

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

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APR 5 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of the ) CC Docket No. 96-98  
Local Competition Provisions )  
of the Telecommunications Act of 1996 )

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COMMENTS  
OF THE  
UNITED STATES TELECOM ASSOCIATION

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## SUMMARY

The market for special access services is competitive. Competitive carriers are significant providers of special access services through their own facilities-based fiber networks. These competitive carrier networks reach business customers throughout the country in urban, suburban and rural areas. Competitive carrier networks provide service in the top 150 MSAs which reach more than 70% of the country and 80% of special access revenues. IXCs, which are the largest customers of ILEC special access services, are also significant self providers of special access services through their own local network facilities, which demonstrates significant bypass of, and non-reliance on, ILEC network facilities and services. This robust competition, which continues to grow, has occurred without mandatory ILEC unbundling of loop and transport combinations solely for the use by competitive carriers to provide special access services. As the attached *Special Access Report* demonstrates, competitive carriers are not impaired in their ability to provide special access services absent use of ILEC loop and transport combinations. Any changes in current Commission policy would damage the competitive balance in the special access market, and adversely impact facilities-based competition. The Commission's prohibition against co-mingling should continue. In addition, the Commission has yet to resolve universal service and access charge issues of particular concern to rural and smaller ILECs. Clearly, there are no legal, policy, or competitive reasons to disrupt the special access market - - a market that is competitive - - which should be permitted to continue to prosper without government intervention.

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CC Docket No. 96-98

COMMENTS  
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UNITED STATES TELECOM ASSOCIATION

INTRODUCTION

The United States Telecom Association (“USTA”) hereby files its comments in the above-referenced proceeding in response to the Commission’s Public Notice.<sup>1</sup> Attached to USTA’s comments is the report “Competition for Special Access Service, High Capacity Loops, and Interoffice Transport” prepared by Evan Leo of Kellogg Huber and submitted on behalf of BellSouth, Qwest, SBC, and Verizon (“Special Access Report”). The *Special Access Report* makes three points: (1) the market for special access service is distinct from the market for basic local exchange services from both a demand and supply perspective; (2) competition for special access service is widespread and growing rapidly; and (3) the availability of competitive alternatives to the high-capacity loops and interoffice transport that ILECs provide also is widespread and has continued to grow rapidly. USTA fully supports and endorses the findings and conclusions in the *Special Access Report*.

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<sup>1</sup> DA 01-169, released January 24, 2001.

In the Public Notice, the Commission seeks comments on (1) whether there is any basis in the 1996 Act or Commission regulations whereby incumbent LECs could decline to provide combinations of loops and transport network elements at unbundled network element prices to be used by requesting competitive carriers as a substitute for existing special access services provided by ILECs, (2) whether requesting competitive carriers may use dedicated or shared transport facilities with unbundled switching to originate or terminate interstate toll services to their customers where the requesting competitive carrier does not provide local exchange services to its customers, and (3) whether requesting carriers may combine network elements with tariffed access services purchased from ILECs know as “co-mingling.”

As a matter of public policy, special access services should not be converted to UNEs because the service is competitive, and competitive carriers are not impaired in their ability to provide such services without access to ILEC loop and transport combinations consistent with Section 251(d)(2) of the Act. Conditioning the use of ILEC loop and transport combinations by competitors is just, reasonable, non-discriminatory and consistent with Section 251(c)(3) of the Act and competing statutory obligations in Sections 251(g) and 254 of the Act.

## **I. THE IMPAIRMENT TEST**

The Commission is required by Section 251(d)(2), and the Supreme Court’s decision in *AT&T v. Iowa*,<sup>2</sup> to determine if ILEC unbundling is necessary and would constitute an impairment of a CLECs’ ability to compete if a UNE was not made available. Since the implementation of the 1996 Act, the Commission has conditioned the use of UNEs, identifying which network elements were subject to unbundling, and defining when and where ILECs and CLECs would interconnect their facilities. CLECs

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<sup>2</sup> *AT&T Corp. v. Iowa Utilities Bd.*, 525 U. S. 366 (1999); 119 S.Ct. 721, 734 (1999).

have been required to provide local exchange carrier services to their customers as a condition for using UNEs to provide special access and toll services to those same customers.<sup>3</sup> Those parties who argue that the Commission has no authority to condition how UNEs are used are simply ignoring the record since 1996.<sup>4</sup> Moreover, permitting IXCs to substitute network elements for special access services would “undermine the investments that facilities-based carriers have already made in competing facilities.”<sup>5</sup>

The Commission has viewed the availability of competitive alternatives to UNEs as a basis for denying efforts by CLECs to require unnecessary network unbundling by ILECs. The Commission rejected various CLEC arguments about “differences in cost and the amount of time required to implement services” regarding the use of operator services and directory assistance (“OS/DA”) provided by competitors and concluded that ILECs need not unbundle operator services and directory assistance, except under very limited conditions, because these services were competitively available.<sup>6</sup> Applying an impairment analysis, the Commission concluded: “Significantly, we find that the

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<sup>3</sup> See, e.g., *Intermedia Comments* at 2 (“Commission does, indeed, possess the statutory authority and the public justification to restrict the use of loop and transport combinations ....”); *Time Warner Telecom Comments* at 3 (the Commission has the authority to restrict the use of UNEs), *Fourth Further Notice of Proposed Rulemaking*, CC Docket No. 96-98, January 19, 2000.

<sup>4</sup> If parties who support converting special access to UNEs prove successful, then Section 251(d)(2) necessary and impair analysis is rendered useless. Congress intended, and the Supreme Court’s decision in *AT&T v. Iowa* affirms, that the Commission is required under Section 251(d)(2) to limit the unbundling obligations of ILECs in Section 251(c)(3) to only that which is necessary for requesting carriers to compete, and where requesting carriers are not impaired from providing competitive services to their customers.

<sup>5</sup> *Bell Atlantic Comments* at 12, citing joint *ex parte* letter to the Commission from Allegiance, Intermedia, Time Warner and Bell Atlantic dated September 2, 1999, *Fourth Further Notice of Proposed Rulemaking*, CC Docket No. 96-98, January 19, 2000.

<sup>6</sup> *Third Report and Order and Fourth Notice of Proposed Rulemaking*, CC Docket No. 96-98, released November 5, 1999.

existence of multiple alternative providers of OS/DA service in the marketplace, coupled with evidence of competitors' decreasing reliance on incumbent OS/DA services, demonstrates that requesting carriers' ability to provide the services it seeks to offer is not materially diminished without access to the incumbent's OS/DA service on an unbundled basis."<sup>7</sup> Clearly, the Commission has the authority under Section 251(d)(2) to determine where competitive alternatives are available, ILECs are not required to provide UNEs to facilitate services where such alternatives are present in the market, and where CLECs have demonstrated a non-reliance on ILEC services. Based upon the data in the *Special Access Report*, and the Commission's findings in the *Pricing Flexibility Order*, the Commission could simply substitute the words special access for OS/DA and the end result would be the same. Special access services are competitive, and CLECs are not impaired in their ability to compete if ILECs are not required to provide loop and transport combinations for CLECs to provision special access and toll services. In addition, the Commission created an exception for ILEC unbundling of switching in the top 50 markets.<sup>8</sup> The Commission concluded that the local switching exception was consistent with the goals of the 1996 Act to "reduce regulation when possible" ... and "consistent with our policies of encouraging facilities-based competition and encouraging innovation."<sup>9</sup> These are just a few examples of valid use restrictions on UNEs adopted by the Commission.<sup>10</sup>

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<sup>7</sup> *Third Report and Order and Fourth Notice of Proposed Rulemaking* at 203, ¶449, CC Docket No. 96-98, released November 5, 1999.

<sup>8</sup> *Id.* at 130, ¶279.

<sup>9</sup> *Id.* at 138, ¶299.

<sup>10</sup> As USTA stated in prior comments, the Commission has consistently argued that it has the authority to impose such restrictions and that CLECs did not have unrestricted rights to "use unbundled elements to originate and terminate interstate calls." *USTA Comments* at 16, *Fourth Further Notice of Proposed Rulemaking*, CC Docket No. 96-98, January 19, 2000.

The Commission has the authority to ensure that ILEC obligations to provide unbundled network elements to requesting competitive carriers do not adversely impact special access arrangements consistent with Section 251(g) of the Act.<sup>11</sup> The Commission has consistently argued that its policy on UNEs should not create adverse impacts on the current access charge regime.<sup>12</sup> Moreover, the Commission's decision must continue to promote facilities-based local exchange carrier competition consistent with the goals and objectives of Section 251. As Section 251(g) provides, the Commission must maintain the integrity of the existing access charge regime, which supports universal service obligations established in Section 254, until access and universal service reforms are completed. Parties in favor of converting special access to UNEs present no public policy, regulatory, or legal arguments to reverse the Commission's prior position that loop and transport combinations may not be used to provision special access or toll services unless requesting carriers are providing significant local exchange carrier services to their customers.

## **II. SPECIAL ACCESS SERVICES ARE COMPETITIVE**

ILEC unbundling to facilitate competition in special access markets is unnecessary. The access market is distinct from the local exchange market. The access market customers are IXCs and large business customers, not residential consumers and small business customers. As the *Special Access Report* demonstrates, the market for special access and private line services is competitive. IXCs already bypass ILEC

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<sup>11</sup> *SBC Comments* at 23 (“the Commission has ... relied upon Section 251(g) to protect the access charge regime”) *Fourth Further Notice of Proposed Rulemaking*, CC Docket No. 96-98, January 19, 2000.

<sup>12</sup> *USTA Comments* at 15-20”) *Fourth Further Notice of Proposed Rulemaking*, CC Docket No. 96-98, January 19, 2000.

facilities: “The big three interexchange carriers are not only the largest purchasers of special access service from incumbent LECs, but also major self-suppliers of special access. AT&T and WorldCom, for example, each has local facilities in nearly 200 markets that are used to provide special access services.”<sup>13</sup>

CLECs are significant providers of special access services. As explained in the *Special Access Report*, CLECs as a group derive the majority of their revenues from providing special access and local private line services, rather than from local exchange service.<sup>14</sup>

Special access competition is widespread and continues to grow. Based upon the market-based test for measuring special access competition adopted by the Commission and affirmed by the appeals court,<sup>15</sup> competitive carriers are not impaired in their ability to provide special access services without access to ILEC loop and transport combinations. The framework adopted by the Commission measures the fraction of ILEC wire centers in an MSA in which competitors have obtained fiber-based collocation.<sup>16</sup> As explained in the *Special Access Report*:<sup>17</sup>

The D.C. Circuit agreed with the Commission that collocation “is a reliable indication of sunk investment by competitors.”<sup>18</sup> It found that “collocation can reasonably

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<sup>13</sup> *Special Access Report* at 3.

<sup>14</sup> *Special Access Report* at 4.

<sup>15</sup> See *WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

<sup>16</sup> Fiber-based collocations are those where “at least one competitor relies on transport facilities provided by a transport provider other than the incumbent.” *Pricing Flexibility Order*, ¶82.

<sup>17</sup> *Special Access Report* at 6.

<sup>18</sup> *WorldCom v. FCC*, 238 F.3d at 457, 459 (quoting *Pricing Flexibility Order* ¶81).

serve as a measure of competition in a given market and predictor of competitive constraints upon future LEC behavior.”<sup>19</sup> The court also agreed that analyzing competition at the MSA level was appropriate because MSAs ““best reflect the scope of competitive entry.””<sup>20</sup>

Competitive carriers serve such customers now through their own facilities-based networks and significant portions of potential customers are served by at least one facilities-based competitor interconnected through ILEC central offices or through independently collocated space in “collocation hotels.”<sup>21</sup> The number of facilities-based competitive carriers in the top 150 metropolitan statistical areas (“MSAs”) has grown from 486 to 635 since the *UNE Remand* proceedings.<sup>22</sup> Within the overwhelming number of the top 150 MSAs, at least one facilities-based competitive fiber network provider serves the market. In 136 of the 150 top MSAs, one or more competitive carriers serves the market, 77 of the top 100 MSAs are served by at least 3 competitive carrier networks, 47 MSAs are served by at least 5 competitive carriers, and 27 of the top 150 MSAs are served by at least 7 competitive carriers.<sup>23</sup> Competitive carrier route miles have increased from about 160,000 to over 218,000 with facilities covering 70% of the population and 80% of special access revenues.<sup>24</sup> A recent report shows that these competitive carriers provide service to about 1.15 million buildings with approximately

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<sup>19</sup> *WorldCom v. FCC*, 238 F.3d at 459.

<sup>20</sup> 238 F.3d at 461 (quoting *Pricing Flexibility Order* ¶72).

<sup>21</sup> *Special Access Report*, Appendix A.

<sup>22</sup> *Special Access Report* at 1, 11, Appendix B.

<sup>23</sup> *Id.* at 11.

<sup>24</sup> *Id.* at 10.

973,000 apartment buildings and 175,000 commercial buildings or 25% of commercial office buildings throughout the country.<sup>25</sup> This growth in fiber-based competitive carrier networks has occurred in all regions and markets throughout the country with competitive carrier networks servicing business customers in not only urban areas but suburban and rural areas.<sup>26</sup> In addition, the market for wholesale suppliers of special access services has emerged.<sup>27</sup>

The competitive developments discussed in the *Special Access Report* have occurred without the Commission resorting to mandatory unbundling to facilitate special access services by competitive carriers. Mandatory ILEC unbundling of special access services would not promote facilities-based competition - - competition that is diverse and growing throughout the country.

### **III. THE COMMISSION SHOULD CONTINUE TO PROHIBIT CO-MINGLING OF UNES AND TARIFFED SPECIAL ACCESS SERVICES**

In the *Supplemental Order Clarification*,<sup>28</sup> the Commission concluded that a requesting carrier which provides significant local exchange service could use UNES to provision special access arrangements. The Commission, however, required that “loop-

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<sup>25</sup> *Special Access Report* at 11.

<sup>26</sup> *Id.* at 12.

<sup>27</sup> The dramatic increase in wholesale providers of high-capacity local access and interoffice transport includes companies which sell or lease dark fiber to other carriers, but do not themselves engage in the provision of telecommunications services. *Special Access Report* at 14. Recently, several wholesalers formed the Coalition of Competitive Fiber Providers with the goal of providing “competitive fiber-based transport services and dark fiber to competitive local exchange carriers (“CLECs”) collocated in ILEC central offices.” *Id.*

<sup>28</sup> *Supplemental Order Clarification*, 15 FCC Rcd 9587, released June 2, 2000.

transport combinations must terminate at the requesting carrier's collocation arrangement in at least one incumbent LEC central office."<sup>29</sup> The Commission concluded that under each of the three safe harbor provisions, "This option does not allow loop-transport combinations to be connected to the incumbent LEC's tariffed services."<sup>30</sup> The Commission explained: "We further reject the suggestion that we eliminate the prohibition on "co-mingling" (*i.e.* combining loops or loop-transport combinations with tariffed special access services) in the local usage options discussed above. We are not persuaded on this record that removing this prohibition would not lead to the use of unbundled network elements by IXCs solely or primarily to bypass special access services."<sup>31</sup>

The Commission's concerns about arbitrage of tariffed special access services is no doubt as true today as it was in 2000. The market for special access and private line services is robust, competitive, and growing. There is no basis for the Commission to change its decision against co-mingling.

#### **IV. HARM TO RURAL AND SMALL ILECS**

In comments filed in this proceeding last year, USTA discussed at length the harm that would occur to rural and smaller ILECs if competitors could provide special access services through ILEC UNEs.<sup>32</sup>

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<sup>29</sup> 15 FCC Rcd at 9598-9599, ¶22.

<sup>30</sup> *Id.*

<sup>31</sup> 15 FCC Rcd at 9602, ¶28.

<sup>32</sup> *USTA Comments at 23-25, Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, January 19, 2000.*

The total NECA traffic sensitive pool revenue requirement for average schedule companies is \$974 million. USTA estimates that \$120 million, or 12% of the total revenue requirement for small and rural carriers in the NECS traffic sensitive pool, would be at risk if the Commission permits CLECs to convert special access to UNE pricing. The Commission has consistently conditioned the use of UNEs to originate and terminate toll traffic with a CLEC provisioning local exchange or exchange access services.<sup>33</sup> Clearly, a change in current Commission policy would create devastating financial impacts for all ILECs, would eviscerate the hold harmless commitments currently under review in the universal service proceeding,<sup>34</sup> render mute the access reform proceedings,<sup>35</sup> and the *Pricing Flexibility Order*.

The Commission has consistently recognized the link between the current access charge regime embodied in section 251(g) of the 1996 Act and the universal service obligations set forth in Section 254. Access and universal service reform are far from complete. Given that access revenues continue to subsidize universal service, the Commission would be ill-advised to permit the conversion of special access to UNEs at forward-looking TELRIC pricing. The potential financial harm to small and rural ILECs and their customers in the form of lost revenues and increased rates for services would be contrary to the goals of the 1996 Act and stated Commission policy. As Chairman Kennard has stated “We need to be sensitive to

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<sup>33</sup> USTA estimates were based upon NECA tariff data. See NECA Transmittal number 833, Annual 1999 Access Tariff Filing (filed June 16, 1999), Volume 5, Exhibit 12, Workpaper 11 of 15. NECA traffic sensitive pool members account for approximately 6 million access lines. USTA estimated that the adverse revenue consequences for rate-of-return carriers is double the amount at risk for NECA traffic sensitive pool ILECs.

<sup>34</sup> See *Federal-State Joint Board on Universal Service Seeks Comment on the Interim Hold-harmless provisions of the Commission’s High-cost Support Mechanism*, Public Notice, FCC 99-J-2 (released November 3, 1999)(“Notice”); *Federal State Joint Board on Universal Service, CC Docket No. 96-45, Ninth Report & Order and Eighteenth Order on Reconsideration*, FCC 99-306 (released November 2, 1999)(“Methodology Order”).

<sup>35</sup> *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return*, CC docket No. 98-77 (released June 4, 1998).

the special needs of rural carriers in adopting regulatory changes ....”<sup>36</sup>

Section 251(g) requires that the Commission continue the existing access charge policy, until a new policy is implemented. Congress clearly stated its intent that the Commission shall enforce the regulations governing the current access charge regime “until such restrictions and obligations are superseded.”<sup>37</sup> Continuation of the existing access charge regulations, until such time as the Commission completes access and universal service reform, will ensure the financial health of small and rural ILECs, while minimizing the adverse impacts of change on these ILECs.

The potential impact on rural and smaller ILEC revenue requirements, should the Commission permit competitors to use ILEC loop and transport combinations to solely provide special access services would be even greater today. There are unresolved issues involving access and universal service involving the RTF and MAG plans that directly impact rural and smaller ILECs. Adoption by the Commission of regulations permitting competitive carriers to use loop and transport combinations for the sole purpose of providing special access services, without resolution of these critical proceedings vital to the competitive survival of rural and smaller ILECs, would be inconsistent with the requirements of the 1996 Act.

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<sup>36</sup> Remarks of William Kennard, former FCC Chairman, Connecting All Americans Conference, U.S. Dept. Of Commerce (February 26, 1998). Clearly, the Commission needs to continue to recognize the diverse needs of rural and smaller ILECs as they continue to provide innovative telecommunications services to rural and undeserved areas of the country.

<sup>37</sup> 47 U.S.C. §251(g). “Generally speaking, courts have read “shall” as a more direct statutory command than words such as “should” and “may” in the context of interpreting the intent of Congress regarding agency action.” See *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 437 (5th Cir. 1999), No. 97-60421, slip op. at 11., citing *MCI v. FCC*, 765 F.2d 1186, 1191 (D.C. Cir. 1985 )(holding that “shall” is the “language of command”).

## CONCLUSION

The special access market is competitive. Competitive carriers are not impaired in providing such services, without access to unbundled ILEC loop and transport combinations, as the *Special Access Report* demonstrates. The prohibition against co-mingling must be retained to ensure competitive balance. Conversely, requiring ILECs to provide loop and transport combinations such that competitors can solely provide special access services would impede the growth of market-driven facilities-based competition, while creating severe financial consequences for ILECs in general, and rural and smaller ILECs in particular.

Respectfully submitted,

**UNITED STATES TELECOM ASSOCIATION**

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## CERTIFICATE OF SERVICE

I, Gail Talmadge, do hereby certify that on April 5, 2001, a copy of *Comments of United States Telecom Association* in CC Docket No. 96-98, was either hand-delivered or sent via U.S. Mail, first-class, postage prepaid, to the persons on the attached service list.

A handwritten signature in cursive script, reading "Gail Talmadge", written over a horizontal line.

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Implementation of the Local	)	CC Docket No. 96-98
Competition Provisions in the	)	
Telecommunications Act of 1996	)	
	)	
Joint Petition of BellSouth, SBC, and	)	CC Docket No. ____
Verizon for Elimination of Mandatory	)	
Unbundling of High-Capacity Loops	)	
and Dedicated Transport	)	

**COMPETITION FOR SPECIAL ACCESS SERVICE, HIGH-CAPACITY  
LOOPS, AND INTEROFFICE TRANSPORT**

**Submitted by the United States Telecom Association**

**Prepared for BellSouth, SBC, Qwest, and Verizon**

**April 5, 2001**

## INTRODUCTION AND SUMMARY

This report responds to the Commission's Public Notice in CC Docket No. 96-98, which seeks additional information on how to define the special access market, and on the ability of competing carriers to provide special access service without access to incumbent LECs' networks.\*

*First*, this report demonstrates that the market for special access service is distinct from the market for basic local exchange services from both a demand and supply perspective. On the demand side, the vast majority of special access revenue is generated by customers using DS-1 circuits or above, and the largest purchasers are interexchange carriers. On the supply side, CLECs and interexchange carriers are more significant providers of special access service than basic local exchange services. Moreover, special access service uses dedicated facilities that are different to provision, operate, and maintain from the shared facilities used for basic local exchange service, and that accordingly are priced very differently.

*Second*, this report demonstrates that competition for special access service is widespread and growing rapidly. It has been more than a year since the Commission received comprehensive data regarding special access competition, and since that time the number of carriers reporting to the Commission that they provide competitive access service has grown from 109 to 349. CLECs' share of the entire special access/private line market has grown from 33 percent to 36 percent. Competing carriers have obtained one or more fiber-based collocation arrangements in wire centers that cover at least 30 percent of the incumbent LECs' special access revenues in 60 percent of the MSAs in the country.

*Third*, this report demonstrates that the availability of competitive alternatives to the high-capacity loops and interoffice transport that ILECs provide also is widespread and has continued to grow rapidly. In the past two years since the Commission examined such data, there has been a dramatic increase in local fiber supplied by "carrier-agnostic" wholesale suppliers. Five of these alternative fiber suppliers recently formed an industry coalition, which claims that its "members together represent a total capital investment of approximately \$1 billion." For a growing number of CLECs, the fiber provided by these wholesale suppliers satisfies a large part of their demand for last-mile local connectivity and interoffice transport. Moreover, CLECs have continued to expand their own local fiber networks rapidly. In the past two years, the number of route miles of fiber that CLECs have deployed has grown from approximately 160,000 to more than 218,000. The number of CLEC fiber networks in the 150 largest MSAs – which contain nearly 70 percent of the U.S. population and 80 percent of all special access revenues – has grown from 486 to 635. Furthermore, several of the nation's largest operators of long-haul fiber networks have recently constructed local fiber networks and have begun leasing dark fiber on these networks to CLECs. Finally, CLECs continue to expand their use of fixed wireless connections to reach end-user customers.

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\* This report was prepared by Evan T. Leo of Kellogg, Huber, Hansen, Todd & Evans, PLLC. It updates and builds on an earlier report prepared by Peter W. Huber and Evan T. Leo that was submitted in this proceeding: P. Huber and E. Leo, *Special Access Fact Report*, Submitted by the United States Telecom Association, Prepared for Bell Atlantic, BellSouth, GTE, SBC, and U S WEST, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (FCC filed Jan. 19, 2000).

## I. SPECIAL ACCESS.

### A. Market Definition.

Special access service is distinct from basic local exchange service from both a demand and supply perspective.

First, the end users of special access service are different from those of basic local exchange service. As the Commission has found, the customers for special access “are IXCs and large businesses, not residential or small business end users.”<sup>1</sup> In fact, between 78 and 89 percent of the special access revenue earned by BellSouth, Qwest, SBC, and Verizon is generated from DS-1 circuits or above (e.g., DS-3, OC-3). See Table 1.<sup>2</sup> And as the Commission has recognized, DS-1 circuits “are primarily used by business customers.”<sup>3</sup>

BellSouth	87%
Qwest	89%
SBC**	78%
Verizon	81%

\*Includes both intrastate and interstate revenues. \*\*Does not include SNET and Nevada Bell.  
Source: Internal company data

The largest purchasers of special access service are interexchange carriers, which use special access to transport large volumes of traffic to and from their largest business customers.<sup>4</sup>

<sup>1</sup> Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Carriers; Petition of U S WEST Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, ¶ 142 (1999) (“Pricing Flexibility Order”); see also *WorldCom v. FCC*, 238 F.3d. 449, 453 (D.C. Cir. 2001) (“Most users of special access services are companies with high call volumes.”); Corrected Brief for Federal Communications Commission at 4, *WorldCom v. FCC*, No. 99-1395, et al. (D.C. Cir. filed Sept. 12, 2000) (“Because special access services employ dedicated facilities, special access is typically used by IXCs and large businesses with high traffic volumes.”); Brief of MCI WorldCom, Petitioners and Supporting Intervenors, *WorldCom v. FCC*, No. 99-1395, et al. (D.C. Cir. filed Sept. 8, 2000) (“Special access, used generally by business customers who have a high volume of calls, is accomplished ‘via a private, dedicated line...running from the customer to the IXC’...By contrast, switched access connections are generally used by residential customers and other customers with lower traffic volumes.”).

<sup>2</sup> References to Verizon include GTE; references to Verizon East refer to the former Bell Atlantic states; references to SBC include Ameritech; references to Qwest include U S WEST.

<sup>3</sup> See, e.g., *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Second Report ¶ 99, CC Docket No. 98-146, FCC 00-290 (rel. Aug. 21, 2000).

<sup>4</sup> As the CLECs’ own economist describes it: “Beginning in the late 1980s, the competitive access providers . . . began to construct fiber ring facilities in the central business districts . . . of many urban areas in order to supply the IXCs and their customers with alternatives to ILEC provided special access services. Large IXCs have vertically integrated into the special access business in order to provide dedicated circuits to their largest customers in certain parts of the country.” Daniel Kelley, HAI Consulting, Inc., *Deregulation of Special Access Services: Timing Is Everything*, at 7-8 (June 25, 1999), attached to ex parte filing of the Association of Local Telecommunications Services, CC Docket No. 99-24 (FCC filed July 1, 1999).

Between 56 and 76 percent of the special access revenue earned by BellSouth, Qwest, SBC, and Verizon is generated by interexchange carriers. See Table 2. The FCC has noted that long distance carriers “typically provide resold special access and private line services as part of toll service operations.”<sup>5</sup>

<b>Table 2. Percentage of Special Access Revenues* Generated from Interexchange Carriers</b>	
BellSouth	72%
Qwest	76%
SBC	56%
Verizon	67%
*Includes both intrastate and interstate revenues. Source: Internal company data	

Special access customers also are highly concentrated. For example, more than 80 percent of SBC’s special access revenues are generated in less than 25 percent of the wire centers in which it is providing special access. In Verizon’s region, more than 80 percent of special access revenues are generated from about 20 percent of Verizon’s total wire centers. In Qwest’s region, more than 60 percent of special access revenues are generated from 11 percent of Qwest’s total wire centers. In BellSouth’s region, 91 percent of special access revenues are generated from 20 percent of BellSouth’s total wire centers.

Second, the suppliers of special access service are different from the suppliers of basic local exchange service. The big three interexchange carriers are not only the largest purchasers of special access service from incumbent LECs, but also major self-suppliers of special access. AT&T and WorldCom, for example, each has local facilities in nearly 200 markets that are used to provide special access services.<sup>6</sup> Sprint recently stated that it is deploying local fiber rings in “20 major U.S. markets” that allow “improved access economics, and enable Sprint “to significantly reduce its special access costs.”<sup>7</sup> As described in more detail below, other long distance providers – including Williams, Level 3, and Global Crossing – likewise have extensive local facilities that they use to self-provide special access services.<sup>8</sup>

<sup>5</sup> FCC, *Local Telephone Competition at the New Millennium* at Table 6 note \*\*\*\* (Aug. 2000).

<sup>6</sup> See New Paradigm Resources Group, Inc., *CLEC Report 2001*, Ch. 9 – WorldCom at 13, 18 & AT&T at 19, 27 (13th ed. 2001) (“*CLEC Report 2001*”).

<sup>7</sup> *Sprint Announces Financial Targets and Growth Strategies*, PR Newswire (Nov. 3, 2000).

<sup>8</sup> See, e.g., C. Grice, *Williams to Expand High-Speed Network into 50 Cities*, News.com (Feb. 10, 2000), <http://news.cnet.com/news/0-1004-200-1546995.html?tag=st> (Williams “expects to spend \$421 million over three years in order to link its proposed 33,000-mile fiber-optic ‘backbone’ network directly to business customers in the nation’s largest cities.”); Level 3 Communications, *Building the Network*, <http://www.level3.com/us/info/network/networkmap> (“When completed, the Level 3 Network will include local networks in 56 U.S. cities,” and this network will “be connected to an approximately 16,000 mile U.S. intercity network.”); Global Crossing Press Release, *Global Crossing Reports 2000 Pro Forma Cash Revenue up 36%, Recurring Adjusted EBITDA up 54% from 1999* (Feb. 14, 2001) (in 2000, Global Crossing completed metro rings in 10 cities in the United States: New York, Philadelphia, Washington D.C., Atlanta, Miami, Dallas, Chicago, San Francisco, San Jose, and Los Angeles).

Apart from the major interexchange carriers, CLECs as a group are more significant suppliers of special access service than basic local exchange service. As the Commission has recently found, “the revenues of competitive LECs come primarily from special access and local private line services.”<sup>9</sup> CLECs now account for 36 percent of all special access revenue, which is indeed significantly larger than their share of the local exchange market as a whole.<sup>10</sup>

*Third*, special access service is provisioned and operated differently from basic local exchange service. As the Commission has noted, special access is provided over “dedicated facilities that run directly between the end user and the IXC’s point of presence (POP), or between a LEC’s switch and an IXC’s POP.”<sup>11</sup> In contrast, ordinary local exchange services “use local exchange switches to route originating and terminating interstate toll calls.”<sup>12</sup> As demonstrated above, the vast majority of dedicated facilities used for special access are high-capacity circuits. *See* Table 1. In contrast, the vast majority of switched access lines are standard voice-grade circuits (*i.e.*, analog two-wire loops).<sup>13</sup>

Finally, as suggested by the difference in how facilities are used for special access services as compared to basic local exchange services, the prices of these services differ as well.<sup>14</sup> The price of a special access circuit – including one channel termination, a fixed and variable mileage charge, and multiplexing – typically begins at around \$500 per month.<sup>15</sup> By contrast, the typical local business line in urban areas costs \$44 to \$71 per month and relies on switched access service that is priced at between 2 and 3 cents per minute.<sup>16</sup>

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<sup>9</sup> *Promotion of Competitive Networks in Local Telecommunications Markets*, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, WT Docket No. 99-217; CC Docket No. 96-98; CC Docket No. 88-57, FCC 00-366, ¶ 24 (rel. Oct. 25, 2000).

<sup>10</sup> According to FCC figures, CLECs control about 36 percent of special access revenues compared to about 8 percent of local exchange revenues as a whole. *See* FCC, *Telecommunications Industry Revenue 1998* at Table 7 (Sept. 1999); FCC, *Telecommunications Industry Revenue 1999* at Tables 5 & 6 (Sept. 2000) (CLECs’ share of 8 percent of local service revenues was derived by applying CLEC- and industry-wide growth rates to 1999 data in order to estimate 2000 data).

<sup>11</sup> *Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd 12962, ¶ 130 (2000).

<sup>12</sup> *Id.*

<sup>13</sup> *See, e.g.*, FCC, *Statistics of Communications Common Carriers* at Table 2.4 (Aug. 2000) (as of December 31, 1999, over 85 percent of business access lines were single- or multi-line analog lines).

<sup>14</sup> *See, e.g.*, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Second Report, 12 FCC Rcd 11,266, 11,324 & n.258 (1997) (“A key aspect of our analysis of the extent to which wireless services are being used as a substitute for wireline services is to look at the prices for both types of services.”).

<sup>15</sup> For example, a DS-1 circuit under Qwest’s federal special access tariff starts at \$447.25 plus \$12.90 per mile. A DS-1 circuit under SBC’s federal special access tariff starts at \$415 plus \$13.78 per mile.

<sup>16</sup> *See* FCC, *Reference Book of Rates, Price Indices and Expenditures for Telephone Service* at Tables 1.8, 1.13, 1.17 (June 1999) (average monthly charges for flat-rate service to businesses with a single line, a key system line, or a PBX trunk in urban areas); FCC, *Statistics of the Long Distance Telecommunications Industry* at Table 12 (Jan. 2001) (national average per-minute access charge paid by long distance carriers in January and July 2000 was 2.9 cents and 1.9 cents, respectively).

Although special access service is distinct from basic local exchange service, it is largely interchangeable with private line service. Both the Commission's own local competition surveys and the leading independent study of the CLEC industry treat special access and local private line service as a single category.<sup>17</sup> A recent survey of local competition by the CLECs' own trade association, ALTS, has likewise endorsed this approach.<sup>18</sup> Moreover, as the Commission has found, both special access and private line services are "specialized services" that "are provided to business customers" that wish to haul large volumes of traffic between two fixed points.<sup>19</sup> CLECs, like ILECs, also use the same facilities to provide private line and special access service.<sup>20</sup>

## **B. Special Access Competition.**

The latest data submitted to the Commission regarding competition for special access services are now more than a year old.<sup>21</sup> Since that time, special access competition has continued to grow rapidly. See Table 3.

In the past year, the number of carriers reporting to the Commission that they provide competitive access service has grown from 109 to 349.<sup>22</sup> The number of route miles of fiber that these carriers have deployed has grown from approximately 160,000 to more than 218,000.<sup>23</sup> The revenues competitors have earned from special access service has grown from nearly \$5.7 billion (52 percent of what BellSouth, Qwest, SBC, and Verizon were earning) to more than \$7.3 billion (57 percent of what BellSouth, Qwest, SBC, and Verizon were earning). CLECs' share of the entire special access/private line market has grown from 33 percent<sup>24</sup> to 36 percent.<sup>25</sup>

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<sup>17</sup> See *CLEC Report 2001*, Ch. 7 at 2 (reporting revenues for Special Access and Private Line together); *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, DA 00-2729 at fn.18 (rel. Dec. 8, 2000) ("The 1999 Data Request defined 'special lines' to include state private lines as well as interstate special access lines.").

<sup>18</sup> ALTS, *The State of Competition in the U.S. Local Telecommunications Marketplace*, at Graphic I (Feb. 2000); ALTS, *The State of Local Competition 2001*, at 26 (Feb. 2001).

<sup>19</sup> See *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, Memorandum Opinion and Order, 14 FCC Rcd 14,712, ¶ 25 (1999).

<sup>20</sup> See, e.g., D.M. Goldsmith, Buckingham Research Group, Inc., Investext Report No. 2430215, Time Warner Telecom – Company Report at \*3 (Jan. 10, 2001) (Time Warner's "Dedicated Transport" provides "direct services either between two telephone companies (IXC and/or LEC), a telephone company and a customer or between private lines.").

<sup>21</sup> See, e.g., P. Huber and E. Leo, *Special Access Fact Report*, Submitted by the United States Telecom Association, Prepared for Bell Atlantic, BellSouth, GTE, SBC, and U S WEST, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (FCC filed Jan. 19, 2000) ("*Special Access Fact Report*").

<sup>22</sup> FCC, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, at Figure 2 (Nov. 1997); FCC, *Carrier Locator Interstate Service Providers* at Table 1 (rel. Oct. 2000).

<sup>23</sup> *CLEC Report 2001*, Ch. 6 at Table 4.

<sup>24</sup> New Paradigm Resources Group, Inc., *CLEC Report 2000*, Ch. 6 at Table 16 (11th ed. 2000) ("*CLEC Report 2000*"); FCC, *Telecommunications Industry Revenue: 1998*, at Tables 5 & 6; FCC, *Statistics of Communications*