATION

The Blooston Private Microwave Licensees ("Petitioners"), hereby request reconsideration of the Bureau's determination in Paragraph 14 of its *Clarification Order* in this proceeding[1] not to categorically exclude entities that use fixed point-to-point microwave services on a non-common carrier basis for their own private internal communications from the definition of the "Purchasers" of dedicated special access services from price cap carriers that must participate in the special access data collection. This petition is filed in timely fashion within thirty (30) days after publication of the summary and description of the *Clarification Order* in the Federal Register on November 8, 2013.[2]

Petitioners are an unrelated group of businesses and government agencies listed in Appendix A that are not telecommunications service providers or otherwise engaged in for profit telecommunications-related businesses. Each of the named petitioners has sought and obtained from the Commission one or more licenses for point-to-point microwave facilities in the Microwave Industrial/Business Pool Service governed by Part 101 of the Commission's Rules.

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[1] *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,* WT Docket No. 05-25, RM*Sp*-10593, Report and Order, DA 13-1909, released September 18, 2013 ("*Clarification Order*").
[2] 78 Fed. Reg. 67053 (November 8, 2013)

When accepting applications for such licenses, the Wireless Telecommunications Bureau and its predecessors have long given point-to-point microwave applicants the option of operating and being regulated as common carriers or as non-common carriers. For example, Item 41 of the current FCC Form 601 Main Form allows applicants to select one or more of the following Regulatory Status options: (1) Common Carrier; (2) Non-Common Carrier; (3) Private, Internal Communications; (4) Broadcast Services; and (5) Band Manager. All of the petitioners listed in Appendix A are non-common carriers that do not provide telecommunications or telecommunications-related services and that use their licensed point-to-point microwave facilities solely for private, internal communications.

In its *Clarification Order*, the Bureau determined that the definition in the Commission's previous *Special Access Data Collection Order*[3] of the "Purchasers of Dedicated Service" required to participate in the special access data collection was too broad. By including as a Purchaser "any entity subject to the Commission's jurisdiction . . . that purchases special access services," the Commission imposed special access data collection requirements upon many entities that are no different from those consumers of dedicated special access services that are not subject to Commission jurisdiction. That is, the Bureau determined that requiring all entities subject to the Commission's jurisdiction for any reason to participate in the special access data collection would unnecessarily impact potentially hundreds of thousands of non-common carriers and non-telecommunications service providers that may hold private radio licenses or authorizations but that "otherwise are simply consumers of *Dedicated Services* and are

[3] *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*, WT Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012).

unfamiliar with, and perhaps completely unaware of, the Commission's requirements and proceedings involving the regulation of [incumbent local exchange carriers] in price cap areas."[4]

The Bureau found that including literally all entities subject to the Commission's licensing jurisdiction in the data collection process would result in the non-uniform treatment of certain categories of non-telecommunications businesses because entities therein would be included or excluded in the required data collection on the basis of whether they happened to engage in an unrelated activity that subjected them to the Commission's jurisdiction.[5] Second, the Commission's description and estimation of the size of the expected respondent pool indicated that the "Purchasers" and other required respondents were intended to consist predominately of price cap regulated incumbent local exchange carriers, competitive local exchange carriers, interexchange carriers, cable operators, fixed wireless communications providers, and some entities providing "best efforts" business broadband Internet access services.[6] Finally, a broad definition of "Purchasers" will not contribute substantially to the economic analysis.[7]

As a result of its analysis,[8] the Bureau clarified that the definition of "Purchasers" subject to the special access data collection requirements excludes entities subject to the Commission's jurisdiction only because they hold the following types of licenses and authorizations: (a) Part 2 and Part 15 equipment authorizations; (b) Part 3 accounting authorizations in the maritime and maritime-mobile-satellite radio services; (c) Part 5 experimental radio authorizations; (d) Part 13 commercial radio operator licenses; (e) Part 17 antenna structure registrations; (f) Part 73

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[4] *Clarification Order*, at par. 11.
[5] *Id.* at par. 12.
[6] *Id.*
[7] *Id.*
[8] Petitioners note that the Bureau's analysis could also justify the exclusion from special access data collection requirements of those few Part 22 paging licensees and Part 25 transmit/receive earth station licensees that purchase special access services from price cap carriers.

television and radio broadcast station licenses; (g) Part 74 experimental radio, auxiliary, special broadcast and other program distribution service authorizations; (h) Part 80 maritime service authorizations; (i) Part 87 aviation service authorizations; (j) Part 90 private land mobile radio service authorizations; (k) Part 95 personal radio service authorizations; and (k) Part 97 amateur radio service authorizations.[9]

The Bureau's list of categorical exclusions did not include any Part 101 fixed microwave services. In fact, the Bureau appeared to presume that all Part 101 services were common carrier telecommunications services when it mentioned them in the following list of "Purchasers" of special access services that were not excluded:

> . . .we point out that these categorical exclusions do not include common carriers (wired or wireless), mobile wireless service providers, cable system operators even if they only provide video program services, international service providers, satellite service providers, or entities that hold authorizations issued by the Federal Communications Commission (FCC) for the provision of fixed point-to-point microwave services.[10]

Microwave Industrial/Business Pool Service licensees and other Part 101 Fixed Microwave Service licenses can elect to operate, and to be regulated, either as common carriers or as non-common carriers. In fact, the petitioners listed in Appendix A and many other Microwave Industrial/Business Pool Service licensees have elected operation and regulation not only as non-common carriers but additionally as private entities using such microwave facilities for internal communications only. If the Bureau intended to exclude such entities under the above-quoted language because they do not hold their Part 101 licenses "for the provision of fixed point-to-point microwave services," it is respectfully requested that the Bureau clarify this intent. If the Bureau instead intended to impose the reporting requirement on all Part 101

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[9] *Id.*, at par. 13.
[10] *Id.*, at par. 14.

microwave licensees, it is respectfully submitted that the Bureau should reconsider this decision, for the following reasons.

It is well established that the Commission and its Bureaus must treat similarly situated entities in a similar manner. See, for example, *Melody Music, Inc. v. FCC*, 345 F.2d 730 (DC Circ. 1965). The Bureau has, in fact, exerted substantial efforts in its *Clarification Order* to treat alike non-common carriers and non-telecommunications service providers that are simply Purchasers of special access services, whether or not they hold unrelated Commission licenses or authorizations.

However, the Bureau's categorical exclusion efforts need to be extended one step further to encompass Part 101 Microwave Industrial/Business Pool Service licensees that are using their private, non-common carrier microwave facilities for internal communications only. Like the other excluded categories, they are simply consumers of dedicated special access services and are unfamiliar with or completely unaware of the Commission's requirements and proceedings involving the regulation of special access services provided by price cap carriers. In the absence of reconsideration, they will be required to participate in the Commission's special access data collection, while similarly situated entities in their business or operational categories will not be so required, only because they hold private point-to-point microwave licenses for their internal communications. They are wholly unlike the telecommunications carriers and telecommunications service providers that comprise the Commission's estimated respondent pool. Finally, the special access data which they would be required to provide, at significant effort and expense because they have not heretofore been required to collect such data in the detail and categories required by the Commission, would not contribute substantially to the Commission's ultimate analysis of price cap special access prices, terms and conditions.

In sum, the hundreds or thousands of non-common carrier Microwave Industrial/Business Pool Service licensees like petitioners that operate private Part 101 point-to-point microwave facilities for their own internal communications are indistinguishable from the many non-common carrier licensees that have been categorically excluded by the Bureau from the definition of "Purchaser" for special access data collection purposes, as well as from those consumers of dedicated special access services that are not subject to Commission jurisdiction. Hence, the Bureau is respectfully requested to reconsider and extend its *Clarification Order* to rule that those Part 101 point-to-point microwave licensees that have elected non-common carrier status, and particularly those engaged in non-telecommunications businesses that use their private point-to-point microwave systems for internal communications only, are categorically excluded from the definition of "Purchaser" of dedicated services for purposes of the special access data collection.

Respectfully submitted,
Blooston Private Microwave Licensees

By: Gerard J. Duffy
John A. Prendergast
Gerard J. Duffy
Richard D. Rubino

Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP
2120 L Street, NW (Suite 300)
Washington, DC 20037
Telephone: (202) 659-0830
Facsimile: (202) 828-5568

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APPENDIX A

AAA of Northern California, Nevada and Utah
Caterpillar of Delaware Inc.
Heritage Coal Company
Metropolitan Water District of Southern California
Peabody School Creek Mining LLC
Praxiar, Inc.