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February 6, 2013

The Honorable John D. Rockefeller
Chairman
The Honorable John Thune
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Fred Upton
Chairman
The Honorable Henry A. Waxman
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Federal Communications Commission: 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*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Communications Commission (FCC), entitled “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” (FCC 12-153). We received the rule on January 23, 2013. It was published in the *Federal Register* as a final rule on January 11, 2013, with a stated effective date of March 12, 2013. 78 Fed. Reg. 2572.

The final rule initiates a one-time, comprehensive data collection to assess competition in the special access market. This is part of FCC’s continuing process of reviewing its special access rules to ensure that they promote competition, investment, and access to dedicated communication services. This rule requires providers and purchasers of special access service and certain other services to submit data, information, and documents to allow FCC to conduct a comprehensive evaluation of competition in the special access market. The data to be collected falls into five general categories: market structure, pricing, demand, terms and conditions, and competition and pricing decisions.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This final rule was published in the *Federal Register* as a final rule on January 11, 2013, and received by Congress on January 24, 2013. 159 Cong. Rec. S284 (January 24, 2013). The rule has a stated effective date of March 12, 2013. Therefore, this rule does not have the required 60-day delay in effective date under the CRA.

Enclosed is our assessment of FCC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that FCC complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Nick Alexander
Deputy Division Chief, Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL COMMUNICATIONS COMMISSION
ENTITLED
"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"
(FCC 12-153)

(i) Cost-benefit analysis

The Federal Communications Commission (FCC) is not required to prepare, and did not prepare a cost benefit analysis.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

FCC prepared a Final Regulatory Flexibility Analysis under the Act including (1) a description of the need for, and objectives of the rule, (2) a summary of significant issues raised by public comments on the Initial Regulatory Flexibility Analysis, (3) a description and estimate of the number of small entities to which the rule will apply, (4) a description of projected reporting, recordkeeping, and other compliance requirements, and (5) steps taken to minimize significant economic impact on small entities and alternatives considered.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, FCC is not subject to the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On January 31, 2005, FCC released a Notice of Proposed Rulemaking (NPRM) on special access. In July 2007, FCC requested further comments on the NPRM. In November 2009 FCC sought additional comments on the appropriate analytical framework for the NPRM. In October 2010 FCC issued a public notice inviting the public to submit data on the presence of competitive special access facilities to assist the Commission in evaluating the issues that the NPRM raised. In September 2011, FCC issued a second public notice requesting the submission of

competition and pricing data. FCC published a proposed rule on January 11, 2013, the same day as this final rule. 78 Fed. Reg. 2600. In the final rule FCC notes that there has been extensive notice and opportunity for public comment on the needs for and scope of this rule and that FCC determined that it met any requirements of the Act.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

FCC determined that this final rule contains information collection requirements under the Act. FCC will submit these requirements to the Office of Management and Budget for review.

Statutory authorization for the rule

FCC promulgated this final rule under the authority of sections 1, 4(i), 4(j), 5, 201 to 205, 211, 215, 218, 219, 303(r), 332, 403, and 503 of the Communications Act of 1934, as amended (47 U.S.C. §§ 151, 154(i), 154(j), 155, 201 to 205, 211, 215, 219, 303(r), 332, 403, 503).

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, FCC is not subject to the review requirements of the Order.