



June 13, 2011

By Electronic Filing

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Re: *Ex Parte* Notice in *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, RM-10593; *Applications of AT&T Inc. and Deutsche Telekom AG For Consent To Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 11-65.

Dear Ms. Dortch:

On June 9, 2011, the undersigned and Susan M. Gately of SMGately Consulting, LLC met with Betsy McIntyre, Andrew Multz, Jenny Prime, Eric Ralph, Steve Rosenberg, and Deena Shetler of the Wireline Competition Bureau, Nese Guendelsberger, Joseph Levin, and Jennifer Salhus of the Wireless Telecommunications Bureau, and James Bird of the Office of General Counsel, on behalf of the Ad Hoc Telecommunications Users Committee ("Ad Hoc"). We referred to the Wireline Competition Bureau's March 29, 2011 letter to Regina McNeil, Vice President and General Counsel of the National Exchange Carrier Association filed in CC Docket No. 01-92, GN Docket No. 09-51, and WC Docket Nos. 05-337, 07-135, and 10-90 ("NECA letter") and Ad Hoc's Comments filed in docket WT Docket No. 11-65 on May 31, 2011 ("Ad Hoc Comments").

We discussed the Wireline Competition Bureau's reliance in the NECA letter on its broad statutory authority under Section 220 of the Communications Act to require information from companies regulated under Title II. We urged the Bureau to use the same statutory authority to collect cost accounting data from AT&T, Verizon, and Qwest to determine whether the supposed competition in special access markets has been sufficient to ensure that rates are just and



Ms Dortch  
June 13, 2011  
Page 2 of 6

reasonable. We observed that an information request directed only to those three carriers would not require approval under the Paperwork Reduction Act.

We also observed that the Commission's *AT&T Cost Assignment Forbearance Order*<sup>1</sup> (and a companion Order applicable to Verizon and Qwest<sup>2</sup>) gave the Bureau additional authority to collect relevant data for this rulemaking without approval (or further delay) under the Paperwork Reduction Act. That Order granted AT&T forbearance from certain accounting rules but, in paragraph 21, cited the Commission's "continuing responsibilities under the Act to ensure that rates are just and reasonable, and not unjustly or unreasonably discriminatory." Accordingly, the Commission expressly required AT&T to produce accounting data upon request in the future. The Commission noted that it needs the tools "to accomplish our statutory responsibilities" and that the Act provides the Commission with ample authority to require accounting data in the future:

Even without the Cost Assignment Rules, the Act provides the Commission with ample authority - including section 220 - to require AT&T to produce any accounting data that the Commission needs for regulatory purposes, including rulemakings or adjudications, in the future. We also expressly condition the forbearance granted in this Order on the provision by AT&T of accounting data on request by the Commission for its use in rulemakings, adjudications or for other regulatory purposes.

---

<sup>1</sup> *Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement Of Certain of the Commission's Cost Assignment Rules and Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket Nos. 07-21 and 05-342, Memorandum Opinion and Order, 23 FCC Rcd 7302, *pet. for recon pending, pet. for review pending*, *NASUCA v. FCC*, Case No. 08-1226 (D.C. Cir. filed June 23, 2008).

<sup>2</sup> *Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160(c) From Enforcement Of Certain of the Commission's ARMIS Reporting Requirements; Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c); Petition of Verizon For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain Recordkeeping and Reporting Requirements, et al.*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, WC Docket Nos. 07-21, 07-204, and 07-139 (rel. Sept. 6, 2008).



Ms Dortch  
June 13, 2011  
Page 3 of 6

*AT&T Cost Assignment Forbearance Order* at para. 21 (emphasis added; footnotes omitted). The Commission imposed an identical condition on Verizon and Qwest.<sup>3</sup>

We discussed Ethernet service and the claims of some parties to this proceeding that the DS1/DS3 services still subject to regulation will soon be obsolete, because they will be replaced in the very near future by Ethernet service, and therefore do not merit regulatory intervention. The Commission expressed its interest in receiving market data that may be available to Ad Hoc members regarding the extent of, timing of, and incentives for enterprise customer migration to Ethernet services.

Ad Hoc addressed this issue when it responded to the Commission's Public Notice<sup>4</sup> in this docket seeking comment on an analytical framework. In its Reply Comments,<sup>5</sup> Ad Hoc addressed AT&T's attempt to downplay the problems created by the Commission's premature price de-regulation of special access services. AT&T claimed in its Comments that regulated special access services do not merit investigation because they are technologically obsolete and commercially irrelevant. According to AT&T, the Commission is wasting time and resources on this docket when "all of the available evidence indicates that those services are going the way of the dodo."

In response to AT&T's claims, Ad Hoc's Reply Comments reported the following to the Commission:

[I]ndividual Ad Hoc members reported that they currently rely heavily on TDM and/or copper-based DS1 and DS3 services and plan to do so for the foreseeable future. In addition, some members (about a dozen) provided data regarding their actual usage. Those members currently use approximately 75,000 DS1 circuits and 3,000 DS3s with annual billing of more than \$250-million.<sup>6</sup> The circuit counts reported by these members are

---

<sup>3</sup> *Id.* at para. 27.

<sup>4</sup> Public Notice, *Parties Asked to Comment On Analytical Framework Necessary to Resolve Issues In the Special Access NPRM, Extension of Reply Comment Date to February 24, 2010*, WC Docket No. 05-25, DA 10-244 (Feb. 12, 2010).

<sup>5</sup> Comments of Ad Hoc Telecommunications Users Committee, filed Feb. 24, 2010.

<sup>6</sup> Given the demand characteristics of Ad Hoc members, Ad Hoc's economic consultants estimate that the Committee-wide demand for these services is at least twice as great.



Ms Dortch  
June 13, 2011  
Page 4 of 6

noteworthy for their relative proportions: DS1 circuits dwarf DS3s in sheer numbers. The typical first step corporate users take to satisfy their “exploding demand” for increased broadband is to increase circuit capacity from the DS1 to DS3 level. Yet the reporting members identified less than 5% of their total circuits as DS3. Their bandwidth needs were met by services at DS1 levels for the remaining 96% of their circuits. This information is consistent with data presented by the GAO in its 2007 report on special access data collection.<sup>7</sup> The data in the *GAO Report* revealed that the number of locations with demand for DS1 service was nearly 50 times greater than the number of locations with DS3 level demand.<sup>8</sup> The 75,000 DS1s of the reporting members – whose numbers include companies of many types and sizes, including companies who do not operate in atypical, “information intensive” industries – suggest that the remainder of the Fortune 500 companies are likely to use at least five million.

Ad Hoc members also responded to AT&T’s claim that these services are “going the way of the dodo” with the following information:

- “We have about 20,000 T1 dodos and <100 DS3 dodos. No immediate plans to abandon them to the wild.”
- “We just received a response from [a major telecommunications company] to a global enterprise RFP for a new MPLS network in the US. 100% of the access lines proposed by [the company] were TDM (dodo?).”
- “Almost 95% of [my company’s] domestic US data network are those ‘circuits that nobody wants’.”

---

<sup>7</sup> United States Government Accountability Office, Report, FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services (Nov. 2006) (“*GAO Report*”).

<sup>8</sup> *Id.* at 20, Table 2. The relationship can be derived from Table 2 as follows. Column 1 indicates the total number of Buildings with demand of DS-1 or greater at 177,571. Columns 4 and 7 provide the total number of Buildings with demand of DS-3 and the total number of Buildings with demand of 2 DS-3s and greater at 3,916 and 1,510, respectively. Subtracting the sum of Columns 4 and 7 (5,426, the number of Buildings with demand of DS-3 or greater) from Column 1 provides the number of Buildings with demand of DS-1, at 172,146, or 43.9 times the number of Buildings with demand of DS-3.



Ms Dortch  
June 13, 2011  
Page 5 of 6

- “We still completely rely on the services in question here.... Many companies still are running legacy PBX infrastructures which require these services, and companies that have transitioned to VoIP-based systems also still primarily rely on these transport technologies for their customer interactions.”
- “For data, [my company’s divisions] in North America completely rely on TDM (DS3) services versus non-TDM services (all our factories, offices, call centers, etc).”

In short, AT&T grossly mischaracterizes the state of the marketplace with respect to demand for TDM/DS1/DS3 services. What AT&T calls “dodos” are in fact the most common building blocks of corporate networks and will remain so for the foreseeable future.

Finally, we outlined the Ad Hoc Committee’s position that market power in the special access market enables AT&T, Verizon, and Qwest to engage in anti-competitive price squeezes of their competitors in retail markets for which special access is an input, including Ethernet, wireless, and interexchange services. Traditionally, economic literature focused on the scenario in which a company that dominates the market for a wholesale input raises the price of that input in order to drive out competitors in retail markets dependent upon the input and to then raise consumer prices in those retail markets. Ad Hoc’s concern is that price squeezes can be used to impede competition and exploit ratepayers before (and regardless of whether) competitors are completely forced from downstream markets, *e.g.*, inflated input costs reduce profit margins and thereby deny competitors the revenues they need to build out networks or achieve scale economies that enable them to reduce their prices and drive market-wide prices down to competitive levels.

Pursuant to the Commission’s rules, we are filing a copy of this notice electronically in the above-referenced docket. If you require any additional information, please contact the undersigned.

Sincerely,

A handwritten signature in black ink that reads "Colleen Boothby". The signature is written in a cursive, flowing style.

Colleen Boothby



Ms Dortch  
June 13, 2011  
Page 6 of 6

cc: Betsy McIntyre  
Andrew Mulitz  
Jenny Prime  
Eric Ralph  
Steve Rosenberg  
Deena Shetler

Nese Guendelsberger  
Joseph Levin  
Jennifer Salhus

James Bird