



AMERICAN PETROLEUM INSTITUTE

Stephen B. Comstock
Director, Tax and Accounting Policy

1220 L Street, NW
Washington, DC 20005-4070
Telephone (202) 682-8455
Fax (202) 682-8408
Email comstocks@api.org
www.api.org

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Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WT Docket No. 05-25

The Telecommunications Subcommittee of the American Petroleum Institute ("API") submits these Comments regarding the business data services (special access) reform rulemaking proceeding.

I. BACKGROUND

API is a national trade association representing more than 650 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining, marketing and transportation of petroleum, petroleum products and natural gas. Among its many activities, API acts on behalf of its members before federal and state regulatory agencies. The API Telecommunications Subcommittee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the oil and gas industries. API is supported and sustained by companies that make use of a wide variety of wireline, wireless and satellite communications services on both a private and commercial basis.

II. PRELIMINARY STATEMENT

We agree that it is timely for the Commission to re-assess the special access. The competitive landscape is clearly different than what was envisioned a decade and half ago. With economic drive now coming more from consumers and less from business, along with services converging around IP, the main stream tools and techniques for service delivery have changed. This makes traditional special access services arguably increasingly challenging for ILEC and RBOC's to deliver competitively. Nevertheless, special access type services still underpin our nations most critical infrastructure. If and until, suitably reliable alternatives are available everywhere special access exists today, the ILECs and RBOCs, by virtue of their franchised dominance of the last mile, have a duty to provide special access (or equivalent quality) service, and to do so at a fair rate.

Interstate special access services are essential inputs for wireline voice and data interexchange services offered in the United States and will remain essential inputs for the foreseeable future. This is true for interexchange voice services and interexchange data communications, regardless of whether the "interexchange data transport" is frame relay service, ATM service, private line service or an IP-VPN

solution that relies on high speed Internet access. As the Commission observes, interstate special access services--principally DS-1 access services--are essential inputs for domestic commercial mobile radio services inasmuch as wireless carriers are dependent on special access services for connectivity between cell sites and mobile switching centers. Thus, the outcome of this proceeding is of direct importance to large business customers, small and medium-sized businesses that increasingly utilize DS-1, DS-3 and Gigabit Ethernet access services to support data communications requirements, state and local governments, and consumers that use wireless services throughout the country.

In addition to the voice and corporate data communications requirements of comparably-sized corporations in other industries, API member companies must procure or self-provision services to ensure the uninterrupted transmission of supervisory control and data acquisition ("SCADA") from thousand of valves and control points along pipelines and gathering systems. They must routinely transmit very large files of geophysical data from production and exploratory wells located throughout the country and world to domestic and foreign data centers. The vast preponderance of the petroleum industry's principal business centers and infrastructure within the Lower 48 fall within the footprint of the incumbent local exchange carrier (ILEC) service territories of AT&T and Verizon. Their domestic footprints are unparalleled in terms of local access lines and infrastructure. Their Internet backbones are among the most significant, if not the largest, in the United States.

Many of the larger API member companies acquire hundreds of DS-1 access lines, respectively, for facilities located in urban, suburban and rural areas throughout the United States. Almost all of these services are acquired from incumbent local exchange carriers, principally operating companies of the RBOCs, by the interexchange carriers that provide member companies with the end-to-end interexchange voice and data services. The same is true for DS-3 access services. In the far less frequent instances that member companies acquire OC-n capacity services—principally for metro area connectivity for multiple offices and facilities— interexchange carriers may utilize the facilities not controlled by the RBOCs or other incumbent local exchange carriers.¹

We encourage the Commission to significantly change business data services so that critical infrastructure can have available, nationally consistent, reliable access in a vibrant, competitive market.

III. COMMENTS

We urge the Commission to adopt substantially revised rules and policies for regulating the rates for interstate special access services offered by the ILECs subject to price cap regulation. Presently, the rates for these services are neither just nor reasonable under Section 201(b) of the Communications Act. The Commission's rules and policies for these rates must align with the overarching marketplace and economic realities that interstate special access services are not subject to meaningful competition and that competition is unlikely to develop for the foreseeable future. API member company concerns with the future of special access services goes beyond costs. Of equal concern are:

- 1) Reliability. As ILEC, RBOC costs rise to maintain traditional special access services, and to the extent that CLEC's may not broadly provide traditional special access services, API member companies are increasingly encouraged to make use of modern consumer focused services,

¹ See the FCC's 2012 Report and Order, suspending ILEC Pricing Flexibility Authority, paragraphs 131-137, available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-12-92A1.pdf

where the service objectives are defined to be “best effort.” “Best effort” services are not appropriate for many of the applications that have life safety implications. While the exact evolution of special access services provided by ILEC’s and RBOC’s is unclear, ILEC’s and RBOC should bear the responsibility to offer widely available high reliability replacement alternatives going forward. A corollary is that costs for the replacement network should be in line with the circuit that was replaced. The carriers should not use this as a revenue generating excuse by selling unwanted services as the only replacement option.

- 2) Availability. Increasingly, as ILEC’s and RBOC’s look at how to handle aging copper infrastructure in rural areas, they struggle with the choice to invest in fiber, which supports converged (voice, data, and video) for consumers, or do nothing, hoping the few customers will move over to wireless for voice, and satellite for Internet and TV. Lines have become blurred as to what “having service available” even means. Some lines, such as Direct Transfer Trip and synchronization circuits, have strict latency, synchronization and availability requirements that packet based networks cannot meet, thereby putting the power grid at risk. It can be argued that virtually everyone in the US has internet and TV service (via satellite) and telephone (via cell phones), yet when one looks at the steady and reliable flow of information that traditional special access circuits continue to supply, many places do not have suitable special access service options. In fact, the foot print of where special access services can be provided may not be expanding as anticipated.
- 3) Regional and National Consistency. Technology is changing the face of what a special access circuit looks like as we transition from a TDM (Time Division Multiplexing) world to an IP world. Changes in service offerings will likely not change at all ILEC/RBOC service locations at the same time, forcing large oil and gas companies that have operations spanning the country to support multiple technologies for the foreseeable future. Obviously keeping in sync with ILEC/RBOC service offering changes will be challenging. To that end, it would be helpful if there were a mandated period of time in which ILEC/RBOC companies would be required to keep traditional service offerings working in parallel with new ones.
- 4) Pricing API does not and will not recommend a new pricing structure or formula. Special Access rates are neither just nor reasonable under Section 201(b) of the Communications Act. The 1999 pricing flexibility rules were based on predictions of competition that never materialized. In 2012, the FCC suspended ILEC special access pricing flexibility for this very reason.² In 2015, the FCC initiated a separated investigation because the RBOCs were imposing grossly one-sided, bundled minimum purchase obligations for special access services.³ The incumbent LECs have been able to charge unjust and unreasonable rates – and to impose unjust and unreasonable terms and conditions – unconstrained by competitive pressure or by price cap regulation.

² Ibid. Paragraphs 22 through 84.

³ See https://apps.fcc.gov/edocs_public/attachmatch/DA-15-1194A1.pdf. Paragraph 6.

IV. SUMMARY

In summary, issues surrounding special access go beyond pricing and cost. Dominant carriers have publicly threatened to essentially kill traditional TDM based special access circuits in the next four or five years. It is unclear that the evolving go-forward service options will completely meet latency, QOS (Quality of Service), and availability requirements of oil and gas and other critical infrastructure industries for SCADA applications. Minimum service offering capability/performance standards need resolution to establish what the ILEC's and RBOC's will be expected to make available within the foot prints served with copper wire today; otherwise, there will be a loss of key data services in areas that have no other terrestrial option.

Sincerely,

Stephen Comstock