



November 14, 2016

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Business Data Services in an Internet Protocol Environment (WC Docket No. 16-143);
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)

Dear Ms. Dortch:

On November 10, 2016, Diane Holland and the undersigned of USTelecom met with Stephanie Weiner and Lisa Hone, Senior Legal Advisor and Legal Advisor, respectively, to Chairman Wheeler; Howard Symons, FCC General Counsel; and Matt DeNero, Chief of the Wireline Competition Bureau. We discussed the possibility that the BDS Order described in the Chairman's recent fact sheet may alter the regulatory status of transport services in addition to making changes to BDS loops or "end user channel terminations."

We began by noting that the pricing flexibility framework that is being reexamined in this proceeding has always divided those services.¹ Section 69.711 defines "channel terminations between LEC end offices and customer locations" and creates tests for pricing flexibility for those services. Section 69.709 defines with "dedicated transport and [other services]" and creates different tests for pricing flexibility for those services. Notably, dedicated and other services include "entrance facilities," which are connections between carrier networks. As long ago as its 2005 UNE Order, the Commission found entrance facilities were competitive, concluding that "competing carriers are not impaired without access to entrance facilities connecting an incumbent LEC's network with a competitive LEC's network in any instance."²

¹ See, e.g., 47 C.F.R. §§ 69.711, 69.709 (describing pricing flexibility rules for two separate components of BDS: (1) channel terminations, and (2) dedicated transport and special access services other than channel terminations between LEC end offices and customer premises).

² *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533, 2536 (2005).

Different amounts of flexibility have been granted to the two groups of services under the separate tests. Pricing flexibility for transport and other services is much broader than for loops, with about 15,000 wire centers having received Phase II relief for transport and other services. BDS circuits that combine both of these services are priced by adding up the separately tariffed rate elements.³ Such a circuit may include an end user channel termination subject to price caps, Phase I or Phase II treatment and, similarly, associated transport or other service falling into any of those categories. To the extent that end user channel terminations in some geographic areas would be brought back under price caps, those services (and the demand for them) could be re-incorporated in the tariff process separately from transport and other services given their separate treatment under the current Commission rules.

We noted that the Commission's consultant and staff economic analyses did not conduct a separate look at transport and other services.⁴ Similarly, the record from all sides has focused on the difficulties of extending networks to end user customers, not on building transport facilities to a relatively limited number of LEC end offices. We discussed that one of the principle arguments for increased regulation of end user channel terminations – the inability to secure building access – is not applicable to the construction of transport facilities connecting to LEC end offices.⁵ In particular, the Commission has longstanding detailed rules under Section 251(c)(6) governing the collocation of competitor facilities in LEC end offices.

Contrary to claims in the record by competitors that a "carve-out" of transport circuit elements from the Commission's price cap framework would "eviscerate the order,"⁶ such an approach better reflects competition and the state of the record. Transport and other services would remain under the Commission's current regulatory structure, with about 10,000 LEC end offices remaining under price caps. There is no record evidence or analysis of these services that would support increasing the regulatory burden on LEC transport and other services.

Please do not hesitate to contact the undersigned if you have questions or concerns.

Sincerely,



Jonathan Banks
Senior Vice President, Law & Policy

³ Even Sprint acknowledges that ILECs continue to charge separately for transport and termination of legacy BDS. See Ex Parte Letter to Marlene H. Dortch, Secretary, FCC from Paul Margie, Counsel to Sprint Corp., WC Docket Nos. 16-143, 15-247, 05-25, RM-10593, at 3-4 (Nov. 9, 2016) (Sprint Ex Parte).

⁴ See *Business Data Services in an Internet Protocol Environment, et al.*, Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 4723, App. B at 204 (2016) ("My approach of aggregating to the level of the circuit rules out separate analysis of the transport market. In this paper, I focus only on the market for circuits provided to customers (sometimes called the channel termination market ...").

⁵ See, e.g., *id.* at para. 227.

⁶ Sprint Ex Parte at 1.

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cc: Matthew DelNero
Lisa Hone
Howard Symons
Stephanie Weiner