

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

In the Matter of )  
 )  
Performance Measurements and Standards ) CC Docket No. 01-321  
for Interstate Special Access Services )  
\_\_\_\_\_ )

**COMMENTS OF THE  
UNITED STATES TELECOM ASSOCIATION**

**INTRODUCTION AND SUMMARY**

The United States Telecom Association (USTA)<sup>1</sup> hereby files its comments in the above-referenced proceeding pursuant to the Notice of Proposed Rulemaking released by the Federal Communications Commission (FCC) on November 19, 2001.<sup>2</sup> The *Special Access Measurements and Standards Notice* solicits comments on “whether the Commission should adopt a select group of performance measurements and standards for evaluating incumbent local exchange carrier (incumbent LEC) performance in the provisioning of special access services.”<sup>3</sup> The *Notice* observes that special access

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<sup>1</sup> USTA is the Nation’s oldest trade organization for the local exchange carrier industry. USTA represents more than 1200 members that provide telecommunications services worldwide, including a full array of voice, data and video services over wireline and wireless networks, and products and services to the telecommunications industry. USTA supports the concept of universal service, and its carrier members are leaders in the deployment of advanced telecommunications services to American and international markets.

<sup>2</sup> *Performance Measurements and Standards for Interstate Special Access Services, et al.*, Notice of Proposed Rulemaking, CC Docket No. 01-321, FCC 01-339 (rel. Nov. 19, 2001) (*Special Access Measurements and Standards Notice*). See also, *Performance Measurements and Standards for Interstate Special Access Services, et al.*, Order, CC Docket No. 01-321, DA 01-2911 (rel. Dec. 17, 2001) granting additional time to January 22, 2002, for filing comments and February 12, 2002, for filing reply comments.

<sup>3</sup> *Special Access Measurements and Standards Notice* at ¶1.

services are very important because they are used by competitive local exchange carriers (CLECs) and interexchange carriers (IXCs) to reach end user customers.<sup>4</sup> The *Notice* also states that competitive carriers have alleged that incumbent local exchange carrier (ILEC) provisioning of special access services is “characterized by delay, poor quality, and discrimination.”<sup>5</sup> Accordingly, the FCC asks interested parties to comment on whether performance measurements, standards and reporting procedures should apply to ILEC services, how they should be implemented and enforced if applied, and how it should be determined that such measurements, standards and reporting procedures (if currently deemed necessary) are no longer necessary.<sup>6</sup>

USTA has filed comments and reply comments in recent FCC proceedings concerning special access services and the state of competition in the special access market.<sup>7</sup> USTA has consistently expressed its view that the market for special access services is competitive. End user customers requiring special access services can secure those services from sources other than ILECs. Carriers requiring special access services can also secure those services from sources other than ILECs, or they can self-provision facilities that are substitutable for ILEC special access services. The FCC has accepted the presence of competitive carrier facilities collocated in ILEC central offices as evidence of available alternatives to ILEC special access services.

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Comments of the United States Telecom Association, filed April 5, 2001, and Reply Comments of the United States Telecom Association, filed April 30. Both of which are incorporated herein by reference along with the respective attachments thereto. See also, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Joint Petition of BellSouth, SBC, and Verizon for Elimination of Mandatory Unbundling of High-Capacity Loops and Dedicated Transport*, CC Docket No. 96-98, Comments of the United States Telecom Association, filed June 11, 2001, which are hereby incorporated by reference.

The broad deployment of special access facilities by ILECs makes it convenient for competitive carriers and end user customers to secure special access services from ILECs. That it is convenient to secure special access services from ILECs does not mean that special access services, or substitutable alternatives, are unavailable from other sources or that there is not competition in the special access services market.

It is axiomatic that regulation is a surrogate for competition where competition does not exist and market forces are, therefore, incapable of disciplining a dominant service provider. In this instance, the FCC should forgo adopting special access performance measurements, standards or reporting procedures. The competitive nature of the special access market causes USTA to conclude that no special access services providers should be subject to performance measurements, standards or reporting procedures. Should the FCC determine that performance measurements, standards or reporting procedures are in the public interest, then such measurements, standards or reporting procedures should be narrow in scope and equally applicable to all special access services providers.

## **DISCUSSION**

The interstate special access market is competitive as evidenced by competitive carrier collocated facilities in ILEC central offices. Customers for special access services are predominantly IXCs and large business customers, not residential and small business customers. IXCs already bypass ILEC facilities. While IXCs are the largest purchasers of special access services from ILECs, they are also major self-suppliers of special access

services or substitutable facilities. AT&T and WorldCom provide special access services in nearly 200 markets.

Competitive carriers are significant providers of special access services. As a group, competitive carriers derive the majority of their revenues from the provision of special access and local private line services rather than from local exchange services.

The framework adopted by the FCC in order to extend pricing flexibility to price cap ILECs measures the percent of ILEC wire centers in an MSA in which competitive carriers have obtained fiber-based collocation.<sup>8</sup> The proposition that collocation can serve as a reasonable measure of competition in a given market was affirmed by the Federal Court of Appeals for the District of Columbia Circuit.<sup>9</sup> The D.C. Circuit also affirmed the FCC's decision to examine competition at the MSA level since it best reflects the extent of competitive entry.<sup>10</sup>

Evidence of facilities-based competition to ILEC special access services is significant. Many competitive carriers now serve customers over their own facilities-based networks. The number of facilities-based competitive carriers in the top 150 MSAs has surpassed 600. Within the overwhelming number of top 150 MSAs, at least one facilities-based competitive fiber network provider serves the market. Seventy-seven of the top 100 MSAs are served by at least three competitive carrier networks and 47 MSAs are served by at least five competitive carriers. 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. Competitive carriers provide service to

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<sup>8</sup> Fiber-based collocations are those where "at least one competitor relies on transport facilities provided by a transport provider other than the incumbent." *Access Charge Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-262, 14 FCC Rcd 14221, at ¶82 (*Pricing Flexibility Order*), *aff sub nom. WorldCom Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

approximately 1.15 million buildings. Competitive carriers continue to deploy their own facilities at a rapid pace. They have the economic incentive to do so because special access customers tend to be clustered together in areas such as cities, office and industrial parks, and educational/government campuses. Further, a market has emerged for wholesale suppliers of special access services, and non-ILEC wholesalers are aggressively seeking to provide services to competitive carriers.

With little more than the statements that special access services are important and that numerous ILEC competitors have alleged “delay, poor quality and discrimination” in the provisioning of ILEC special access services, the FCC has launched a rulemaking proceeding to examine interstate special access performance measurements, standards and reporting procedures. Although the FCC asks whether any performance measurements, standards and reporting procedures that it adopts should apply to competitive providers of special access services, the focus of the *Notice* is squarely on ILEC special access services.<sup>11</sup>

Before the FCC concludes that performance measurements, standards and reporting procedures that it might adopt should only be applied to ILECs, it must first establish that the special access market is not competitive and that market forces are insufficient to bring discipline to an identified group of service providers. Complaints by competitors, alone, do not demonstrate a lack of competition in the special access market. There must be evidence that unequivocally demonstrates that market power exists and

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<sup>9</sup> See *WorldCom v. FCC*, 238 F.3d at 459.

<sup>10</sup> *WorldCom v. FCC* at 461.

<sup>11</sup> See, e.g., “We seek comment on whether any performance measurements, standards, and reporting requirements that we adopt for special access services should apply to incumbent carriers only, or should also apply to competitive providers of such services. Assuming they should apply only to incumbent ILECs, we ask whether all incumbent ILECs should be subject to any special access measurements and

regulatory intervention is warranted. No such evidence is presented in the *Notice*. USTA submits that the evidence is to the contrary. The special access market is competitive.

Competitors/complainants certainly have an adequate remedy to address purported ILEC special access provisioning inadequacies or discrimination to the extent that such purported inadequacies or discrimination constitute a violation of Section 201 or Section 202 of the Communications Act.<sup>12</sup> There are also the options to secure services from an alternative service provider or to self-provision substitutable facilities. It would be exceedingly advantageous for ILEC competitors to operate free of government imposed regulatory burdens while ILECs alone have to bear the costs of those regulations.

ILECs should not be singled out for special access performance measurements, standards or reporting procedures. USTA believes that performance measurements, standards and reporting procedures are unwarranted for any special access service providers. The special access market is competitive, and one service provider's perceived deficiency is another service provider's opportunity.

Should the FCC conclude that special access customers require FCC oversight with respect to carrier provisioning of special access services, then all special access services providers should be subject to the same performance measurements, standards and reporting procedures.

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standards that we may adopt or whether such regulations should only apply to some subset of incumbent ILECs." *Notice* at ¶15.

<sup>12</sup> 47 U.S.C. §§201-202.

## CONCLUSION

The market for interstate special access services is competitive. Accordingly, USTA urges the FCC to forgo the adoption of special access performance measurements, standards or reporting procedures. USTA believes that there is insufficient justification for the imposition of special access performance measurements, standards or reporting procedures on ILECs alone. Should the FCC conclude that the imposition of special access performance measurements, standards or reporting procedures is in the public interest, then such regulatory requirements should be equally applied to all special access services providers.

Respectfully submitted,

**UNITED STATES TELECOM ASSOCIATION**

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