

New Networks Institute

December 31st, 2015

VIA ECFS

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

Re: AT&T's Objection to Disclosure of Confidential Or Highly Confidential Information to Mr. Kushnick Under the Governing Protective Orders, WC Docket No. 05-25 RM-10593

Shredding AT&T's Objections

AT&T and Verizon have decided to attack Bruce Kushnick and the independent team at New Networks Institute and have asked the FCC, in a series of letters of objections (the most recent by AT&T on December 18th, 2015¹), to block Bruce Kushnick's ability to see the recently collected special access information. This data can only be viewed through a process requiring a letter of confidentiality, which Bruce Kushnick signed.

On December 24th, 2015 we filed a short first response to AT&T's December 18th objection. We wrote:²

- We ask that the FCC immediately grant our request for Bruce Kushnick to examine the special access data—because the clock is ticking.
- We believe AT&T's plan is to take advantage of my (Bruce Kushnick) personal time and of our small, independent group, which has limited resources—and run out the clock.
- AT&T (with their lawyer, Sidley Austin), is insinuating that Bruce Kushnick would somehow break the law and not fully live by the conditions of the letter of confidentiality Bruce Kushnick signed.

¹ AT&T Letter of Opposition, number 2, December 18th, 2015
<http://apps.fcc.gov/ecfs/comment/view?id=60001360802>

² New Networks Institute Response to AT&T's second opposition letter, December, 24th, 2015
<http://apps.fcc.gov/ecfs/comment/view?id=60001362898>

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- If AT&T-Sidley has any evidence that Bruce Kushnick have ever violated a letter of confidentiality, it needs to produce such information now—or apologize for making such vulgar claims.

We add; in short, while AT&T and Verizon filed letters of objections filled with trash to attempt to miss-direct the FCC, we have the right to see this data as the protective order covering this information states that a ‘participant’ is one who has filed or has a “good faith intention to file material comments in this proceeding” — and we have done so.

Moreover, AT&T-Sidley claims that we do not have the capability or expertise to supply “material comments” or examine the data. As we will show, nothing is farther from the truth.

In fact, we have submitted the first two full reports of the new series “Fixing Telecommunications” and they offer critical information and insight into decade+ problems with special access.

Ironically, AT&T started this inquiry with a request to investigate and fix the special access pricing, market power and other aspects of the incumbent utilities’ controls over broadband services (or backhaul) to businesses and competitors — in 2002.

AT&T’s original RM-10593 Petition, October 31, 2002, (written with Sidley Austin, and Christopher Shenk, Esq.)

“As detailed below, there is now indisputable proof that: (i) large LECs, and particularly the Bell Operating Companies (“Bells”), retain pervasive market power in the provision of these services, (ii) the large ILECs are abusing that market power with patently unjust and unreasonable rates that impose a multi-billion dollar annual overcharge or tax on American businesses and consumers and also severely harm both local and long distance competition, (iii) the Commission’s existing rules are incapable of addressing this worsening crisis, and, indeed, only exacerbate the problem, and (iv) the Commission therefore

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has a clear legal obligation promptly to reform its regulation to protect the public interest and to put an end to these monopoly abuses.”⁴

On December 13, 2015, we wrote:

“The reports detail Verizon New York’s ongoing cross-subsidization. The reports show how this abuse of Verizon’s (ILEC) FCC’s freeze of jurisdictional separations factors, beginning in 2001, where the FCC ‘froze’ the calculations of expenses, from network costs to corporate operations and advertising, to be based on the year 2000.

“This Freeze has allowed Verizon and others to create a manipulated, financial fiction— that the local service communications networks are unprofitable. In fact, our findings reveal that Verizon’s affiliate transactions a) charge local service a disproportionate amount of every expense; b) do not allocate a fair share of common costs to the subsidiaries, affiliates and their other lines of business; c) many of the affiliates’ products and services are not paying tariff or market-based prices to Verizon New York, thus artificially and improperly lowering regulated telephone customers was abetted by the revenues; with the result that d) these affiliate transactions lead to local service (and the ratepayers) ‘funding’ these non-core lines of business with the result that Verizon New York improperly and inaccurately “reports” massive financial losses in New York State.”⁶

In short, we uncovered never seen before or examined critical issues pertaining to the flows of money that make special access extremely profitable, while the majority of expenses are charged to the local phone customer. And this is caused, in a large part, by a mathematics used that have been frozen by the FCC to match to expense allocations of the year 2000 — almost 16 years ago — and it directly impacts special access prices to all end users and all competitors.

And these are but two of the new reports being released and will be filed with the FCC.

⁴Petition for Rulemaking To Reform Carrier Rates For Interstate Special Access Services, October 15th, 2002
<http://apps.fcc.gov/ecfs/document/view?id=6513297623>

⁶New Networks Institute cover letter in 31 FCC proceedings, with the accompanying reports,
<http://newnetworks.com/fcccovrletter/>

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And yet, we will discuss, AT&T-Sidley asserts that our data doesn't fit this examination.

Ironically, AT&T's most recent objection letter, dated December 18, 2015, was also written by Sidley lawyer, Christopher Shenk, Esq., which argues that the expert information and analysis we have just provided in this proceeding, in the form of two full reports, is not germane.

“After seeking access to the confidential data in this proceeding, New Networks very recently (on December 16, 2015), filed a letter in more than a dozen Commission proceedings, including this one, alleging that Verizon's pricing of Plain Old Telephone service (‘POTs’) is discriminatory and not cost-based. Those submissions have little or no relevance to this proceeding. The only reference to this proceeding states: ‘[t]he proper calculation of costs is crucial to the proper pricing of dedicated special access.’... But the Commission ended cost-based regulation of special access services decades ago in favor of price caps, and the highly confidential information at issue here does not contain the type of cost information about which the December 16 letter is concerned.”⁷

The irony is overwhelming. This current version of AT&T⁸ is now attempting to block our access, even though our research found the same disturbing issues about special access that were detailed in AT&T's original petition of 2002. (Sidley was the lawyer for AT&T for both of these filings, and Christopher Shenk, Esq., worked on or was author of both of these filings.)

Also, the FCC should recall that this proceeding dovetails into an investigation of business data services and special access, started by the FCC on October 16th, 2015, Docket Number 15-147.

“By this Order, the Wireline Competition Bureau (Bureau) initiates an investigation into the terms and conditions of certain incumbent local exchange carrier (LEC) tariff pricing plans of AT&T, CenturyLink, Frontier,

⁷ AT&T Letter of Opposition, number 2, December 18th, 2015
<http://apps.fcc.gov/ecfs/comment/view?id=60001360802>

⁸ In 2005, SBC, one of the former Bell companies that control special access and now controls critical infrastructure as the incumbent wireline utility in 21 states, merged with AT&T and took the name AT&T after the merger.

¹⁰ *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans,*

and Verizon for business data services (or special access services) that competitive LECs allege are unreasonable, anticompetitive, and lock up the vast majority of the demand for TDM-based business data services – assertions that the incumbent ILECs have disputed. With substantial advocacy in the record on both sides of the issues, we believe that a more systematic inquiry into the tariff pricing plans in question is needed before any determination on the merits can be made. By initiating this investigation, the Bureau intends to gather sufficient information to enable the full Commission to decide whether and how to resolve these allegations.”¹⁰

It is now 13 years after the original AT&T Petition of 2002, and the FCC is just now starting the full investigation. And to be clear: Based on what we have uncovered, this examination is only a partial fix, as our data and analysis will prove over the next few months.

Time-Line

“On June 24, 2015, the Wireline Competition Bureau (Bureau) released a Public Notice announcing it is ready to receive execute Acknowledgements of Confidentiality (Acknowledgements) from parties seeking access to confidential and highly confidential information submitted in response to the Commission’s special access data collection earlier this year... The Bureau released public notices on July 10, 2015 and September 17, 2015 listing those parties filing Acknowledgments as of the release dates and stating we would announce subsequent Acknowledgement filers on a rolling basis in subsequent public notices.”¹¹

- **September 30, 2015** — Bruce Kushnick filed signed letters of confidentiality to examine the FCC’s recent collection of special access information.
- **October 13, 2015** — AT&T filed an objection to Bruce Kushnick’s access to the special access data.¹²
- **October 15, 2015** — Verizon filed a letter to block our access to the special access information. Verizon merely referred to AT&T’s filing. “For the reasons AT&T expressed in its October 13 letter, Verizon also objects to the disclosure of its Confidential and Highly Confidential Information and Data to Mr. Kushnick under those orders.”¹³

¹¹<http://apps.fcc.gov/ecfs/comment/view;ECFSESSION=nV7sW2ZbypLspLh5805N4ZgFbJpT5z9T6sr1YdjG218VJvVdp7QR!1951721665!-1566059965?id=60001300680>

¹² <http://newnetworks.com/attfckushnick/>

¹³ <http://newnetworks.com/verizonobjection/>

- **October 22, 2015** — New Networks Institute responded to AT&T’s first objection.¹⁴
- **November 16, 2015** — Verizon filed an Objection to Disclosure of Confidential or Highly Confidential Information to Neil Stevens, WC Docket No. 05-25 and RM-10593, but also pointed to Bruce Kushnick
- **December 18, 2015** — AT&T filed a second letter of objection.¹⁵
- **December 24, 2015** — NNI submitted a short response to AT&T’s second letter of objection designed to block telecom analyst Bruce Kushnick from examining the newly collected information on special access services.¹⁶

Let us respond in detail to AT&T’s specific points.

- Point 1: We have standing as a participant. Period.
- Point 2: New Networks et al has the capacity to supply comments in a “meaningful way”.
- Part 3: AT&T has shown no respect for the experts and blatant acts of misquotes and miss-direction to the FCC.
- Part 4: There was no reason to file sooner in this docket – There was no there there.
- Part 5: AT&T complains that neither Bruce Kushnick nor the Team have the experience or capabilities to do this work.
- Part 6: We can handle all forms of data and bring unique analysis to the table.
- Part 7: AT&T original petition, October 2002 was an attack on AT&T, the incumbent 2002.

Point 1: We have Standing as a Participant. Period.

We fulfilled our pledge to ‘participate in a meaningful way’— and will continue to do so. And our submissions (now multiple), show our intention to file “material comments” in this proceeding. Based on the FCC’s Data Collection Protective Order, this gives us the right to see the FCC’s collected data— finally.

To quote AT&T-Sidley:

“...the protective order’s standard that a ‘participant’ is one who ‘has filed, or has a good faith intention to file, material comments in this proceedings.”¹⁷

¹⁴ <http://newnetworks.com/nniattverizonobjection/>

¹⁵ <http://newnetworks.com/attobjectiondec2015/>

¹⁶ <http://newnetworks.com/nniresponseattletterdec/>

¹⁷ *Data Collection Protective Order, Appendix A, ~ 1.*

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On December 13th, 2015, New Networks Institute, which includes Bruce Kushnick and our independent team of experts, auditors, analysts and lawyers, filed the first two reports from the new series “Fixing Telecommunications”, and there are more reports coming, including a separate report on special access services.

AT&T even acknowledges that we agreed that we were planning on filing in meaningful comments in their last objection.

“NNI affirmatively states that it does indeed plan to participate with meaningful comments and other filings and reports that rely, in material part, on the information.”¹⁸

Point 2: New Networks et al. has the Capacity to Supply Meaningful Comments.

We are amazed at the arrogance displayed by the ill-informed to make decisions out of their own lack of knowledge. AT&T-Sidley hasn’t bothered to examine the reports we just filed, or our background and expertise.

Here is AT&T’s sanctimonious dismissal of our capabilities:

“Mr. Kushnick plainly has not met that burden in his reply submission. Even if his unsupported claim that New Networks Institute will now participate in the proceeding is correct, there is no evidence that he or New Networks has the capacity to participate in a "meaningful way" or file "material comments," two requirements of the protective order.”

“Mr. Kushnick has not shown that he is familiar with any of these software programs, has the ability to conduct econometric analyses, or can effectively analyze such a complex data set. His Reply states that “[t]he NNI team has considerable expertise when it comes to assembling, assimilating and assessing massive amounts of detailed technical or accounting information,” but does not state that Mr. Kushnick has any such experience or expertise - and he is the only member of the "NNI team" who has sought access to the protected data.”¹⁹

¹⁸ Footnote of AT&T objection -- 23 Id. at 1; see also id. at 4

¹⁹ AT&T Letter of Opposition, number 2, December 18th, 2015
<http://apps.fcc.gov/ecfs/comment/view?id=60001360802>

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These reports — and they are reports, not blog posts or some other ridiculous reference made by AT&T-Sidley — supply new and important data and analysis, which we will address.

Fixing Telecommunications

- Report 1: Verizon’s Manipulated Financial Accounting & the FCC’s “Big Freeze”
- Report 2: DATA REPORT

The reports were accompanied by an extensive cover letter and filed in 31 separate FCC proceedings as they all have one thing in common — The FCC’s “Big Freeze”.

Simply put: In 2001, the FCC “froze” the calculations of expenses that are used in every state, based on the year 2000 — and this freeze will continue until the year 2017. It assigns the majority of all expenses to the “local phone service” category, including expenses that should have been paid for by the other lines of business, which includes all special access services.

EXAMPLE: In 2003, Verizon New York’s Local Service brought in 65% of revenues and paid 65% of the “Corporate Operation” expenses. In 2014, Local Service generated only 27.6% but still paid 60% of all corporate expenses.

Using the “Freeze” makes the wired networks, including local service, appear to be unprofitable, even though no expenses are actually examined or audited. By doing this, Verizon, et al., have been able to manipulate public policies in every FCC docket where the cost of service or the expenses are examined, from Universal Service to the Connect America Fund. It is also important in every interconnection examination, and the treatment of competitors, and it is a critical factor in the IP Transition and the ‘shutting off’ of the copper networks. It is also important in the special access examination where the companies discuss pricing and even the use of copper-based TDM services, which use the existing copper-based wired networks. In short, it impacts most of the current proceedings at the FCC and in state commissions.

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Moreover, this find is incredibly ‘meaningful’: No other analyst or team at the FCC or in any state has ever done such a ‘longitudinal’ examination of the impacts on local service rates before, or about the actual finances of special access—the revenues collected, the expenses paid and profits garnered.

The fact that the FCC never examined this information since 2001 is very relevant because the FCC can’t make public policies about special access expenses, revenues, construction budgets and profits; it only has a partial view of the total picture. Our research is the first to offer any glimpse into issues that are critical but are not being properly vetted.

However, the current FCC administration must be congratulated to have finally started the process of gaining accurate information, which now also includes an investigation of AT&T, Verizon and CenturyLink’s special access services, Docket Number 15-247.²⁰

We note as to the report Fixing Telecommunications:

- This report series is a continuation of work that started in 2009 and the reports were filed in 31 separate proceedings; they are not ‘blog posts’ or ‘web pages’, but full reports that deliver ‘meaningful’ information.
- These are the first 2 reports of a series and were prepared during the summer, 2015 – before we filed to see the special access data.
- Everything else AT&T wrote is hogwash. Or, to quote AT&T’s 2002 Petition filed with the FCC, RM-10539; – “The Commission has been duped”.

We fulfilled any and all obligations to be a participant in this proceeding. Period.

Part 3: AT&T has Shown No Respect for the Experts and Blatant Acts of Misquotes and Miss-Direction to the FCC.

Short Bios of the Independent Team

This is a list and very short bios of some of members of the team who worked on these reports.²¹

²⁰ <http://apps.fcc.gov/ecfs/comment/view?id=60001304111>.

²¹ NOTE: A letter of confidentiality has been signed by Bruce Kushnick only. While the ‘Team’ is working on this project and helping with the letter, they have NOT individually signed the letter of confidentiality and will not be privy to any information or analyses from Mr. Kushnick. This is, of course, an identical ‘Chinese wall’

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Is AT&T claiming that they are not capable of participating in a meaningful way?

- **David Bergmann, Esq.** — worked as an Assistant Consumers' Counsel for the Office of the Ohio Consumers' Counsel, the state's residential utility consumer advocate, for almost 30 years. He also been drafted filings for the National Association of State Utility Consumer Advocates, which has previously filed in Docket 05-25.
- **Kenneth Levy, Esq.** — has worked as a telecommunications lawyer since the late 1970s, when he joined the FCC. He held several supervisory positions at the FCC, including Deputy Chief, Operations of the Common Carrier Bureau and Chief of the Tariff Division during the period leading up to divestiture and through the aftermath. He left the FCC to become General Counsel of the National Exchange Carrier Association, Inc., the organization charged with administering the FCC's interstate access charge plan and universal service fund.
- **W. Scott McCollough, Esq.** — is an attorney whose practice focuses on communications, computer and Internet law and regulation. Past activities included 10 years as an Assistant Texas Attorney General and Contract Consumer Advocate (representing residential and small business consumers) with City of Austin Electric Utility (1994- 1999).
- **Fred Goldstein** — of Interisle advises companies on technical, regulatory and business issues related to the telecommunications, cable and Internet industries, Prior to joining Interisle, he was employed by Arthur D. Little Inc. in its Communications, Information and Electronics practice, was corporate telecommunications manager for Bolt Beranek and Newman, and worked for the consulting firm Economics and Technology Inc.
- **Chuck Sherwood** — As part of his involvement with national advocacy associations, Chuck serves as a member of the Alliance for Community Media's Public Policy Working Group and the Policy and Legal Committee of the National Association of Telecommunications Officers and Advisors. (NATOA)
- **David Solomonoff** — is the President of the Internet Society of New York (ISOC-NY), a Chapter of the global Internet Society (ISOC). ISOC plays a crucial role in advocating for an open Internet, accessible to all via protocols and standards that are developed in a transparent manner by the entire Internet community.
- **Dana Spiegel** — is the Executive Director of NYCWireless, which has been the leader in helping get public spaces wired up for wireless service and it promotes open wireless hotspots in public spaces throughout the New York region
- **Tom Allibone** — is the President of LTC Consulting, and the Director of Teletruth's Auditing Division. Tom worked for New Jersey Bell and AT&T as a systems

that will be maintained, just as any consultant or lawyer that AT&T has hired or is on staff and has signed the letter of confidentiality, would maintain.

consultant and National Account Manager, starting in 1970. Tom is an AT&T 'legacy'. Tom has led Teletruth's auditing capabilities which has resulted in the settlement of 3 class action suits against Verizon, New Jersey, as well as telecom auditing resulting in over \$30 million in refunds. Tom was a member of the FCC Consumer Advisory Committee.

Part 4: There was No Reason to File Sooner in this Docket 05-25 – There was No There There.

“It is undisputed that Mr. Kushnick and New Networks have not participated in this proceeding until now - even though the proceeding began in 2005 and the initial protective order was put in place in 2010. It is only now, years later, that Mr. Kushnick contends that New Networks “does intend to participate in this proceeding and will do so in a meaningful way.”²²

AT&T-Sidley didn't bother to recount the history properly. This docket started in 2002, when AT&T filed a petition, RM-10593, to fix the issues surrounding special access services. And ironically, Christopher Shenk, the author of the objection, was listed as a lawyer on this filing.

AT&T-Sidley seem to forget that this docket has been a ghost with no serious action— for over a decade+ and there was nothing but the FCC kicking this proceeding down the road — until recently.

As a small group we don't have the resources to file in every docket. Special access has been an ugly tale that has languished for a decade; we even mentioned the failure of this process in our AT&T-T-Mobile filing in Docket 11-65, dated May 31, 2011; it even mentioned Docket 05-25 and special access services.

“The special access proceedings at the Commission over the last decade are a classic case study of how undue corporate influence neutralizes a regulatory agency and how mergers and acquisitions in the industry have silenced dissenting voices as they are brought into the fold.

²² AT&T Letter of Opposition, number 2, December 18th, 2015
<http://apps.fcc.gov/ecfs/comment/view?id=60001360802>

²⁴ New Networks Institute & Teletruth, Petition to Deny, Docket Number 11-65, May 31, 2011
<http://apps.fcc.gov/ecfs/comment/view?id=6016813682>

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“On October 15, 2002 the pre-acquisition AT&T filed a petition for rulemaking, imploring the Commission to take some action to stem the Bell market abuse in special access services.

“As late as December 7, 2004 AT&T was urging the Commission to grant its petition for rulemaking. On January 31, 2005 the Commission finally released an NPRM in Docket No. 05-25, proposing, among other things, to reinstate the X-Factor from the expired CALLS Plan on an interim basis. One day earlier SBC had announced its plans to acquire AT&T. Needless to say the former AT&T's advocacy for special access regulation vanished from the scene.

“Without the former AT&T leading the charge, the Commission took no further action, not even to grant the proposed interim relief, until two and a half years later when it asked for comments to ‘refresh the record’ based on recent developments.

“Again the Commission did nothing for more than two years, finally releasing a Public Notice on November 5, 2009 in which it announced that it needed to develop ‘an analytic framework to resolve the issues raised’ in the NPRM and sought comment thereon. Since that time the Commission has held a workshop.

“The problem of monopoly pricing of special access services has therefore been allowed to fester for a decade. Among the handful of non-Bell affiliated wireless companies who participate in these proceeding, T-Mobile and Sprint have consistently pressed their position and provided convincing evidence that they have been overpaying for special access services for years to no avail.

“Yet while AT&T ridicules the call for regulation as old fashioned and outmoded, it resorts to its tried and true regulatory tactics perfected in the monopoly era of inundating the regulator with data and claiming that regulatory reports are distorted and do not mean what they say.

“The egregious returns on Bell special access services have been well documented in the record in this proceeding. These services have become the main wireline profit centers.”²⁴

Our report details that the FCC never audited or examined the basic costs under the Big Freeze for over 14 years. This means that the original AT&T Petition of 2002 was never actually resolved — yet, and it is obvious from the FCC decision to do an investigation in October 2015.

Part 5: AT&T Complains that Bruce Kushnick Nor the Team has the Experience or Capabilities to do this Work.

“The dataset contains more than one hundred million records and billions of entries. To enable effective analyses of these data, the Commission and NORC (the entity that is hosting the secure database) have made sophisticated software programs such as SAS, Stata, ArcGIS and others available to those seeking to analyze the data.

“The Commission also stated that its own analysis of the data will likely include ‘panel regressions,’ and that it ‘expect[s]’ that reviewing parties ‘will want to conduct similar econometric analyses’.

“Mr. Kushnick has not shown that he is familiar with any of these software programs, has the ability to conduct econometric analyses, or can effectively analyze such a complex data set. His Reply states that ‘[t]he NNI team has considerable expertise when it comes to assembling, assimilating and assessing massive amounts of detailed technical or accounting information,’ but does not state that Mr. Kushnick has any such experience or expertise - and he is the only member of the ‘NNI team’ who has sought access to the protected data.”²⁵

Answer: You got to be kidding me.

We are over-qualified to examine this information and are offended AT&T didn’t bother to actually think before they wrote this time-wasting gibberish.

But we have to ask: Why does AT&T even care that we have or do not have the expertise to examine massive amounts of data? One would think that AT&T would be glad if Bruce Kushnick couldn’t manage the task.

Once again, it is hard to believe how AT&T’s totally bogus claims just keep adding up.

²⁵ Ibid.

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Example of Expertise

In 1993, New Networks Institute had a joint venture with the respected market research firm, Probe Research, to undertake “10 Years since Divestiture: The Future of the Information Age.”²⁶

This was the short summary of the project.

“The Future of the Information Age,” was one of the largest independent study projects ever undertaken to examine the impact the breakup of AT&T and the creation of the Baby Bells had on telephone customers. It consists of 14 volumes, over 1,900 pages, over 910 exhibits, a computer database of telephone prices, as well as two computer databases with data from more than 2,000 consumer telephone interviews, (conducted independently through Fairfield Research). Over 6,000 documents were examined, including information from the FCC, National Association of Regulatory Utility Commissioners (NARUC), BellCore, telephone company annual reports, tariffs, telephone directories, proprietary reports from market research firms, trade and business articles, and association sponsored research. Also, actual telephone bills from subscribers representing 34 states were examined, including phone bill “collections” for business and residential subscribers. The report series publishers include Probe Research, Phillips Business Information and Fairfield Research.”

Bruce Kushnick not only built the databases and software to analyze the data, but wrote the reports and collected most of the data.

Our information is always cutting edge, meaningful and influential. This report series had a number of direct impacts on America’s telecommunications service offerings and the companies, our clients, who applied what we uncovered or created.

- AT&T used the data to show that consumers wanted competition and as ammunition to create the Telecommunications Act of 1996.^{27, 28}

²⁶ <http://newnetworks.com/nnipublicationstarting1986/>

²⁷ AT&T was a long standing client of Bruce Kushnick’s research since 1986.

²⁸ NOTE: This was the second version of AT&T which started in 1984 as a long distance company, and ended up being bought by SBC in 2005. The current (third version) was created when SBC renamed the company AT&T.

- Sprint used one of the questions from our consumer phone-based surveys (of over 2000 consumer interviews, which were conducted by Fairfield Research). Sprint created a national commercial featuring Candice Bergen asking the question “Do you know what you pay for one minute of long distance?” I paraphrase this question from our survey; we found that literally 0% of population could answer basic questions about the cost of their long distance service. This research helped to create the first, national, flat-rate priced long distance service, Sprint’s “10 cents a minute” plan.²⁹
- The information and survey were used in a class action about the rate increases on phone rentals — Our data showed that 25% of seniors were still renting a phone a decade after the break up, with prices going up over 400%, thanks to deregulation.
- One report of this series, “**New Networks Services: 500, 600 and *100**”, had a section on the creation of 3-digit dialing. In 1992, New Networks Institute worked with Cox Newspapers to invent and roll out the first 3-digit information service, “511”, in Florida and Georgia.
- In the 1990’s timeframe, AT&T rolled out the “500” network, (1-500-555-1212), a network designed and invented by Bruce Kushnick, known as ‘caller-paid’.
- The report also featured: *100 -- (i.e., *100-555-1212) and was one of the first to propose “follow-me” services, i.e., one phone number for all services.
- In 1993, Jim Smith, then president of Comptel, the association of competitive carriers, used New Networks Institute report as part of testimony to Congress.³⁰

Part 6: We Can Handle All Forms of Data and Bring Unique Analysis to the Table.

AT&T’s arrogance knows no bounds. AT&T’s Objection states:

“Nor is there any evidence of such experience or expertise in materials filed by Mr. Kushnick and his organization in prior Commission proceedings. A search of ECFS identified approximately a few dozen proceedings in which New Networks Institute, Mr. Kushnick, or the affiliated “Tele Truth” made a filing. None contain any analyses of complex data. Instead, these past filings are primarily non-analytical compilations of links to websites, versions of blog posts or, in many cases, simply attacks on other parties before the Commission.

“None of these past filings demonstrate that these parties have any ability - or interest - in analyzing massive amounts of data to constructively participate in a rulemaking.”

²⁹ Sprint was a long standing client of Bruce Kushnick’s research since 1986.

³⁰ S. 1086, the Telecommunications Infrastructure Act of 1993: hearings before the Subcommittee on Communications of the Committee on Commerce, Science, and Transportation, United States Senate, One Hundred Third Congress, first session, July 14 and September 8, 1993”
https://archive.org/stream/s1086telecommuni00unit/s1086telecommuni00unit_djvu.txt

Neither the reports we filed nor our previous reports are based on ‘blog posts’— and AT&T’s non-analytical discussion of our work is pathetic.

One of the Reports from “10 Years Since Divestiture” was Called “Telephone Charges in America, 1980-1993”.

“Telephone Charges In America, 1980-1993 (3 Volumes) examines the changes in the costs of telephone services, from 1980 through the formation and first decade of the Baby Bells. It is based on government sources, such as the FCC, state Public Utilities Commissions, telephone company supplied information, including tariffs, and finally, actual charges from telephone bills, which are compared to the telephone and government information. It covers most charges, installation fees, directory assistance, calling features, inside wiring, phone rental, taxes and surcharges and local and long distance charges. It is accompanied by a computer database of telephone charges representing 50 states.³²

- This report and database was the only major study ever done that cross-referenced actual costs of service for all 50 states for 13 years. It used multiple sources including government information and cross-referenced it with hundreds of actual phone bills. The database had 224 fields and 27 macros.
- This database also overlaid the 2000 consumer interviews we conducted with 101 fields—this provided an ability to see whether the consumer actually read their bills and got the answers correct, by phone company and region, and age group, etc.
- There was a third overlay from the report **“Regional Bell Earnings, Expenditures and Profits”** and supplied most of the primary the financial information for the Bell companies from 1980-1993, including revenues, expenses, depreciation, profits, construction expenditures, etc.

In another project we used our proprietary software and analysis tools to examine over 1.5 million phone bills.

The author of the objection worries about the size of the database, showing his lack of understanding about ‘big data’ analysis. The number of records or even fields does not matter as much as the interface that allows someone to access the information. The FCC ARMIS data or the US Census data has tens of millions of records and billions of data points, but the analysis tools allow someone to examine the information with little database knowledge

³² <http://newnetworks.com/nnipublicationstarting1986/>

because the designers of the database spent the time to make it searchable with a few simple commands.

New Networks Institute’s First Complaint Against the FCC Data Used Our Findings from these Reports.

We find it amusing to remember that our first complaint against the FCC, in 1994, was about the FCC’s data pertaining to the cost of service, cross-subsidies, revenues of the telcos and other information that was published by the FCC. As we uncovered, the FCC did not collect actual phone bills (and we did), nor did the FCC cross-reference other public documents, like the ILECs annual reports, which made the FCC data unreliable.³³

“Panel Regressions” and “Econometric Metric” Analyses

“The dataset contains more than one hundred million records and billions of entries. To enable effective analyses of these data, the Commission and NORC (the entity that is hosting the secure database) have made sophisticated software programs such as SAS, Stata, ArcGIS and others available to those seeking to analyze the data. ...The Commission also stated that its own analysis of the data will likely include "panel regressions," and that it "expect[s]" that reviewing parties "will want to conduct similar econometric analyses."³⁴

AT&T-Sidley has no clue about how we intend to examine this information. And while AT&T-Sidley uses terms to sound erudite or as an expert, this just covers over what, in the end, are simple data analyses as the FCC’s data is mostly about what customers are paying for special access service, not econo-gobbledygook.

Take “panel regressions”. I assume AT&T-Sidley means that the FCC is going to track what customers paid years ago, and now, and compare?

³³ <http://www.teletruth.org/docs/UpdatecomplaintFCC1994.doc>

³⁴ AT&T Letter of Opposition, number 2, December 18th, 2015
<http://apps.fcc.gov/ecfs/comment/view?id=60001360802>

Wikipedia states:

“The data are usually collected over time and over the same individuals and then a *regression* is run over these two dimensions. Multidimensional analysis is an econometric method in which data are collected over more than two dimensions (typically, time, individuals, and some third dimension).”³⁵

Gee, what a concept? Why didn't we think of that? Oh. We did. Our recently filed report has the actual costs of Verizon New York's local phone service for 30 years starting in 1980, based on actual bills. And it has a longitudinal examination of the changes to revenues, profits and expenses for Verizon New York, and the impact of the FCC's Big Freeze.

Part 7: AT&T Original Petition from October 2002 was an Attack on the Utility Incumbents' Special Access Pricing in 2002.

The irony to AT&T's objection is thick. AT&T started this entire process in October 2002 with a petition that was written with Sidley Austin. Christopher Shenk was not only one of the authors of the original petition, but is also the author of the latest objection in December 2015.

AT&T-Sidley claims that the pricing issue was settled decades ago and that our work has no relevance.

“After seeking access to the confidential data in this proceeding, New Networks very recently (on December 16, 2015), filed a letter in more than a dozen Commission proceedings, including this one, alleging that Verizon's pricing of Plain Old Telephone service ("POTs") is discriminatory and not cost-based. Those submissions have little or no relevance to this proceeding. The only reference to this proceeding states: "[t]he proper calculation of costs is crucial to the proper pricing of dedicated special access." Id. at 6. But the Commission ended cost-based regulation of special access services decades ago in favor of price caps, and the highly confidential information at issue here does not contain the type of cost information about which the December 16 letter is concerned.”³⁷

³⁵ https://en.wikipedia.org/wiki/Panel_analysis

³⁷ AT&T Letter of Opposition, number 2, December 18th, 2015
<http://apps.fcc.gov/ecfs/comment/view?id=60001360802>

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Our findings about the FCC's Big Freeze are direct hits to this proceeding as this financial expense freeze has allowed special access to have exceptionally high profit margins because it is not paying most expenses due to this reliance on the year 2000.

We have submitted as part of our objection, the original petition of AT&T of 2002—which was never completed or acted on by the FCC and left dormant for over a decade.

AT&T's original petition is a critique of the ILECs, of which AT&T is now one of. Here is an excerpt of the opening.

“Pursuant to Section 1.401 of the Commission's Rules, 47 C.F.R. 5 1.401, AT&T Corp. (“AT&T”) hereby requests that the Commission promptly initiate a rulemaking to reform regulation of price cap incumbent local exchange carrier (“ILEC”) rates for interstate special access services.

“As detailed below, there is now indisputable proof that: (i) large LECs, and particularly the Bell Operating Companies (“Bells”), retain pervasive market power in the provision of these services, (ii) the large ILECs are abusing that market power with patently unjust and unreasonable rates that impose a multi-billion dollar annual overcharge or tax on American businesses and consumers and also severely harm both local and long distance competition, (iii) the Commission's existing rules are incapable of addressing this worsening crisis, and, indeed, only exacerbate the problem, and (iv) the Commission therefore has a clear legal obligation promptly to reform its regulation to protect the public interest and to put an end to these monopoly abuses.

INTRODUCTION AND SUMMARY

“The Commission has been duped. For several years now, the Bells have been peddling the story that they face substantial competition in the provision of high capacity loops and transport and that the only appropriate Commission response is reduced regulation and greater reliance upon market forces. In order to “meet competition” from many alternative suppliers of loops and transport, the Bells have argued, they have an urgent need to escape rate regulation of their own special access services.

“The Bells' approach to selling their special access tale has been quite clever. Early on, they recognized the futility of attempting to supply evidence of actual competition that creates market forces adequate to constrain their power

over price. The marketplace reality is that, despite limited, targeted entry, price-constraining levels of competition in the provision of special access services simply did not (and do not) exist in any local market, as even regulators in the local markets with the most competitive activity have recently held. Thus, although the Bells knew full well that they were (and are) the only suppliers of high capacity local links to the vast majority of buildings, they proffered the novel, and, at the time, largely unverifiable, theory that the existence of some collocation in some of a Bell's central offices in an area signals sufficient competition to justify rate flexibility and, ultimately, rate deregulation. Without access to the contrary facts in the Bells' sole possession, the Commission made a predictive judgment that the Bells' theory was sound, and, noting the great deference owed to such predictive judgments, the court of appeals affirmed.

“The Bells responded with a torrent of “pricing flexibility” requests, and, to no one's great surprise, they had little trouble meeting the “competitive triggers” that had been adopted. Today, more than half of the Bells' special access revenues come from areas in which they are no longer subject to price cap regulation. On current trends, special access rate deregulation will be all but complete by the end of next year.

“That would have the makings of a great regulatory success story, but for the unfortunate fact that the Bells' own subsequent actions and submissions to the Commission have exposed their story - and the entire foundation of reduced regulation of their special access rates - as a fraud. The Bells' claims that their rates are constrained by market forces were false when made, are false today, and will remain false for the foreseeable future. The Bells have not used rate deregulation to meet competition, but to gouge both their captive special access customers and the general public. The Bells' already exorbitant special access rates and revenues have soared, and the ever -increasing annual returns that the Bells enjoy on those services are now as much as 50 percent or more. The Bells' special access windfalls already represent at least a \$5 billion annual direct tax on American businesses and consumers, and the problem is only worsening.

“The Bells' unjust - and, as compared to the Bells' own costs of accessing the underlying facilities, patently discriminatory - special access rates are also among the greatest threats to both local and long distance competition.

“In short, special access rates that have long been a problem have now

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become an industry crisis that portends irreversible harm to competition and consumers. Immediate Commission action is imperative.”³⁸

It would appear that things have gotten worse, not better and that special access has been a festering wound for competitors, and therefore end users.

Conclusion:

To repeat, while AT&T and Verizon filed letters of objections filled with sanctimonious trash to attempt to miss-direct the FCC, we have the right to see this data, as the protective order covering this information states that a ‘participant’ is one who has filed or has a “good faith intention to file material comments in this proceeding” — and we have done so.

Moreover, AT&T-Sidley claims that we do not have the capability or expertise to supply “material comments” or examine the data. As we demonstrated, nothing is farther from the truth.

In fact, we have submitted the first two full reports of the new series “Fixing Telecommunications” and they offer critical information and insight into a decade+ problems with special access.

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³⁸ Petition for Rulemaking To Reform Carrier Rates For Interstate Special Access Services, October 15th, 2002
<http://apps.fcc.gov/ecfs/document/view?id=6513297623>