

May 2, 2013

FILED VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

**Re: *Ex Parte* Notification
WC Docket No. 05-25
Special Access for Price Cap Local Exchange Carriers**

Dear Ms. Dortch:

Union Telephone Company; AST Telecom, LLC d/b/a Blue Sky Communications; Illinois Valley Cellular RSA 2-I Partnership and Illinois Valley RSA 2-II Partnership, d/b/a Illinois Valley Cellular; Leaco Rural Telephone Cooperative; Bluegrass Cellular, Inc.; and Eastern Kentucky Network, LLC d/b/a Appalachian Wireless (collectively, the “Small Carriers”), by counsel, hereby submit this *ex parte* letter in support of those parties that filed comments expressing deep concern regarding the enormous and unjustified burden of the Commission’s mandatory data collection requirements adopted in the *Report and Order and Further Notice of Proposed Rulemaking* in the above-referenced proceeding.¹ Each of the Small Carriers is a mobile wireless carrier, a purchaser of special access facilities, and a small business entity providing service predominantly in rural areas of the United States.

Summary

The Small Carriers agree with the various comments that urge the FCC to scale back the vast scope of the mandatory data collection requirements.² These data requirements would be particularly onerous for small carriers that purchase small amounts of special access. Further, the mandatory data collection requirements contravene the Paperwork Reduction Act (“PRA”) in various ways because, among other reasons, the burden of producing such data far outweighs the public interest in gathering such data.

¹ In the Matter of Special Access for Price Cap Local Exchange Carriers, WC Docket No. 05-25, *Report and Order and Further Notice of Proposed Rulemaking*, released December 18, 2012, FCC 12-153 (“*Mandatory Data Collection Order*”).

² See Comments of Smith Bagley, *et al* (“Joint Commenters”); Comments of American Cable Association (“ACA”); Comments of National Cable & Telecommunications Association (“NCTA”); Comments of NTCA – The Rural Broadband Association (“NTCA”); Comments of Independent Telephone & Telecommunications Alliance (“ITTA”); and Comments of Alaska Communications Systems (“ACS”). All of these Comments were filed in the above-referenced docket on April 15, 2013. See also NCTA *Ex Parte* letter dated April 17, 2013 (NTCA *Ex Parte*).

Specifically, the Small Carriers support the proposals to implement a *de minimis* exemption to the mandatory data collection requirements. If the Commission does not exempt small carriers, the Small Carriers support the proposals to substantially reduce the data collection requirements. Among other things, the Commission should (1) eliminate the requirement to furnish data (a) that carriers do not possess and (b) for any time period prior to 2012; (2) eliminate the requirement for purchasers of special access to provide qualitative information regarding the purchase of special access facilities; (3) exempt self-provisioned special access facilities from the data collection requirement; and (4) narrow the scope of quantitative data to be provided by purchasers of special access facilities.

The Commission Should Implement a *De Minimis* Exemption

The Small Carriers strongly support the proposal of Joint Commenters that any carrier that purchases less than \$5 million annually in special access facilities in price cap areas should be exempt from the mandatory data collection requirements. Among the Small Carriers, the highest level of annual spending on special access is far less than \$5,000,000 annually, which constitutes “an almost infinitesimal level of spending on special access facilities.”³

The Small Carriers also support the concept of establishing a *de minimis* exemption based on the number of special access connections purchased by a carrier. However, setting the threshold at 50 such connections, as proposed by NTCA, is too low.⁴ Even the smallest wireless carriers may require more than 50 special access connections to provide backhaul from their cell towers. The Small Carriers instead propose a *de minimis* exemption for carriers with fewer than 200 special access connections⁵, or in the alternative, with less than \$5 million in annual spending on special access facilities.

The Small Carriers fully agree with NTCA’s assessment that establishing a *de minimis* threshold “would enable the Commission to achieve its goals of understanding the overall market for special access services while minimizing the burden on small businesses that in all likelihood comprise a statistically insignificant portion of the overall market.”⁶ Put differently, “the burden of producing the data is wholly disproportionate to the public interest in obtaining such data.”⁷

The Commission Should Substantially Reduce the Data Collection Burden on Carriers

The Small Carriers agree with Joint Commenters that if the Commission does not exempt small carriers, then it should substantially reduce the data collection requirements.⁸

³ Comments of Joint Commenters at 7, estimating the market for special access facilities to be at least \$20 billion.

⁴ Comments of NTCA at 12.

⁵ The Small Carriers consider a “connection” to be a dedicated access facility furnished by one provider between two points, regardless of the number of circuits on that facility.

⁶ Id.

⁷ Comments of Joint Commenters at 7.

⁸ Id.

Eliminate the requirement to furnish data (1) that carriers do not possess and (2) for any time period prior to 2012.

Several parties filing comments noted that the Commission did not provide prior notice of the data collection requirements, and carriers therefore had no reason to – and in fact, did not – collect the data now being requested.⁹ The Small Carriers agree with ITTA’s assessment that:

In many cases, respondents have not previously been required to comply with recordkeeping or reporting obligations with respect to the data now being requested, so gathering, creating, compiling, and submitting the requested information will require a substantial effort of time and commitment¹⁰

Joint Commenters noted that carriers have not identified and tracked such data in their electronic databases.¹¹ For these reasons, the Commission should eliminate the requirement for carriers to furnish data that such carriers do not possess. In all events, the Commission should eliminate the requirement to furnish data for any time period prior to 2012. The requirement to furnish data for both 2010 and 2012 doubles (at a minimum) the enormous data burden requirements without any corresponding public interest benefit in obtaining such additional data.

Eliminate the requirement for purchasers of special access to provide qualitative information regarding the purchase of special access facilities.

The Small Carriers agree with the various commenters who urged the Commission to eliminate the requirement for purchasers of special access to provide qualitative information. The Small Carriers agree with NCTA’s assessment that the question of whether ILEC tariffs constrain the purchaser’s ability to take certain actions “is not a data collection but rather [a requirement for] respondents to make a series of subjective judgments.”¹² The Small Carriers further agree with Joint Commenters and NCTA that any such information request should be voluntary.¹³

⁹ Comments of ITTA at 6 and n. 17 (“it is important for the Commission to make clear that respondents will not be expected to provide material that they do not possess or that they cannot easily compile”); Comments of Joint Commenters at 8; Comments of ACA at 5 (“small cable operators [should] not be required to produce information that they do not collect in the normal course of business.”)

¹⁰ Comments of ITTA at 6.

¹¹ Comments of Joint Commenters at 8.

¹² Comments of NCTA at 16. *See also* Comments of NTCA at 6 n. 12 (“Requests for “data” that are so inherently subjective do not represent a request for data at all. These types of questions ... bear more resemblance to college application essay questions”

¹³ *Id.* and Comments of Joint Commenters at 12.

Exempt self-provisioned special access facilities from the data collection requirement.

The Small Carriers, who self-provision a significant number of their backhaul facilities, agree with Joint Commenters that carriers should be exempt from providing data regarding such facilities. Self-provisioned facilities are not part of the “market” for special access facilities.¹⁴ There is no market price for the use of such facilities.¹⁵ As a result, any “data” collected regarding such facilities will not be useful in assessing the market for special access facilities, and in all events, the burden of providing such data will dwarf the utility of such data.

Narrow the scope of quantitative data to be provided by purchasers of special access facilities.

Many of the parties filing comments provided concrete suggestions for how the Commission should narrow the scope of data so that only the most relevant data must be provided.¹⁶ The Small Carriers agree with NCTA and Joint Commenters that in many cases the providers are the best source for some of the data, and that requiring purchasers to submit such data is unnecessarily duplicative and burdensome.¹⁷

To the extent that the Commission does not exempt small carriers and critical data cannot be provided by the providers of the special access facilities, the Small Carriers support ACA’s recommendation that the Commission adopt a streamlined form.¹⁸ For example, with regard to the tariff through which the special access service is purchased, the Small Carriers support NCTA’s proposal to give respondents the option of simply identifying (rather than categorizing) such tariff.¹⁹ Similarly, the Small Carriers support Joint Commenters proposal that purchasers of special access facilities be required only to identify each of the cell sites where the carrier purchases special access from a third-party provider, to provide the address and geographic coordinates for the site, the number of dedicated access facilities serving the site, and the name of the service provider(s).²⁰ As Joint Commenters noted, the Commission can then match that information to the more detailed information required to be furnished by the service provider(s).²¹

Conclusion

For the reasons set forth above, the Small Carriers urge the FCC to scale back the vast scope of the mandatory data collection requirements.

¹⁴ Comments of Joint Commenters at 8 – 9.

¹⁵ *Id.*

¹⁶ *Id.* at 9 – 11, Comments of NCTA at 5 – 16, Comments of ACA; Comments of NTCA at 10 – 11.

¹⁷ Comments of Joint Commenters at 9 - 11; Comments of NCTA at 12.

¹⁸ Comments of NTCA at 10 – 11.

¹⁹ Comments of NCTA at 12.

²⁰ Comments of Joint Commenters at 9 – 11.

²¹ *Id.* at 10.

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Respectfully submitted,

A handwritten signature in black ink that reads "Robert S. Koppel". The signature is written in a cursive style with a large, prominent 'R' and 'K'.

David L. Nace
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