



November 14, 2014

***Ex Parte Notice***

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

**RE: WC Docket No. 05-25, Special Access for Price Cap Local Exchange Carriers**

Dear Ms. Dortch:

NTCA–The Rural Broadband Association (“NTCA”) hereby submits this letter to supplement, to support in part, and to object to in part, the application for review filed by the United States Telecom Association (“USTelecom”) in the above referenced proceeding.<sup>1</sup> Although NTCA anticipates at some point that the Federal Communications Commission (“Commission”) will seek comment on the application for review, because time is of the essence with respect to the data request that is the subject of the application, NTCA feels compelled to file this correspondence in short order to raise certain points regarding the suggestions by USTelecom and to request specific relief.

As the application correctly notes, the special access data request as currently constituted may not serve the Commission’s purposes and thus certain modifications can better effectuate Commission policy. The data collection also poses unnecessary and unprecedented burdens for small, rural carriers. For these reasons, NTCA proposes at least an immediate 90-day extension of the December 15, 2014 filing deadline in addition to supporting, with some modification, the request by USTelecom to employ far less burdensome data sampling techniques.

As the Commission well knows, the special access data request is one of the largest collections of information ever conducted by the agency – and its burden on smaller carriers is particularly stark. Since the prospect of this data request first loomed nearly two years ago,<sup>2</sup> a number of

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<sup>1</sup> 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, Application for Review of the United States Telecom Association (fil. Oct. 24, 2014) (“USTelecom Application”).

<sup>2</sup> 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, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-153 (rel. Dec. 18, 2012) (“Order”).

parties have expressed concern that the burden imposed by a data collection of this scope far outweighs any benefit in terms of future policy mandates in this area. As part of a lengthy review for compliance with the Paperwork Reduction Act by the Office of Management and Budget (“OMB”), the Commission amended the original request in several respects.<sup>3</sup> Unfortunately, despite the Commission’s assurances that the amended collection, “provide[s] ample relief by significantly decreasing the overall estimated reporting burden of the collection,”<sup>4</sup> the modified collection does little to relieve the burdens imposed upon small carriers. To the contrary, the data collection threatens to impose significant burdens on NTCA members and other smaller carriers that justify a delay of the December 15, 2014 filing deadline and necessitate additional relief.

As an initial matter, the modified collection fails to account for the fact that many small carriers will need to physically sort through the billing and plant records of each and every special access circuit they have deployed to complete the data collection. Furthermore, the mapping requirements will force a number of small providers without in-house software to subcontract this portion of the information collection at substantial expense. Each of these requirements will strain the staff and financial resources of the small, rural carriers that NTCA represents. NTCA’s members employ on average 25 to 30<sup>5</sup> employees, a number that includes employees of both the incumbent rate-of-return providers and their affiliated, competitive local exchange carrier (“CLEC”) entities that provide the special access services at issue here. Completing the data request will require a number of members to engage outside consultants, often at considerable expense – and NTCA has heard from many members that the estimate of 134 hours for completion of the data request bears little relation to the reality they face.<sup>6</sup> In fact, one NTCA member has estimated that completing the request will consume as many as 800 hours in staff time, while another member has estimated almost 300 hours. Both are far in excess of the 134 hour estimate provided by the Commission to OMB.

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<sup>3</sup> 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, Order on Reconsideration, Wireline Competition Bureau (rel. Sep. 15, 2014) (“Order on Reconsideration”), ¶ 8.

<sup>4</sup> *Id.*, ¶ 12.

<sup>5</sup> While the average NTCA member has 25 to 30 employees, quite a few fall far below that number. NTCA has received feedback on this data request from members with employees ranging in the single digits and with customer counts numbering just over 1,000, and sometimes far fewer. For these carriers, the data request will constitute a burden that far outstrips the value that their submitted data could have in any market analysis the Commission ultimately conducts. Thus, a sampling approach as suggested below and by the USTelecom application that gathers data with respect to markets above a certain size would more properly balance the burdens and benefits of this data request.

<sup>6</sup> Even assuming that the 134 hours estimate is correct, to put that burden into its proper perspective, 134 employee hours represents, accounting for an average amount of vacation and holiday time taken, approximately 7 percent of one full-time employee’s annual hours of employment. Even if some NTCA members might require fewer hours than the average to complete the information collection because of the size of their CLEC operations, they also have fewer employees to devote to such tasks.

It is also important to note that the special access data collection comes at a time when rural carriers also must prepare to file FCC Form 477. While the filing deadline for Form 477 is currently suspended, rural carriers typically must expend substantial resources – in-house and/or through the use of outside consultants – to complete that reporting requirement, and these resources will need to be spread across both the special access *and* the Form 477 reporting requirements. For a company of 25 to 30 people, this is a substantial burden. Moreover, a number of carriers’ staff tasked with completing the special access and Form 477 filings are the very same personnel involved too in the rural broadband experiments application process. For those seeking to participate in such experiments, the confluence of all of these filing deadlines has further frustrated their ability to complete the special access data request in the very limited filing window provided. Indeed, NTCA is aware that at least several of its members ultimately and unfortunately declined to participate in the rural broadband experiments in part because of the staff resources needed to address instead these other data collections.

All of these factors lead to the conclusion that the 90-day filing window adopted by the Order on Reconsideration<sup>7</sup> simply does not provide small carriers with limited resources sufficient time to complete such a considerable task. Thus, an additional extension of at least 90 days beyond the December 15, 2014 deadline is warranted.

Moreover, the Commission declined to adopt an alternative approach – sampling – that could have lessened the burden of the special access data collection while enabling the collection of data sufficient to conduct the market analysis at issue in this proceeding. Although the Commission’s rejection of sampling was based on the concern that “[a]ny effort to lessen the burdens of this information collection on small companies must be balanced against [the] goal of obtaining the most accurate and useful data possible,”<sup>8</sup> there is no basis for the conclusion that utilizing a sampling methodology would undermine data accuracy. Indeed, within a well-designed survey it is possible to calculate a margin of error, and thus still retain a very high level of confidence in the results. At the very least, the Commission should have investigated this method in greater detail (as it has in other contexts<sup>9</sup>) to determine if any slight degree of uncertainty introduced by sampling (quantified by the calculated margin of error) could be acceptable when balanced against the very real burden that this data collection will impose on carriers of all sizes.

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<sup>7</sup> Order on Reconsideration, ¶ 13. The Order on Reconsideration finalized the special access data collection on September 15, 2014, granting small carriers only ninety days to complete this resource-intensive data request.

<sup>8</sup> Order, ¶ 22.

<sup>9</sup> The Commission has utilized data sampling in other important contexts. For example, the Commission utilized sampling for the purposes of the survey of urban rates for fixed voice and fixed broadband residential services. The data from this survey was used to establish a rate floor that eligible telecommunications carriers receiving high-cost loop support or frozen high-cost support must meet to receive full support amounts. Sampling methodologies will also be used to ensure that universal service support recipients offering fixed voice and broadband services do so at rates reasonably comparable to those in urban areas. Connect America Fund, WC Docket No. 10-90, DA 13-598 (rel. Apr. 13, 2013).

The Commission could, for example, sample the top 10 or 20 Metropolitan Statistical Areas – or some other subset or group of markets across the nation – which may prove that competitive providers in fact continue to represent a small portion of the providers of special access services. This may yield a statistically valid data set sufficient for the Commission to conduct its analysis of competition in the special access market, particularly since these larger markets will provide a fairly large data set. This approach would balance the Commission’s need for data versus burdening small providers with what could be an unnecessarily large data collection. If, after such an initial data request, the Commission were to determine that additional data were needed, it could certainly seek such data. Implementing such a change would be relatively easy—no modification would be necessary to the data request itself, but only to the scope of mandated responses.<sup>10</sup>

NTCA therefore joins USTelecom in urging the Commission to adopt a far less burdensome approach to the collection by using data sampling. NTCA goes further, however, and urges the Commission to suspend the data collection altogether pending development of a proper sampling methodology. Such a delay – which would include, but perhaps not be limited to, the initial 90-day minimum suspension requested earlier in this correspondence – would not materially limit the Commission’s ability to take action in the special access market; if anything, a sampling approach would provide the Commission with data that it could more quickly assess and process in making effective decisions in this docket. A reasonable delay now would enable the Commission to engage in the development of a robust sampling methodology – and suspension would also ease the burden imposed on carriers of all sizes arising out of the multiple simultaneously occurring data collections.

Finally, NTCA parts ways with USTelecom, however, with respect to the one-year data submission requirement mandated by the Order on Reconsideration. USTelecom asserts that “limiting the collection of high capacity services data to just a single year will not provide the Commission with the requisite data to conduct the comprehensive analysis of competition in the special access marketplace that the Commission has said it will undertake.”<sup>11</sup> NTCA disagrees, siding instead with the Small Purchasers Coalition, who stated that “[t]he scope of quantitative data to be provided...is unduly burdensome and, in many respects, unnecessarily repetitive of the data to be furnished by the providers of such facilities.”<sup>12</sup> The Small Purchasers recommend

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<sup>10</sup> Such an alternative use of sampling should not, however, be mandatory as to carriers responding to the data request. That is, those carriers that may have already expended substantial staff and other resources toward completion of the data request – particularly those carriers that must compile and report the data across a large number of study areas – should be allowed to file those responses as is. A few of NTCA’s (relatively) larger members with greater than average staff resources have reported that they have compiled a large portion of the data necessary to complete the data request as it is currently constituted and have aggregated such data in the format requested by the Order on Reconsideration, Appendix A. These carriers should not now be required to disaggregate this data to respond to a new sampling format.

<sup>11</sup> USTelecom Application, p. 3.

<sup>12</sup> 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, Small Purchasers Coalition Petition for Blanket

that “Small Purchasers should be required only to furnish the minimum data required for the Commission to identify the corresponding, detailed data by the provider” and that “the Commission can then match that information to the more detailed information required to be furnished by the service provider(s)”<sup>13</sup> for other years of interest.

NTCA further disagrees with USTelecom’s assertion that “the [Wireline Competition] Bureau exceeded its delegated authority when it limited the scope of the data collection to a single year.”<sup>14</sup> As noted in the Order on Reconsideration, “[t]he Commission delegated authority to the Bureau to implement the data collection,” including authority to “amend the data collection based on feedback received through the [Paperwork Reduction Act] process.”<sup>15</sup>

For the foregoing reasons, the Commission should suspend the December 15, 2014 filing deadline and undertake a more robust review of how sampling techniques can be utilized (as they have been in other contexts) to achieve the Commission’s objectives. In addition, the Commission should at the very least grant an immediate 90-day extension of the December 15, 2014 filing deadline to accommodate more reasonably the burdens placed upon smaller providers by this data request. As noted above, this data collection will impose substantial burdens on small carriers, requiring them to gather, analyze, and input the data into an FCC online form while at the same time complying with Form 477 and the numerous other reporting requirements applicable to them. A delay would thus help in managing the burdens of the many data collections and reporting requirements imposed by the Commission on providers of high-capacity services.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed via ECFS.

Sincerely,  
/s/ Michael R. Romano  
Michael R. Romano  
Senior Vice President – Policy

cc: Elizabeth McIntyre  
Deena Shetler  
Gregory Haledjian  
William Layton  
Rachel Kazan  
Ken Lynch  
Jonathan Reel  
Eric Ralph

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Exemption, or, In the Alternative, Petition for Reconsideration (rel. Dec. 9, 2013) (“Small Purchasers Coalition Petition”), p. 11.

<sup>13</sup> *Id.*, p. 12.

<sup>14</sup> USTelecom Application, p. 4.

<sup>15</sup> Order on Reconsideration, ¶ 5.

Belinda Nixon  
Jack Erb