

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

_____	)	
In the Matter of	)	
	)	WC Docket No. 05-25
Special Access for Price Cap Local	)	OMB Control No. 3060-XXXX
Exchange Carriers	)	
_____	)	

**OPPOSITION OF THE  
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom) respectfully submits these comments in opposition to the Application for Review filed by the National Cable & Telecommunications Association (NCTA) seeking Commission review of the Wireline Competition Bureau’s data collection order in this proceeding.<sup>1</sup>

Cable providers compete to provide high-capacity services to business customers, and their presence in the marketplace is growing rapidly. The Commission cannot hope to capture an accurate view of the marketplace if it grants NCTA the relief it seeks and exempts a major segment of the marketplace from the mandatory data collection.

The Commission was correct to decide to conduct a robust market analysis so that it can determine how actual and potential competition provides competitive discipline in the high-capacity services marketplace.<sup>2</sup> It also acknowledged that it does not currently have the

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<sup>1</sup> *Application for Review of the National Cable & Telecommunications Association*, WC Docket No. 05-25 (Dec. 9, 2013) (“AFR”). See, *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Report and Order, 28 FCC Rcd 13189 (Sept. 18, 2013) (*Bureau Order*).

<sup>2</sup> See, *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Report and Order, FCC 12-92, ¶¶ 97-101 (rel. Aug. 22, 2012) (“*Commission Suspension Order*”) (“commenters state that any market analysis we conduct must be forward-looking and account for significant competitors in a market. We agree.”).

data it needs to conduct that analysis,<sup>3</sup> and correctly concluded that it must issue a comprehensive, mandatory data request in order to collect those data.<sup>4</sup>

Throughout this proceeding, however, non-cable competitors have sought to minimize the significant and rapidly growing role that cable providers are playing in the marketplace for high-capacity services. The Commission correctly dismissed those efforts to limit the market definition at the start of the process, concluding that “for purposes of this data collection, we conclude it is best to simply take a broad approach.”<sup>5</sup> The Commission’s efforts to develop a meaningful picture of the high-capacity services marketplace would be undermined if it were to reconsider that approach and grant the relief NCTA seeks.

### **INTRODUCTION AND SUMMARY**

No one denies that complying with the *Bureau Order* will be burdensome. But that alone is not a reason to grant special relief to a critical marketplace segment. Similar burdens will fall on every entity that must comply with this data collection. In fact, the Commission has already provided cable companies with relief from certain burdens being placed upon other competitors required to respond to the data collection – relief based on faulty presumptions that run the risk that essential data will be missed by the Commission.<sup>6</sup> It certainly should not grant cable additional relief.

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<sup>3</sup> *Commission Suspension Order* at ¶7. See also, Opposition of the Federal Communications Commission to Petition for Writ of Mandamus, *In re CompTel, et al.* (D.C. Cir. Dkt. 11-1261) (Oct. 6, 2011) (“While the Commission has made progress in its data-gathering efforts, the vast majority of the service provider members of the principal petitioner here (the trade association COMPTTEL) did not provide any data in response to the agency’s October 2010 [voluntary] request.”).

<sup>4</sup> *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 (Dec. 18, 2012) (“*Commission Data Collection Order*”); see also *Commission Suspension Order*.

<sup>5</sup> *Commission Data Collection Order* at ¶¶ 18-21.

<sup>6</sup> See, *Application for Review of CenturyLink*, WC Docket No. 05-25 (Oct. 22, 2013) (*CenturyLink AFR*).

In its Application, NCTA emphasizes the extensive investments its member companies have made to “*bring widespread competition to the special access marketplace.*”<sup>7</sup> The largest cable companies – which include companies that are much larger than many of the incumbent Local Exchange Carriers (ILECs) subject to special access regulation and required to respond to the data collection – will have approximately **\$8.5 Billion** in business services revenues in 2013.<sup>8</sup> Indeed, with respect to Ethernet services – the technology that businesses customers are rapidly adopting to replace traditional TDM services – it is estimated that cable companies already have fully one-quarter of these service revenues nationally.<sup>9</sup> Moreover, given that cable companies already have facilities passing more than three-quarters of business locations,<sup>10</sup> analysts are bullish that the cable companies’ business services revenues will continue to grow at double-digit rates, as it has in recent years.<sup>11</sup>

As NCTA acknowledges, cable companies have quickly become some of the preeminent participants in the business services marketplace. Whatever burdens might result from complying with the *Bureau Order*, the resulting data collected by the Commission will not include a major segment of the competitive landscape if the Commission fails to collect a robust

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<sup>7</sup> AFR at 2 (italics added).

<sup>8</sup> *Light Reading*, “Heavy Reading: Cable Biz Sales to Hit \$8.5B” (Dec. 4, 2013), available at [http://www.lightreading.com/heavy-reading-cable-biz-sales-to-hit-\\$85b/d/d-id/706824?f\\_src=lightreading\\_editorspicks\\_rss\\_latest](http://www.lightreading.com/heavy-reading-cable-biz-sales-to-hit-$85b/d/d-id/706824?f_src=lightreading_editorspicks_rss_latest) (“Major US cable operators are on track to reach \$8.5 billion in commercial service revenues this year, up more than 20% from nearly \$7 billion a year ago.”).

<sup>9</sup> *Light Reading*, “Cable Commands Major Slice of Ethernet” (Sept. 5, 2013), available at <http://www.lightreading.com/cable-video/cable-business-services/cable-commands-major-slice-of-ethernet/d/d-id/703696>.

<sup>10</sup> See, e.g., *Light Reading*, “Cable’s Cut of the Biz Services Pie to Eclipse \$7B” (Nov. 29, 2012) (cable HFC networks already pass more than 75 percent of small and medium-sized business locations); Frost & Sullivan, “Cable MSO Ethernet Strategy: Moving Up-Market for New Opportunities,” Vol. 6, No. 3 at p. 13 (March 2012) (noting that Comcast Business Class, the commercial services division of Comcast, had facilities that reach 80% of the businesses in its territory).

<sup>11</sup> See, e.g., *Light Reading* (Nov. 29, 2012) (projecting growth of at least \$1 Billion per year for the next several years).

set of information from these critical competitors. Indeed, the importance of full cable participation may be best evidenced by the aggressive efforts of *non-cable competitors* to urge the Commission *to minimize* the amount of information collected from cable companies. Those companies have no incentive to downplay the importance of cable companies in the marketplace except to skew the analysis.

## **DISCUSSION**

Like much of the communications marketplace, the marketplace for business services is in the midst of major change: in the demands of customers, in the technologies available to meet those demands, and in the competitive landscape of providers competing to serve those needs. The rapidly escalating bandwidth needs of business customers of all sizes and advances in technology are rapidly upending the nature of the business services marketplace. The cable industry, in particular, has taken advantage of this market shift by – in the words of NCTA – “making significant investments to provide commercial customers with services that are more robust and less expensive” than the TDM special access services traditionally provided by ILECs.<sup>12</sup>

### **I. Cable’s Success in the Business Services Marketplace.**

It is telling that non-cable companies repeatedly have asserted that cable companies are somehow fringe players in this marketplace from which the Commission need not collect detailed data.<sup>13</sup> These companies have a vested interest in having the Commission ignore the

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<sup>12</sup> AFR at p. 2.

<sup>13</sup> The CLEC industry has repeatedly asserted that cable networks are not actually competitive alternatives to ILEC high-capacity service offerings to business customers because their facilities are technologically inadequate or they lack the business acumen to serve such customers. For example, tw telecom has claimed (without substantiation) that cable networks “are not capable of providing the level of service (e.g., reliability, service guarantees) demanded by most business customers and delivered by special access.” *Comments of tw telecom*, WC Docket 05-25 (Jan. 19, 2010). And in a filing urging the Commission to ignore cable companies when defining the market for the provision of high-capacity

role cable companies are playing in this marketplace, and no other reason to be concerned with the burden a comprehensive data collection would impose on cable companies.<sup>14</sup> But as the cable companies themselves have stated – and as evidenced by those same companies’ financials – cable is a critical marketplace participant. To further its goal of “a comprehensive evaluation of competition in the special access marketplace,”<sup>15</sup> the Commission must stay the course and require cable companies to participate fully in the data collection.

The Commission has acknowledged cable’s relevance in this marketplace for some time. As the Commission stated in a different proceeding more than a year 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.*”<sup>16</sup>

Indeed, cable companies have quickly grown the commercial services segment of their businesses. The most obvious example is Comcast, which has a footprint that covers more than

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services to businesses, a group of CLECs has asserted that cable broadband service does not satisfy the needs of small and mid-sized business customers, simply stating that cable networks “are simply not up to the task.” *Workshop Response of tw telecom, One Communications, Cbeyond and Integra*, (WC Docket 05-25, at 2-7 (Sept. 15, 2009). Most recently, competitive providers have filed a paper in this docket concluding, among other things, that “cable companies play a relatively small (albeit growing) role, with the vast majority of the services they offer directed to the smallest of businesses who buy services in the ‘best efforts’ category.” *Ex Parte filing from CompTel, et al.*, WC Docket No. 05-25, Attachment at p. ii (Jun. 17, 2013) (italics added).

<sup>14</sup> See, e.g., *Ex Parte Letter from Thomas Jones, Counsel for tw telecom*, WC Docket No. 05-25 (Dec. 7, 2012); *Paperwork Reduction Act Comments of Sprint Nextel Corp.*, WC Docket No. 05-25 (Apr. 15, 2013).

<sup>15</sup> *Bureau Order* at ¶1. As such, it is important to keep in mind that exceptions from the data request that are based on a predetermination of either the scope of competition or the service or geographic definition of the market would be inappropriate. *Commission Data Collection Order* at ¶18.

<sup>16</sup> *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) (italics added).

40% of the population including more than 20 of the top 25 largest metropolitan areas in the United States – and a network that reaches 80% of the businesses in its service territory.<sup>17</sup>

Comcast did not start deploying Ethernet in its network until 2010-11, and *now has upgraded its entire network to Metro Ethernet*.<sup>18</sup> Comcast alone will earn more than \$3 Billion in business revenues in 2013 and is projected to reach \$10 Billion by 2017.<sup>19</sup> One leading industry analyst explains that Comcast “dramatically expanded its efforts in this market beginning with a late start in 2011, and is virtually certain to become one of the market’s largest players (very likely *the largest*)...”<sup>20</sup>

Cable’s success in this area is not limited to Comcast. All of the large cable companies now have dedicated business services units and account for more than 25% of U.S. Ethernet services revenues, with considerably higher shares within local metropolitan markets.<sup>21</sup> Time Warner Cable has stated that it will have approximately \$2.5 Billion in business services

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<sup>17</sup> Frost & Sullivan, “Cable MSO Ethernet Strategy: Moving Up-Market for New Opportunities,” p. 13 (March 2012).

<sup>18</sup> Bank of America Merrill Lynch Global Telecom & Media Conference, Transcript of Michael Angelakis, Vice President & CFO, Comcast (Jun. 4, 2013), *available at* <http://files.shareholder.com/downloads/CMCSA/2700148827x0x668804/4b4f2004-ccbe-4070-90f5-10919e1ce490/CMCSA.20130604.pdf>. (“[We] now have metro Ethernet throughout the entire network and we're going into much more complicated businesses with primarily a metro E product. And we are competing against ISDN and T-1 lines, which is kind of not a fair fight.”).

<sup>19</sup> Bloomberg/BNA, “Cable Commercial Services Business Forecast 2012,” p. 13 (2012).

<sup>20</sup> Heavy Reading Cable Industry Insider, “Cable Operators & Ethernet: Serious Market Share,” (Aug. 2013), *available at* [] (*italics in original*); *See also*, Fierce Telecom, “Comcast Business gets MEF Carrier Ethernet 2.0 certification,” (Feb. 18, 2013), *available at* [http://www.fiercetelecom.com/story/comcast-business-gets-mef-carrier-ethernet-20-certification/2013-02-18?utm\\_medium=nl&utm\\_source=internal](http://www.fiercetelecom.com/story/comcast-business-gets-mef-carrier-ethernet-20-certification/2013-02-18?utm_medium=nl&utm_source=internal) , (“Despite being a bit later to the Ethernet game than its MSO brethren...Comcast has quickly established itself as a threatening player in the business services market.”).

<sup>21</sup> Light Reading, “Cable Goes on Ethernet Roll” (Aug. 22, 2013) (predicting that share will approach 33% as Comcast expands its efforts).

revenues in 2013, and expects to double that to \$5 Billion by 2017<sup>22</sup>; Cox's business revenues are estimated as approaching \$2 Billion annually; and Charter's annual business revenues are approaching \$1 Billion.<sup>23</sup>

In fact, more than a year ago, a Frost & Sullivan survey found that nearly one-quarter of medium-sized businesses were already using a cable MSO as at least one of their network providers.<sup>24</sup> Frost & Sullivan summed up the business services market as "rapidly becoming a competitive jungle for service providers," but concluded that cable companies "will maintain an advantage over competitors [both ILECs and CLECs] moving into the mid-market due to their strong local presence and experience in the smaller business markets."<sup>25</sup>

And given the relatively recent entry of these companies into the business services market, such rapid growth is expected to continue for several years. Bloomberg/BNA, for example, has projected that by 2017 cable companies will control:

- more than 40% of US small businesses
- 30% of US Ethernet services revenues; and
- one-third of the wireless backhaul market.<sup>26</sup>

And Bernstein Research put it this way more than a year ago:

By now, the cable operators' growth story in commercial services is a familiar one. Collectively, Cable is adding \$1 billion per year

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<sup>22</sup> Time Warner Cable's Management Presentation at UBS Global Media & Telecommunications Conference (Transcript) (Dec. 9, 2013), *available at* [http://seekingalpha.com/article/1851521-time-warner-cable-management-presents-at-morgan-stanley-2013-technology-media-telecom-conference-transcript?source=email\\_rt\\_article\\_readmore](http://seekingalpha.com/article/1851521-time-warner-cable-management-presents-at-morgan-stanley-2013-technology-media-telecom-conference-transcript?source=email_rt_article_readmore).

<sup>23</sup> *See, generally*, Fierce Telecom, "Cable in the third quarter 2013" (Oct. 25, 2013), *available at* <http://www.fiercecable.com/special-reports/cable-third-quarter-2013>.

<sup>24</sup> Frost & Sullivan at pp. 16-18 (Mar. 2012).

<sup>25</sup> *Id.*

<sup>26</sup> Bloomberg BNA, "Cable Commercial Services Business Forecast 2012," p. 3 (2012).

in incremental commercial revenue. On an organic basis, Comcast, Time Warner Cable, and Charter are collectively growing their commercial revenue stream at a 30% clip...So where are those revenues coming *from*? The TelCos obviously.<sup>27</sup>

In light of their current and projected success in this marketplace, there is no basis for the Commission to fail to collect from cable companies the same data as it has proposed collecting from all other competitors.

## **II. Network Location Information.**

With respect to NTCA's request to limit the network map information that cable providers would submit, such maps will be important to the Commission's analysis – particularly given that the cable companies have some of the most extensive and dense network footprints of any competitors. Producing the requested maps will be burdensome for all respondents, including the incumbent LEC's competitive LEC affiliates. In fact, most of the ILECs subject to incumbent providers' sections of the data request also have facilities outside of their incumbent footprint that will be subject to the same collection requirements as other CLEC providers. But the airline-view, stick-detail approach that cable proposed as an alternative in the proceeding would not provide the Commission with the detail it needs to determine how both actual and potential competition provide competitive discipline in the high-capacity marketplace.

As NCTA acknowledges, the *Bureau Order* has already significantly reduced the burden on cable companies in complying with the data request by exempting them (but not other competitive providers) from reporting certain in-place but out-of-service facilities capable of providing dedicated business services.<sup>28</sup> NCTA argues that the Bureau did not follow its own

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<sup>27</sup> Craig Moffett, Senior Analyst, Bernstein Research, "U.S. Telecom, Cable & Satellite – Monday Chart of the Week: The Flip Side of Cable's Growth in Commercial Services" (Dec. 10, 2012).

<sup>28</sup> AFR at p. 9.

logic far enough. To the contrary, the Commission should not exacerbate the potential for failing to collect essential competitive information by excluding additional cable data.<sup>29</sup>

The AFR relies on several misplaced presumptions on this point. First, as USTelecom demonstrated previously in this proceeding, traditional cable hybrid fiber coaxial (“HFC”) facilities are capable of delivering dedicated, service-level guaranteed business services equivalent (or superior) to ILEC TDM-based dedicated connections.<sup>30</sup> Indeed, as already noted, the Commission itself has found that the cable companies’ “ubiquitous” networks can be readily upgraded to compete in the business services marketplace “at relatively low incremental cost.”<sup>31</sup>

Second, the AFR relies on findings in the *Bureau Order* exempting cable companies from reporting location data for facilities that are not connected to a node capable of providing Metro-Ethernet or its equivalent.<sup>32</sup> The AFR points to statements in the *Bureau Order* where staff presumed that, in essence, the data request could focus its more detailed collection on locations where the cable companies had upgraded their networks because that is where they expected there to be sufficient demand.<sup>33</sup> While there may be some logic to such a presumption in stable markets, the business services marketplace and specifically cable’s efforts and successes in that market have been far from stable. To the contrary, the largest cable companies have greatly expanded their capability to provide these services over the past couple of years. Indeed, as noted above, Comcast has gone from no Metro-Ethernet in 2010 to having its entire

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<sup>29</sup> See, *Application for Review of CenturyLink*, WC Docket No. 05-25 (Oct. 22, 2013).

<sup>30</sup> See, e.g., *Ex parte Letter from Glenn Reynolds, USTelecom*, WC Docket No. 05-25 (Dec. 3, 2012); see also, *Ex parte Letter from Glenn Reynolds, USTelecom*, WC Docket 05-25 (Nov. 29, 2012).

<sup>31</sup> *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) (italics added).

<sup>32</sup> AFR at p. 7, 9 (citing *Bureau Order* at ¶¶23-27).

<sup>33</sup> *Id.*

national network Metro-Ethernet today.<sup>34</sup> As it is, the *Bureau Order's* year-end 2012 date for the data to be collected likely already will miss much of this deployment.

The Commission has already excluded cable companies from submitting significant, highly relevant information based upon the misperception that traditional cable networks cannot deliver services that can compete with ILEC special access services. But as Bloomberg/BNA demonstrates:

In reality, DOCSIS 3.0 deployments have given operators a platform that can support high performance that matches or exceeds the base [Service Level Agreements] offered with fiber-delivered Ethernet services...<sup>35</sup>

Particularly in light of this previous relief provided to the cable companies, the Commission should not now exempt additional cable data from the collection.

### **III. RFP Responses and Marketing Materials.**

The AFR also seeks changes to the data request with respect to Request for Proposals (RFPs) and marketing materials. The Commission has recognized, however, that its analysis “must take account of both actual and potential competition, as well as sources of intramodal and

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<sup>34</sup> Bank of America Merrill Lynch Global Telecom & Media Conference, Transcript of Michael Angelakis, Vice President & CFO, Comcast (Jun. 4, 2013), available at <http://files.shareholder.com/downloads/CMCSA/2700148827x0x668804/4b4f2004-ccbe-4070-90f5-10919e1ce490/CMCSA.20130604.pdf>.

<sup>35</sup> Bloomberg/BNA, “Cable Commercial Services Forecast 2012,” at 15. *See also*, Light Reading, TW “Cable to Blend Ethernet With Docsis 3.0” (Nov. 7, 2012) (“Combining Docsis 3.0 with Ethernet will give TW Cable an opportunity to improve the performance of its HFC-based business services while also continuing to pack in the current SLAs and put others on its roadmap”); Light Reading, “Comcast Meshes Ethernet With Docsis 3.0” (Dec. 6, 2012) (“In addition to giving Comcast a better T1 replacement strategy, the higher speeds will come in handy as operators tie in more cloud-based services tailored for business customers.”); Frost & Sullivan at p. 10 (“The introduction of Ethernet WAN solutions and the widespread deployment of DOCSIS 3.0 technology in the HFC networks has substantially resolved many of the issues relating to network reach and quality of service (QOS), [Service Level Agreements and Class of Service].”).

intermodal competition.”<sup>36</sup> The high-capacity services marketplace is dynamic, and the Commission must look not only at the competitive alternatives available to customers today, but also at new sources of supply that competitors have planned or that are likely to become available going forward. The RFPs that providers have won and lost can provide important insight and information into competitors’ plans.

Similarly, marketing plans and information as to where providers intend to offer service in the near future are particularly relevant to potential competition, and the Commission was correct to request it.

### **CONCLUSION**

For the foregoing reasons, USTelecom once again urges the Commission to move forward with a through data collection that avoids excluding certain providers or types of data based upon pre-judgments about the nature and extent of competition in the business services marketplace.

Respectfully submitted,

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<sup>36</sup> *Special Access for Price Cap Local Exchange Carriers*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318, ¶69 n.152 (2012).