

September 15, 2016

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25; Business Data Services in an Internet Protocol Environment, WC Docket No. 16-143; Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans, WC Docket No. 15-247*

Dear Ms. Dortch:

On September 14, 2016, a group of economists who have submitted declarations and white papers in the above-referenced proceedings filed a letter (“Joint Economists’ Letter”) urging the Commission to not regulate business data service (“BDS”) markets with multiple facilities-based competitors and instead, adhering to accepted principles of regulatory economics, adopt a competitive market test targeted at combating supracompetitive rents in entrenched monopoly markets.¹

My co-author, Dr. Federico Mini, and I also submitted an economic declaration in the above-referenced proceedings, on behalf of the American Cable Association.² We explained that the non-dominant regulatory regime used for decades by the Commission to oversee the provision of BDS by non-incumbent providers is rooted in sound and compelling economics since it provides non-incumbents with incentives to commit effort, initiative, and financial investment and avoids needlessly burdening them with regulation when the ultimate policy goal is its elimination. Further, we noted that this approach underlies the U.S. antitrust principle that if a firm attains its presence in the market, even monopoly, through legitimate means (*e.g.* not a monopoly franchise right), it should not find its pricing restricted. Hence, because cable and other non-incumbent providers’ investments to provide BDS have been and are being made without any government grant of a monopoly, any Commission action to regulate non-incumbents, including those risking their own capital to deploy in rural areas, based on their attaining market power would be contrary to sound economics and antitrust policy. Our

¹ See Letter from Joseph V. Farrell *et al.* to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 16-143 *et al.* (Sept. 14, 2016).

² See Comments of the American Cable Association, WC Docket No. 16-143 *et al.* at Appendix A (June 28, 2016).

Marlene H. Dortch
September 15, 2016
Page 2

declaration, although not addressing all issues raised in the Joint Economists' Letter, is consistent with key points they made, and with their conclusion that there is no "plausible argument" for regulating non-incumbent providers which lack market power. As explained in our paper, regulation would not be justified even in cases where non-incumbent providers did attain market power by virtue of their investments or other socially beneficial activities.

Respectfully submitted,

/s/ Marius Schwartz

Professor Marius Schwartz
Department of Economics
Georgetown University