



EX PARTE

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

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

Dear Ms. Dortch:

“Special access” services – dedicated access lines – are increasingly important for the services that American consumers have come to rely on. The Federal Communications Commission has noted that special access services – mostly provided over the copper network – are a \$40 billion market.<sup>1</sup> Ordinary consumers depend on the services supplied by wireless companies, long-distance providers and other businesses that rely on special access services. In 2013, the National Association of State Utility Consumer Advocates (NASUCA) filed comments that stressed the

predictable stand-off between those who assert that special access markets are robustly competitive, with sophisticated purchasers negotiating easily with ILECs, and those who provide substantial evidence of ILECs' market power, including supracompetitive rates, and describe provisions that lock in demand through "loyalty" programs and tying of competitive and non-competitive markets. ... The latter commenters, on the other hand, provide compelling evidence that the increasing prevalence of OCn and Ethernet circuits can occur and is occurring at the same time that there continues to be demand for DS 1 and DS3 special access services, and because ILECs possess market power for DS 1 and DS3 services,

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<sup>1</sup> See <https://www.fcc.gov/document/fcc-takes-major-step-review-40-billion-special-access-market>.

absent regulatory oversight, ILECs will continue to earn supracompetitive prices on these essential services. The unreasonably high rates, in turn, depress economic activity and cause consumers to pay more than is economically efficient for goods and services that depend on ILEC-provided special access services.<sup>2</sup>

NASUCA stands by those comments, and recent information further supports them.

This includes the April 2016 paper by Dr. Mark Cooper, “The Special Problem of Special Access: Consumer Overcharges and Telephone Company Excess Profits.”<sup>3</sup> The paper expertly dissects special access services – which are not all that “special” any more – and demonstrates why the incumbent LECs’ rates for those services need to be reduced. Dr. Cooper shows that **half** of the \$40 billion in special access revenue “is the result of the abuse of market power....”<sup>4</sup>

The data collected by the Commission show the extent of the problem, as explicated by stakeholders such as Sprint, e.g., Sprint ex parte March 24, 2016.<sup>5</sup> The ILECs’ counter-arguments are based on continuing promises of future competition and “someday” savings, and on flawed assertions that “best efforts” broadband Internet access services can discipline ILECs’ special access rates.”<sup>6</sup>

NASUCA urges the Commission to revisit its 2005 decision to deregulate the ILECs’ special access rates, based on current market conditions, and determine the current proper rate structure for these services. NASUCA appreciates that the Commission has placed an Order and FNPRM on the agenda for its April 28, 2016 Open Meeting, addressing some of the issues here.<sup>7</sup> The FCC can reform special access based on the record already before it; a further rulemaking should not be reason for further delay in reform.<sup>8</sup>

Respectfully submitted,

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<sup>2</sup> NASUCA Reply Comments (March 12, 2013) at iii.

<sup>3</sup> <http://apps.fcc.gov/ecfs/comment/view?id=60001535791> (“Cooper Study”); see also [http://consumerfed.org/press\\_release/cfa-study-finds-special-access-market-concentration-cost-consumers-and-the-u-s-economy-150-billion-since-2010/](http://consumerfed.org/press_release/cfa-study-finds-special-access-market-concentration-cost-consumers-and-the-u-s-economy-150-billion-since-2010/).

<sup>4</sup> Cooper Study at 1.

<sup>5</sup> See <http://apps.fcc.gov/ecfs/document/view?id=60001552133>.

<sup>6</sup> As aptly explained by TDS, the fact some businesses are willing to rely on best efforts broadband Internet access does not mean that all businesses are willing to compromise reliability. TDS Metrocom, LLC, March 24, at 10-11.

<sup>7</sup> See [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2016/db0407/DOC-338782A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0407/DOC-338782A1.pdf).

<sup>8</sup> The high-level agreement between Verizon and INCOMPAS (see <http://apps.fcc.gov/ecfs/document/view?id=60001568734>) should be reviewed, but should not be determinative. See <http://www.fiercetelecom.com/story/verizon-incompas-call-truce-special-access-regulation-war/2016-04-08>

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