

**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
)	

COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES AND THE MARYLAND OFFICE OF PEOPLE'S COUNSEL ON FURTHER NOTICE OF PROPOSED RULEMAKING

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I. INTRODUCTION

The National Association of State Utility Consumer Advocates (“NASUCA”) and the Maryland Office of People’s Counsel (“OPC”) (together, “Consumer Advocates”) submit this filing in response to the request of the Federal Communications Commission (“FCC” or “Commission”) for comments on possible changes to its rule for the special access services that incumbent local exchange carriers (“ILECs”) provide in price cap areas.¹ In an Order issued December 21, 2015, in which it most recently extended the filing dates for these comments, the Commission explained that on December 12, 2012, it had adopted an order requiring providers and purchasers of special access services “to submit data and information for a comprehensive evaluation of the special access market.”² The comments sought in Section IV.B. of the December 2012 Order were on “possible changes to pricing flexibility rules after proposed one-time, multi-faceted market analysis.” The data has been collected; now the analysis can proceed, which Consumer Advocates expect to lead to substantive changes to the pricing flexibility rules and thus to special access pricing.

Beginning with comments submitted in 2007 in response to the FCC’s request at that time to refresh the record for this proceeding, NASUCA (and its member, New Jersey Division of Rate Counsel) have been participating in the FCC’s special access

¹ *Special Access for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012) (*Data Collection Order* or *Special Access FNPRM*), Section IV.B, paras. 80-90.

² WC Docket No. 05-25, et al, DA 15-1473, released December 21, 2015, para. 2, citing *Data Collection Order*, 27 FCC Rcd at 16324, para. 13.

docket.³ Consumer Advocates believe that the extensive passage of time since the Commission's issuance of its' December 12, 2012 Order to address special access pricing has harmed consumers nationwide.

Consumer Advocates strongly support the FCC's fact-driven approach to assessing the special access market, and acknowledge the complexity of the task being undertaken by the FCC to gather and meaningfully analyze an enormous quantity of data from ILECs and competitive LECs ("CLECs") nationwide. Consumer Advocates appreciate the FCC's effort to modify, as necessary, its regulation of the special access market to align with empirical information. Consumer Advocates are hopeful that the FCC is prepared not only to lessen regulation if competitive forces so warrant, but also to strengthen regulation in those markets where evidence demonstrates that prior relaxation of regulatory oversight was premature.⁴

Consumer Advocates understand that the review of the large and perhaps unprecedented volume of data regarding special access prices and circuits submitted by carriers in response to the FCC's information and data requests, is challenging and time-

³ The New Jersey Division of Rate Counsel and NASUCA submitted comments regarding special access in 2010, 2011, and 2013.

⁴ In its FNPRM, the FCC stated: "As discussed above, our market analysis is intended to provide a more complete picture of special access competition. The comprehensive data request described in the Report and Order above will identify and require submission of the data needed to implement any market analysis we adopt, including the specific analysis proposed in this Further Notice. Once the data are collected and analyzed, we may modify the existing pricing flexibility rules or adopt a new set of rules that will apply to requests for special access pricing flexibility. As a general matter, however, we propose to adopt rules that will allow for the relaxation or even the elimination of price cap regulation where we find the presence of actual or potential competition sufficient to ensure that rates, terms and conditions for special access services remain just and reasonable. To that end, we seek comment on how the special access pricing flexibility rules might change after we conduct the market analysis proposed above. *We also seek comment below on what steps the Commission should take where relief has been provided under our existing rules and where the data and our analysis demonstrate that competition is not sufficient to discipline the marketplace.*" *Data Collection Order*, para. 80, cites omitted, emphasis added.

consuming.⁵ Consumer Advocates urge the FCC to recognize that the resources of state agencies and non-profit organizations are limited, and that if few such entities participate in this proceeding, it is likely due to resource constraints rather than indifference. Indeed, for resource reasons, Consumer Advocates have not undertaken an in-depth review and analysis of the extensive data that has been submitted to the FCC by hundreds of providers. Instead, Consumer Advocates intend to address such specific matters in reply comments, based on review of initial comments and of the data analyses set forth by ILECs, CLECs and large users – some of whom are CLECS themselves – in their initial filings.⁶ These initial Consumer Advocate comments will, therefore, be brief.

II. DISCUSSION

Consumer Advocates reiterate the importance of efficiently functioning special access markets for all consumers – not only large, sophisticated business users, but also residential and small business customers. Distorted pricing signals thwart the efficient supply of telecommunications services that are critically important inputs to many services and products that consumers purchase. Businesses and CLECs depend on

⁵ The FCC stated: “The data, information, and documents required to conduct a robust analysis of special access competition fall into five general categories: market structure, pricing, demand (i.e., observed sales and purchases), terms and conditions, and competition and pricing decisions. In this section, we describe the nature of the data to be collected. Further, we include in Appendix A an initial version of the data collection that incorporates the data, information, and documents we describe below. We direct the Bureau to review and modify this collection, consistent with the authority delegated in section III.D below, to implement the requirements of this Report and Order.” *Data Collection Order*, para. 30, cites omitted. Appendix A, the “Mandatory Data Collection” form, is more than 20 pages long.

⁶ Joint Commenters’ consultant, Susan M. Baldwin, has signed the highly confidential protective order for this proceeding. Joint Commenters will be requesting that the highly confidential versions of selected initial pleadings be sent to her. (On October 5, 2015, TransWorld Network, Corp. (“TransWorld”) submitted its Objection to the release of its confidential and highly confidential information to the parties identified in the Attachment to Public Notice DA 15-1083, which include Ms. Baldwin. On October 22, 2015, Joint Commenters filed a timely response to such opposition, and, subsequently, the FCC rejected TransWorld’s opposition. DA 15-1336, released November 24, 2015.) No other parties opposed Ms. Baldwin’s access to highly confidential information submitted in this proceeding.

special access. Where ILECs set supra-competitive rates or impose unfair and unreasonable terms and conditions for special access circuits, those costs will be passed on to consumers in the prices they pay for, e.g., airfares, banking transactions, and many other common purchases.

As a threshold matter, Consumer Advocates are troubled by the preliminary evidence, of which the Commission itself has already taken note, showing that prices in markets for which ILECs have been granted pricing flexibility, and for services offered over deregulated technology platforms (e.g., comparable IP-based dedicated services) are higher than where price cap regulation remains in effect. The FCC stated, in August 2015, that

competitive carriers today continue to rely on incumbent LEC TDM-based DS1 and DS3 special access services to serve a large number of utility, residential, and enterprise customer locations throughout the United States. Commenters assert that many areas across the country have few viable alternatives to currently-available incumbent LEC copper loop or TDM-based wholesale inputs. Competitive LECs have submitted evidence in this record and in other proceedings that, in such areas, the prices incumbent LECs charge for these replacement wholesale inputs (e.g., for 2 Mbps IP service) are significantly higher than a comparable service using a TDM-based service subject to a dominant carrier rate regulation.⁷

Were competition actually an effective economic force in disciplining prices for these services, as originally posited to justify pricing flexibility and deregulation, such results – higher rates – could not have occurred.

Consumer Advocates are also participating in the related FCC proceeding (GN Docket no. 135, et al.) concerning the nation's transition to new technology. Even if the longer-term goal is a transition to IP-based services, it is important that pricing signals

⁷ *Technology Transitions et al.*, GN Docket No. 13-5 et al., Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 30 FCC Rcd 9372 (rel. 8/7/15), para. 10 (footnote omitted).

and applicable terms and conditions not distort users' legitimate choices with respect to services that continue to retain value. As noted by the Commission in ant October 16, 2015 Order, demand for traditional TDM copper special access services has not abated: "Despite the growth of newer technologies, preliminary analysis of the Commission's special access data collection shows that revenues from such TDM services continue to make up in the range of sixty percent of the roughly \$40 billion annual special access market."⁸ In fact, preliminary analysis shows that, unlike wireline switched access lines, "for some of the largest price cap incumbent LECs, *DS1 and DS3 channel termination sales actually increased from 2010 to 2013*. Additionally, Vertical Systems Group estimates that on the basis of total actual bandwidth delivered, use of legacy business services will remain stable at least through 2017."⁹

III. CONCLUSION

Consumer Advocates welcome the opportunity to participate in this phase of the FCC's special access proceeding. Consumer Advocates are hopeful that the data being analyzed in this proceeding will support affirmative action by the FCC to enforce or restore rules that ensure that the rates, terms and conditions for interstate special access services (and their IP-based counterparts) are just and reasonable. In any event, ILECs' dominance of critically important inputs to the nation's economy should not be permitted to jeopardize competitors' and consumers' continuing access to copper-based TDM special access circuits.

⁸ *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*, WC Docket No. 15-247, Order Initiating Investigation and Designating Issues for Investigation, DA 15-1194, released October 16, 2015) at para. 2.

⁹ *Id.*, at para. 14, footnote omitted (emphasis added).

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