

April 7, 2016

**VIA ECFS**

*EX PARTE*

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

**Re: *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket  
No. 05-25 and RM-10593**

Dear Ms. Dortch:

Today, we urge the FCC to adopt a new approach to special access regulation.

Over the years, INCOMPAS and Verizon have had sharply different views on the proper regulatory framework for dedicated services (including TDM special access and Ethernet services).

Verizon has maintained that demand for business data services is shifting away from legacy services to providers of all kinds, in particular cable companies. In this marketplace, our priority has always been a regulatory framework that ensures a level playing field for all providers that offer the same or similar services. We have advocated for a regulatory structure that takes into account all of the various competitors for business data services and regulates all competitors evenhandedly. We have also maintained, and continue to believe, that competition yields the best market results. As a result, we have advocated that regulation is necessary only where competition fails to adequately discipline the market.

INCOMPAS has maintained that the large incumbent LECs have market power in the provision of all dedicated services, including TDM-based and packet-based services (*i.e.*, Ethernet services), because they control the only physical connection to the vast majority of commercial locations in the country. Accordingly, INCOMPAS has asserted that the market for dedicated services, *i.e.*, special access, is broken. We have therefore urged the FCC to adopt, among other things, *ex ante* rate regulations designed to ensure that the rates for dedicated services are just, reasonable, and not unjustly or unreasonably discriminatory. We also have urged the FCC to address unreasonable volume and term commitments. We have emphasized that such action will unleash a virtuous cycle of investment and innovation for wired and wireless networks alike, spurring more investment by both competitors and incumbents, and ensuring consumers of these services have competitive choices.

Despite these differences, INCOMPAS and Verizon both agree that it is time for the FCC to move beyond this decade-old debate by adopting a permanent regulatory framework that is legally sustainable, that recognizes the changes in the marketplace over the last ten years, that is flexible enough to accommodate new technology and new competitive circumstances going

forward, and that will encourage the transition from legacy services to IP and more advanced communication services. As a result, in good faith and in the spirit of constructive dialogue, INCOMPAS and Verizon have reached common ground on the following principles that we suggest should guide the FCC in adopting this permanent framework.

- The FCC should promptly adopt a permanent framework for regulating all dedicated services in a technology neutral manner. All providers offering the same or similar services should be subject to the same overall regulatory framework. That includes not only incumbent providers, but also cable companies and other wireline competitive providers that now compete in this marketplace.
- In the near term, the FCC should make clear that all providers offering dedicated services are subject to Title II of the Communications Act, including Sections 201 and 202 of the Communications Act. Subject to such a clarification, Verizon would not oppose an order placing Verizon on the same footing today with regard to Ethernet services as cable companies, competitive providers and other incumbent LECs that have received forbearance relief from dominant carrier regulation and is adopted at the same time as an order adopting a permanent framework.
- The FCC should seek comment on a permanent framework that moves away from the current dominant/non-dominant regulatory structure for these services and adopts a new regulatory model.
  - That new model would rely on ex ante rate regulation in relevant markets with insufficient competition. Under the new model, in relevant markets that are insufficiently competitive, price regulation is warranted on a technology-neutral basis. The FCC would apply rate regulation to constrain prices and ensure that providers could not abuse their market positions by imposing rates, terms or conditions that are unjust or unreasonable, or unjustly or unreasonably discriminatory.
  - In relevant markets where there is sufficient competition, the FCC would not need to apply ex ante rate regulation but would instead rely primarily on market forces to discipline prices and ensure a dynamic marketplace. Providers offering dedicated services in these sufficiently competitive relevant markets would still be subject to Title II, including Sections 201 and 202 of the Communications Act.

Marlene H, Dortch

April 7, 2016

Page 3

- This new model would encompass all dedicated services (*e.g.*, TDM special access services and packet-based services such as Ethernet) provided by all competing providers.
- There should be a relationship between wholesale and retail pricing for these services, which the new model should reflect.

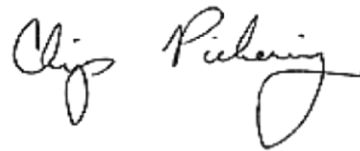
\*\*\*\*\*

This proceeding has lasted more than ten years. While we don't agree on everything, and there is more work to be done to address the issues raised in the proceeding, INCOMPAS and Verizon agree that this important first step towards bringing an end to this proceeding reflects a balanced approach that incorporates the concerns of both sides of the policy debate. We hope that these principles help the FCC formulate this balanced approach as it concludes its work.

Sincerely,



Kathleen Grillo  
Senior Vice President  
Public Policy & Government Affairs  
Verizon  
1300 I Street, NW, Suite 400 West  
Washington, DC 20005



Chip Pickering  
Chief Executive Officer  
INCOMPAS  
1200 G Street, NW, Suite 350  
Washington, DC 20005