

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

United States Telecom Association Petition for
Declaratory Ruling that Incumbent Local
Exchange Carriers are Non-Dominant in the
Provision of Switched Access Services

WC Docket No. 13-3

**REPLY COMMENTS OF
THE MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE**

Commonwealth of Massachusetts
Department of Telecommunications and Cable

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Dated: March 7, 2016

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The Massachusetts Department of Telecommunications and Cable (“MDTC”)¹ respectfully submits these reply comments in response to the Public Notice released by the Federal Communications Commission (“FCC”) on January 21, 2016 and comments filed on February 22, 2016 in the above-referenced docket.² In the Public Notice, the Wireline Competition Bureau (“WCB”) seeks comment to refresh the record on matters raised in the United States Telecom Association (“USTelecom”) Petition for Declaratory Ruling that Incumbent Local Exchange Carriers (“ILECs”) are Non-Dominant in the Provision of Switched Access Services (“Petition”) and in any responsive filings in the docket.³ The MDTC submits that its previously submitted comments within this proceeding are still valid and requests that the

¹ The MDTC regulates telecommunications and cable services within Massachusetts and represents the Commonwealth before the FCC. MASS. GEN. LAWS ch. 25C, § 1; GEN. LAWS ch. 166A, § 16.

² *In the Matter of U.S. Telecom Assoc. Petition for Declaratory Ruling that Incumbent Local Exch. Carriers are Non-Dominant in the Provision of Switched Access Servs.*, WC Docket No. 13-3, *Pub. Notice* (rel. Jan 21, 2016).

³ *Id.*

FCC continue to consider those comments.⁴ The MDTC maintains that in order for the FCC to properly analyze the Petition, the FCC, in accordance with its precedent, must require USTelecom to make an affirmative showing that ILECs are non-dominant in all markets in which it seeks elimination of dominant-carrier regulations.

The FCC as a part of refreshing the record should clarify the level of detailed data necessary for USTelecom to demonstrate that ILECs are non-dominant in every switched access services market. As the MDTC stated in its initial comments, USTelecom focuses almost exclusively on ILECs' market share in the national switched access services market, without regard to the other elements within the FCC's market power analysis utilized in the *AT&T Order*.⁵ USTelecom in its comments refreshing the record continues to focus almost exclusively on ILECs' market share in the national switched access services market.⁶ Under the AT&T Order, the FCC considered: (1) the ILEC's market share; (2) the supply elasticity of the market; (3) the demand elasticity of the ILEC's customers; and (4) the ILEC's cost structure, size, and resources.⁷ While the FCC may determine that an alternative market power analysis is appropriate for a carrier dominance determination in the switched access services market, at this stage, USTelecom should be providing detailed data at a more granular level so that the FCC has sufficient information on which to make a determination on the requested declaratory ruling.

⁴ MDTC Comments, *In re United States Telecom Association Petition for Declaratory Ruling that Incumbent Local Exchange Carriers are Non-Dominant in the Provision of Switched Access Services*, WC Docket No. 13-3 (filed Feb. 25, 2013) ("MDTC Comments").

⁵ *Id.* at 2-3 (citing Petition at 14-15; *In the Matter of Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, FCC 95-427, 11 FCC Rcd 3271, *Order* (rel. Oct. 23, 1995) ("AT&T Order")).

⁶ Comments of the United States Telecom Association, *In re United States Telecom Association Petition for Declaratory Ruling that Incumbent Local Exchange Carriers are Non-Dominant in the Provision of Switched Access Services*, WC Docket No. 13-3 at 2-8 (filed Feb. 22, 2016) ("USTelecom Comments").

⁷ *Id.* at 3 (citing AT&T Order, ¶ 38).

The FCC in considering the Petition should also take care to conduct its marketplace analysis at a sufficiently granular level and not rely on a national geographic market.⁸ There are still areas within the United States, where the ILEC provides the only local voice service available and barriers to entry into the switched access services market remain high.⁹ As the Michigan Public Service Commission (“MPSC”) states in its comments refreshing the record, “[b]road survey results should not be applied to states with rural or underserved areas that rely on wireline services. In these areas, ILECs remain the dominant providers because customers may not have access to ‘competitive alternatives’ that would allow them to ‘cut the cord.’”¹⁰ Further, state legislators and state commissions have continued to set policies and review competition in intrastate markets, which includes the elimination of outdated telecommunications regulations.¹¹ The MDTC submits that in addressing the Petition the FCC must not preempt states’ abilities to make their own determinations of whether a particular carrier, or class of carriers, is dominant in the local switched access services market at the intrastate level. Accordingly, the MDTC requests that the FCC continue to consider its previously submitted comments within this proceeding and require USTelecom to provide more detailed and granular data to make an affirmative showing that ILECs are non-dominant in each market in which regulations would be relaxed.

⁸ *Id.* at 5.

⁹ *Id.* at 6 (citing MDTC, COMPETITION STATUS REP. at 12-13, 54 available at <http://www.mass.gov/ocabr/docs/dtc/compreport/competitionreport-combined.pdf> (last visited Feb. 10, 2016) (“MDTC Competition Report”); *In the Matter of Connect Am. Fund, et al.*, WC Docket No. 10-90, et al., *Report & Order & Further Notice of Proposed Rulemaking*, ¶ 5 (rel. Nov. 18, 2011)).

¹⁰ Comments of the Michigan Public Service Commission, *In re United States Telecom Association Petition for Declaratory Ruling that Incumbent Local Exchange Carriers are Non-Dominant in the Provision of Switched Access Services*, WC Docket No. 13-3 at 2 (filed Feb. 22, 2016) (MPSC Comments).

¹¹ *Id.* at 8; see also, Sherry Lichtenberg, Ph.D., *Examining the Role of State Regulators as Telecomms. Oversight is Reduced*, Nat’l Regulatory Research Inst., Report No. 15-07 (Aug. 2015).

Respectfully submitted,

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