

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

<b>In the Matter of</b>	)	
	)	
<b>Special Access for Price Cap Local Exchange Carriers</b>	)	<b>WC Docket No. 05-25</b>
	)	
<b>AT&amp;T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services</b>	)	<b>RM-10593</b>
	)	

**OPPOSITION OF THE  
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

The Independent Telephone & Telecommunications Alliance (“ITTA”) hereby submits its Opposition to the Small Purchasers Coalition (“Coalition”) Petition for Blanket Exemption or, in the Alternative, Petition for Reconsideration<sup>1</sup> of the September 18, 2013 *Data Collection Order* issued by the Wireline Competition Bureau (“Bureau”) in the above-captioned proceedings.<sup>2</sup> In the *Data Collection Order*, the Bureau finalized the Federal Communications Commission’s (“FCC’s” or “Commission’s”) mandatory special access data collection, which requires providers and purchasers of special access service and certain entities providing “best efforts” business broadband Internet access service to submit data, information, and documents for a

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<sup>1</sup> *In the Matter of Special Access for Price Cap Local Exchange Carriers, AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Small Purchasers Coalition Petition for Blanket Exemption or, in the Alternative, Petition for Reconsideration (filed Dec. 9, 2013) (“Petition”).

<sup>2</sup> *In the Matter of Special Access for Price Cap Local Exchange Carriers, AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order, DA 13-1909 (rel. Sept. 18, 2013) (“*Data Collection Order*”).

comprehensive evaluation of competition in the special access marketplace.<sup>3</sup>

## INTRODUCTION AND SUMMARY

The Coalition asks the Commission to grant a blanket exemption from the mandatory data request for “small purchasers,” defined as any carrier that purchases (1) less than \$5 million annually in special access facilities in price cap areas, or (2) 200 or fewer special access facilities.<sup>4</sup> In the alternative, the Coalition requests that the Commission reduce the data collection burden on small purchasers by, among other things, (1) eliminating the requirement to furnish data for calendar year 2010 and require data for 2013 rather than 2012; (2) exempting self-provisioned special access facilities from the data collection requirements; and (3) exempting the provision of special access facilities among affiliated entities from the data collection.<sup>5</sup>

While ITTA does not dispute that the mandatory data collection places a significant burden on all entities that must comply with the request, the Commission should reject any calls for a blanket exemption from the data collection for certain classes or categories of respondents. Taking such action would undermine the Commission’s ability to conduct a comprehensive analysis of the special access marketplace.<sup>6</sup> Furthermore, to the extent the Commission is inclined to narrow the scope of the data request in any manner, it must do so for all respondents impacted by the data collection for reasons of regulatory parity, practicality, and fairness.

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<sup>3</sup> See *In the Matter of Special Access for Price Cap Local Exchange Carriers, AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012) (“*2012 Special Access Order*”).

<sup>4</sup> Petition at 6-8.

<sup>5</sup> *Id.* at 8-11

<sup>6</sup> *Id.* at 3.

**I. THE COMMISSION SHOULD NOT GRANT A BLANKET EXEMPTION FROM THE DATA COLLECTION FOR CERTAIN CLASSES OR CATEGORIES OF PROVIDERS**

The Commission issued the mandatory data collection to obtain comprehensive information on dedicated services that will enable “a robust analysis” and evaluation of competition in the market for special access services.<sup>7</sup> This comprehensive review is intended to aid the Commission in ensuring that its special access rules “reflect the state of competition today and promote competition, investment, and access to dedicated communications services [that] businesses across the country rely on every day to deliver their products and services to American consumers.”<sup>8</sup> To inform this analysis, the mandatory data request requires submission of a vast array of data, information, and documents regarding market structure (*e.g.*, the location and type of facilities capable of providing special access and the proximity of such facilities to sources of demand), pricing, demand (*i.e.*, observed sales and purchases), information on terms and conditions in special access contracts, and decision data (*e.g.*, detailed information regarding recent successful and unsuccessful RFPs).<sup>9</sup>

The Commission has, without a doubt, drastically underestimated the amount of time it will take for all respondents to comply with the mandatory special access data collection. As ITTA previously pointed out, compliance will require its members and other respondents to devote thousands of hours to gathering the requested data while diverting internal company resources away from other important functions in areas such as network improvement and optimization, carrier services, toll fraud, billing, and systems integration.<sup>10</sup> In many cases,

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<sup>7</sup> 2012 *Special Access Order* at ¶ 30.

<sup>8</sup> *Id.* at ¶ 1.

<sup>9</sup> *See id.* at ¶¶ 30-46.

<sup>10</sup> *See, e.g.*, Paperwork Reduction Act Comments of the Independent Telephone &

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 and time commitment from employees in addition to the other roles and functions they are expected to perform within their companies.

That said, ITTA strongly opposes the granting of a blanket exemption for any particular class or category of entities impacted by the data request because they would be “unduly burdened by the data collection requirements.”<sup>11</sup> Given that the purpose of the data collection is to ensure a “clear picture of all competition in the marketplace,” it is imperative that the Commission refrain from eliminating data submission requirements that would undermine its analysis.<sup>12</sup> Relief for certain classes or categories of respondents would skew this analysis, producing an “incomplete picture of competition in this market [that would be] likely to lead to inappropriate regulatory intervention.”<sup>13</sup>

While the Coalition asserts that the Commission did not adequately address its previous requests for elimination or reduction of the reporting requirements for small purchasers, the *Data Collection Order* explicitly “note[d] concerns regarding the burden that this data collection will impose on small companies.”<sup>14</sup> The Commission nonetheless found “it necessary to obtain data from special access providers and purchasers of all sizes” in order to gain an accurate

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Telecommunications Alliance, WC Docket No. 05-25, RM-10593 (filed Jan. 8, 2014), at 4-7.

<sup>11</sup> Petition at 6.

<sup>12</sup> See *2012 Special Access Order* at ¶¶ 16-19.

<sup>13</sup> Statement of Commissioner Ajit Pai Regarding Release of the Bureau’s *Data Collection Order* (Sept. 18, 2013), at 2.

<sup>14</sup> *Data Collection Order*, Appendix B, Final Regulatory Flexibility Analysis, at ¶ 73.

understanding of the special access marketplace.<sup>15</sup>

According to the Bureau, the *Data Collection Order* reduced the burden associated with the data collection where doing so was consistent with the Bureau's delegated authority and would not impact the Commission's ability to analyze the data. After reviewing "all of the requests for changes and clarifications,"<sup>16</sup> the Bureau concluded it lacks authority to adopt a blanket exemption from the mandatory data request for small purchasers.<sup>17</sup> The Bureau declined to make other clarifications or changes the Coalition and others requested "because the benefit of collecting the information outweighed the burden or because the rejected clarification or change is inconsistent with the terms of the [*Special Access Order*]... or because the Commission previously considered and rejected the requested relief."<sup>18</sup>

Recognizing that grant of a blanket exemption for small purchasers does not fall within the scope of the Bureau's delegated authority, the Coalition requests the Bureau to refer the matter to the full Commission for consideration.<sup>19</sup> That should not change the outcome, however. The Commission must account fully for special access providers and purchasers of all types and sizes if it is to conduct a comprehensive examination of the full scope of actual and potential competition in the special access marketplace. The Commission therefore must reject any request to limit its review.

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<sup>15</sup> *Id.*

<sup>16</sup> *Data Collection Order* at ¶ 54.

<sup>17</sup> *Id.* at ¶ 13, n. 41.

<sup>18</sup> *Id.* at ¶ 54.

<sup>19</sup> Petition at 2.

## **II. ANY MODIFICATIONS TO THE SPECIAL ACCESS DATA COLLECTION MUST BE GUIDED BY PRINCIPLES OF REGULATORY PARITY, PRACTICALITY, AND FAIRNESS**

Alternatively, the Coalition requests that the Commission reduce the data collection burden on small purchasers by, among other things, limiting the scope of the data request to calendar year 2013 and exempting from the data collection special access services that are self-provisioned or provisioned by affiliated entities.<sup>20</sup> To the extent the Commission is inclined to reduce the data collection requirements in any manner, it must do so for all respondents for reasons of regulatory parity, practicality, and fairness.

First, the Coalition argues that the Commission should eliminate the requirement for respondents to provide data for calendar year 2010 because it is “grossly unfair and unduly burdensome” to mandate submission of data that will be more than four years old once it is collected.<sup>21</sup> The Coalition also observes that the data collection requires respondents to provide data for 2012 because the Commission believed it was the most recent year for which data would be available once the data collection is approved by the Office of Management and Budget.<sup>22</sup> Given that more recent information from 2013 will be available by the time the data is collected, the Coalition asks the Commission to modify the data request to apply to calendar year 2013, and limit the scope of the data collection to this period.<sup>23</sup>

The Coalition also argues that the Commission should exempt from the scope of the data request special access service that is self-provisioned or provisioned by affiliated entities.<sup>24</sup> In

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<sup>20</sup> *Id.* at 9-11.

<sup>21</sup> *Id.* at 9.

<sup>22</sup> *Id.* at 10.

<sup>23</sup> *Id.* at 9.

<sup>24</sup> *Id.* at 10-11.

the case of self-provisioning, the purchaser and the provider are the same entity, such that the provider itself is the customer of special access service.<sup>25</sup> According to the Coalition, there is no market price for the use of such facilities, so they are not part of the “market” for special access. Therefore, it does not make sense to require respondents to provide data regarding self-provisioned facilities.<sup>26</sup> With respect to reporting requirements applicable to special access facilities provided to and purchased from affiliates, the Coalition argues for an elimination or reduction in mandatory reporting for respondents that fall below a certain *de minimis* threshold because “[t]he combined burden on the affiliated purchaser and provider would be onerous.”<sup>27</sup>

ITTA generally is supportive of Commission steps to ensure that the data request is consistent with the policies underlying the Paperwork Reduction Act, which Congress enacted to “have Federal agencies become more responsible and publicly accountable for *reducing* the burden of Federal paperwork on the public.”<sup>28</sup> To the extent the Commission is inclined to adopt any of the modifications the Coalition proposes, however, those changes must apply to all respondents.

Uniform application of the mandatory special access reporting requirements is imperative to promote policies of regulatory parity and fairness. In addition, practicality dictates that the Commission treat all respondents in a similar fashion. With respect to modifying the time period applicable to the data request, it is essential for a meaningful analysis that the Commission examine data relating to the same calendar year(s) for all respondents. Likewise, should the Commission determine that certain data is unnecessary to inform its analysis (*e.g.*, data regarding

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<sup>25</sup> *See id.* at 10.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 11.

<sup>28</sup> *See* Paperwork Reduction Act, Pub. L. 104-13, 109 Stat. 163 (1995), *codified at* 44 U.S.C. §§ 3501-3520 (emphasis added).

self-provisioned facilities or affiliate transactions), it is sensible to extend the same relief to all respondents to reduce the burdens on both FCC and industry resources.

### **CONCLUSION**

In sum, ITTA urges the Commission to reject any request for a blanket exemption from the data request because it could skew the Commission's analysis of competition in the special access marketplace. To the extent the Commission is inclined to modify the data collection, however, it must do so for all respondents for reasons of regulatory parity, practicality, and fairness.

Respectfully submitted,

By: /s/ Genevieve Morelli

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**Certificate of Service**

I, Micah M. Caldwell, hereby certify that on this 14<sup>th</sup> day of January, 2014, I have caused a copy of the foregoing Opposition to be served by electronic mail upon the following:

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