

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
AT&T Petition for Rulemaking To Reform)	RM 10593
Regulation of Incumbent Local Exchange Carrier)	
Rates for Interstate Special Access Services)	

OPPOSITION OF VERIZON

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AT&T's petition is utterly at odds with marketplace realities. Indeed, the asserted basis for the petition – that the special access market is essentially a monopoly – is contradicted not just by overwhelming marketplace evidence, but by AT&T's own repeated statements to Wall Street analysts and (in other contexts) to the Commission. The petition should be denied.

I. INTRODUCTION AND SUMMARY

AT&T's petition is fatally flawed in several respects:

First, and most importantly, there is vigorous competition in the special access market, negating any possible basis for the relief AT&T seeks. Competitors enjoy a 36 percent share of special access revenues, and that share has grown steadily even as the RBOCs have gained pricing flexibility in MSAs accounting for the majority of special access demand. In addition, AT&T and other entities frequently use their own or third-party facilities in lieu of the ILECs' special access offerings: competitors already have built more than 1800 alternative fiber networks in the top 150 MSAs, have collocated in wire centers housing much more than half of special access demand, and have deployed links to at least 30,000 buildings nationwide (and likely a far greater number). Moreover, AT&T occupies a dominant and growing position in the

¹ The Verizon Telephone Companies ("Verizon") are listed in Attachment A. Comment dates regarding AT&T's Petition for Rulemaking, RM 10593 (Oct. 15, 2002) ("Special Access Petition") were established by DA 02-2913 (rel. Oct. 29, 2002).

enterprise segment of the business market, which contains the principal customers of special access and other services for which special access is an input, and it expects rapidly to become even more entrenched. And AT&T and other CLECs are competing successfully in the local market using a combination of their own facilities and special access services obtained from the ILECs and other sources, having captured millions of business lines using special access purchased at the very market-disciplined rates that AT&T characterizes as “exorbitant.”

Second, in sharp contrast to its claims here, AT&T elsewhere has admitted to investors and the Commission that it has meaningful alternatives to RBOC special access services, that it is in an enviable position in the enterprise market, and that the government should refrain from mandating the nature or price of access arrangements:

- In contrast to its assertion here that it does not have an alternative to ILEC special access, AT&T previously has conceded that it regularly “obtain[s] private lines from its local service arm and other CLECs” in place of ILEC business lines.²

- In contrast to its argument here that it is not feasible to deploy alternative facilities, AT&T previously has acknowledged that it has “built 18,000 miles of fiber in 90 cities [which account for 70 percent of local market demand] ... has 7,000 buildings on net and that’s growing every day,”³ and that “over 20 percent of our T1-equivalent services are on net and

² AT&T Corp., *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services Are Exempt From Access Charges*, at 20, WC Docket 02-361 (filed Oct. 18, 2002); *compare* Special Access Petition at 25 (“IXCs and CLECs generally have no choice but to purchase special access from the Bells”) (initial caps omitted).

³ David Dorman, President, AT&T, *Presentation at the Goldman Sachs Communacopia Conference*, Transcript of Remarks (Oct. 2, 2002), available at http://www.att.com/ir/pdf/20021002_dorman.pdf (“*Dorman Remarks*”); *compare* Special Access Petition at 25 (“In the vast majority of cases, there are no alternatives to the Bells’ special access services”).

we're growing that every day with a real focus at a grass roots, granular level, building-by-building, address-by-address, of moving customers over."⁴

- In contrast to its allegation here that it is at the mercy of ILEC special access pricing policies, AT&T just informed analysts that it has "shown price leadership across all of the business segments" by instituting "price increases [that] we have not [had] to recant."⁵

- In contrast to its unsubstantiated claims here of anticompetitive conduct by incumbent carriers, AT&T's heavy-handed practices in the enterprise market have led independent analysts to state that it is "taking advantage of panicked WorldCom clients by raising their rates and adopting inflexible stances when negotiating new contracts."⁶

- In contrast to its dire statements here that the incumbents will overwhelm the enterprise market, an AT&T Vice President, in response to Verizon's recently announced plans to enter the enterprise long distance market, said that "I would be doubtful that they would take share from AT&T ... I can assure you that we will sleep easy tonight."⁷

- In contrast to its proposal here to re-institute burdensome rate of return regulation over special access rates, AT&T previously has argued that "[n]egotiated agreements, rather than

⁴ *Dorman Remarks; compare* Special Access Petition at 26, 28 (AT&T has "severely limited opportunities to expand its use of facilities-based alternatives" and "self-deployment of alternative facilities to provide special access is infeasible in most cases.").

⁵ *Q3 2002 AT&T Earnings Conference Call, Fair Disclosure Wire*, available at 2002 WL 100545715 (Oct. 22, 2002); *compare* Special Access Petition at 23 ("excessive special access rates are having an increasingly anticompetitive impact on the long distance market").

⁶ Juan Carlos Perez, "Analysts see opportunities in WorldCom woes," *InfoWorld Daily News*, Oct. 9, 2002; *compare* Special Access Petition at 24 (AT&T is at the mercy of "blatant price squeezes" by the BOCs).

⁷ Caron Carlson, "Verizon to Edge Into Enterprise Data Market," *eWEEK from ZD Wire* (Nov. 4, 2002) (quoting Mike Jenner, an AT&T Vice President); *compare* Special Access Petition at 23-24 (essentially arguing that the RBOCs will take over the enterprise market unless restrained by the Commission).

government mandates, are the most appropriate means for creating and defining access relationships.”⁸

Third, AT&T’s petition is inconsistent with almost two decades of Commission policies seeking to substitute market forces for cumbersome regulation. In particular, AT&T urges the Commission to subject the most competitive portion of the exchange access market to what amounts to an archaic rate of return regulatory regime, predicated on its claim that ILECs are earning too much money. That claim, however, relies on data – category-specific returns reported in ARMIS – that “do not serve a ratemaking purpose,” in the Commission’s own words. There is good reason for this: these data reflect arbitrary regulatory accounting and cost allocation requirements that often mismatch revenues and expenses across services and jurisdictions and have nothing to do with economic profit. Indeed, if AT&T were correct that these data are useful, which it is not, then it would have to agree that Verizon is entitled to a substantial switched access rate increase. After all, Verizon’s reported return in that category is a paltry 7.81 percent.

Further confirming that Verizon’s special access rates are reasonable, Verizon’s prices for typical serving arrangements are near those published by its major competitors, as AT&T concedes. (Similarly, Verizon’s termination penalties, which AT&T claims are anti-competitive, often are more favorable to the customer than AT&T’s.) Consequently, if Verizon’s rates are unreasonably high, then so are those of every other access provider. That plainly is not the case. In fact, AT&T’s own access subsidiary – before being acquired by the nation’s largest access

⁸ Comments of AT&T Corp., at 80, GN Docket No. 00-185 (filed Dec. 1, 2000); *compare* Special Access Petition generally (urging the Commission to abrogate negotiated access arrangements and instead re-impose a form of heavy-handed rate regulation that was declared obsolete more than a decade ago).

customer – regularly accused the RBOCs of pricing special access *too low*, and the RBOCs’ rates have declined by more than 30 percent since those allegations were made.

Fourth, granting AT&T’s petition would be anticompetitive. Hamstringing the RBOCs’ ability to compete to serve large businesses would further tighten AT&T’s iron grip on the enterprise market segment. As a group of business customers just informed the WorldCom bankruptcy court, “Sprint, AT&T and WorldCom account for over 90% of enterprise telecommunications usage and are widely viewed as the only interexchange carriers capable of providing the full suite of network services required by major corporations.” Moreover, with WorldCom in bankruptcy, AT&T “is taking market share in all areas of business communications,” according to the company’s President of Business Services, even as it is raising rates. The only hope for new competition lies with the RBOCs, but slashing special access revenues and eliminating pricing flexibility would prevent that hope from being realized. RBOCs would lack both the resources to invest in the technologies these customers demand and the ability to craft the tailored offerings they expect. Likewise, dramatically cutting the ILECs’ special access rates would devalue the investments of non-ILEC competitors, preventing these entities from earning a reasonable return on their existing assets and dissuading them from deploying new facilities.

Finally, the Commission has no authority to give AT&T the interim relief it seeks in any event. Re-pricing special access in Phase II areas to earn no more than 11.25 percent would require the Commission to find, following a prescription hearing under Section 205, that all existing rates in those areas are unreasonable. Discontinuing the ability to petition for pricing flexibility in additional areas would be unquestionably arbitrary in light of the significant and

growing competition. And the Commission cannot abrogate existing contracts and term plans without departing from a long line of precedent that is antithetical to AT&T's position.

For all of these reasons, AT&T's Petition should be denied.

II. THE PRICING FLEXIBILITY TRIGGERS ARE AN EFFECTIVE MEASURE OF COMPETITION.

A. The Pricing Flexibility Order Was a Logical, Incremental Step Following Nearly Twenty Years of Progressively Relaxed Regulation of Special Access Rates.

AT&T characterizes the *Pricing Flexibility Order* as an ill-conceived experiment resulting from the Commission's having been "duped" into thinking that there was sufficient special access competition to discipline rates. *See, e.g.*, Special Access Petition at 2. Contrary to AT&T's revisionist history, the *Pricing Flexibility Order* was not an inexplicable departure from previously iron-handed control over special access rates. Rather, that *Order* was another incremental step in a painstakingly cautious – indeed, overly cautious – nearly 20-year process "to shift to more lightly regulated regimes." *Price Cap Performance Review for Local Exchange Carriers*, First Report and Order, 10 FCC Rcd 8961, 8989 at ¶ 64 (1995) ("*LEC Price Cap Review Order*"). Thus, the *Pricing Flexibility Order* flowed logically from the Commission's longstanding recognition that "competition can be expected to carry out the purposes of the Communications Act more assuredly than regulation" and that it should "regulat[e] only where and to the extent that competition remained absent in the marketplace." *Id.*

It is hardly surprising that the special access market has been attractive to competitors since divestiture. Special access demand is highly concentrated; in Verizon's region, for example, more than 85 percent of special access revenues is generated from approximately 20 percent of its wire centers. *Competition for Special Access Services*, attached as Attachment B hereto, at 5 (Dec. 2, 2002) ("2002 Special Access Fact Report"). In addition, special access

customers are large, sophisticated entities – predominantly interexchange carriers and large businesses. These attributes make it possible for a new entrant to address a large portion of special access demand with a targeted investment in facilities.

With the initial entry of competitive access providers (“CAPs”) concurrent with divestiture, the Commission first extended pricing flexibility to special access services in 1984. At that time, in recognition of the “growing [competition] for all domestic services offered by all carriers,” the Commission granted flexibility to provide limited volume discounts for private line and special access services. *Private Line Structure and Volume Discount Practices*, Report and Order, 97 FCC 2d 923, 947 at ¶ 39 (1984). Six years later, the Commission transitioned the RBOCs from rate-of-return regulation to incentive-based price cap regulation, and as part of that process gave the RBOCs greater special access pricing flexibility within the price cap baskets and bands.⁹ Importantly, the Commission saw price cap regulation as a transitional step to deregulation, not as an end in itself.¹⁰ Almost simultaneously, acknowledging the growing incursions made by competitive access providers, the Commission gave RBOCs additional pricing flexibility¹¹: the ability to offer more extensive term and volume discounts¹² and to vary

⁹ See generally *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786 (1990) (“*LEC Price Cap Order*”); *LEC Price Cap Review Order* at 8966 ¶ 4 (“The current LEC service baskets and pricing bands provide the carriers with greater flexibility in pricing their interstate access services than they possessed under rate-base/rate-of-return regulation.”).

¹⁰ *LEC Price Cap Review Order* at 8989 ¶ 64 (“We adopted the current price cap system which, we believed, was not only superior to rate-of-return regulation, but could also act as a transitional system as LEC regulated services became subject to greater competition.”); see also *id.* at 8965 ¶ 9 (“The LEC price cap plan was designed...to act as a transitional regulatory scheme until the advent of actual competition makes price cap regulation unnecessary.”).

¹¹ *Expanded Interconnection with Local Telephone Company Facilities*, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369, 7453 at ¶ 177 (1992) (“*Special Access Expanded Interconnection Order*”) (“Although some parties suggest that we delay any increase in LEC special access pricing flexibility until competition has developed further, competition is already developing relatively rapidly in the urban markets and will only accelerate with the

prices by density zone.¹³ A few years after that, the Commission first expanded the RBOCs' ability to lower special access rates,¹⁴ and then eliminated all constraints on downward pricing flexibility. *Access Charge Reform*, Notice of Proposed Rulemaking Third Report and Order, and Notice of Inquiry, 11 FCC Rcd 21354, 21372, 21485 at ¶¶ 30-31, 299-300 (1996) (“*Access Charge Reform NPRM*”).

Finally, in the *Pricing Flexibility Order*, the Commission determined that the access market was sufficiently competitive to permit “market forces, as opposed to regulation ... to compel LECs to establish efficient prices.” *Access Charge Reform*, Fifth Report and Order, 14 FCC Rcd 14221, 14233 at ¶ 21 (1999) (“*Pricing Flexibility Order*”). In so holding, the Commission found that, “[a]though our current price cap regime gives LECs some pricing flexibility and considerable incentives to operate efficiently, significant regulatory constraints remain.” *Id.* at 14232-33 ¶ 19. Accordingly, the Commission adopted the pricing flexibility rules in order to eliminate “counter-productive” regulations. Flexibility was granted in two phases based on precise market-based triggers that focus on the extent of collocation by facilities-based competitors.¹⁵

(Continued . . .)

implementation of expanded interconnection. Thus, delay in providing LECs with additional pricing flexibility appears unwarranted.”).

¹² *Price Cap Performance Review for Local Exchange Carriers*, Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 858, 867 at ¶ 15 (1995) (“*Price Cap Second FNPRM*”); *Special Access Expanded Interconnection Order* at 7463 ¶¶ 199-200.

¹³ *Price Cap Second FNPRM* at 866 ¶ 14; *Special Access Expanded Interconnection Order* at 7454 ¶ 179 (finding that zone density pricing allows ILECs to “gradually reduces rates in geographic areas that are less costly to service, and to increase rates, relatively speaking in areas that are more costly to serve”).

¹⁴ *See LEC Price Cap Review Order* at 9129-30 ¶¶ 381-85 (increasing the lower pricing band from five percent to fifteen percent in areas subject to density zone pricing).

¹⁵ In Phase I, LECs are permitted to provide contract tariffs and volume and term discounts upon a showing that competitive carries have made “irreversible, sunk investments” in the

B. The Pricing Flexibility Triggers Reasonably Reflect the Competitiveness of the Special Access Market.

In selecting collocation-based pricing flexibility triggers, the Commission explained that “collocation ... is a reliable indication of sunk investment” indicating that “a competitor has installed transmission facilities to compete with the incumbent.” *Pricing Flexibility Order* at 14265-67 ¶¶ 81, 82. Such “irreversible investment,” the Commission reasoned, is “sufficient to discourage exclusionary pricing behavior.” *Id.* at 14262 ¶ 78. Notably, the Commission recognized that “evidence of collocation may underestimate the extent of competitive facilities within a wire center, because it fails to account for the presence of competitors that do not use collocation and have wholly bypassed incumbent LEC facilities.” *Id.* at 14274 ¶ 95.

Both the Commission’s rationale for collocation-based triggers and its recognition that the triggers understate the extent of competition were expressly upheld by the D.C. Circuit. In fact, in rejecting challenges by AT&T and WorldCom, the court stated that the Commission’s pricing flexibility triggers “reasonably serve as a measure of competition in a given market and predictor of competitive constraints on future LEC behavior.” *WorldCom v. FCC*, 238 F.3d 449, 459 (D.C. Cir. 2001).

As the Commission and the court realized, the pricing flexibility triggers are hardly the theoretical predictors of competition that AT&T makes them out to be. To the contrary, the collocation-based triggers demonstrate *actual* entry by competitors that have made a sunk investment, rendering the market not just contestable, but actively contested.¹⁶ Perhaps the best

(Continued . . .)
market. In Phase II, LECs may operate “free from both our Part 61 rate level and our Part 69 rate structure rules” if a significant competitive market presence is demonstrated. *Id.* at 14235 ¶ 25.

¹⁶ Declaration of Drs. Alfred E. Kahn and William E. Taylor (attached as Exhibit C hereto), at 5 (Dec. 2, 2002) (“Kahn/Taylor Decl.”) (“The presence of such investments ... shows that ...

testimonial to the wisdom and effectiveness of the Commission's market-based approach comes from the leading independent competitive access provider, Time Warner Telecom: "An important aspect of those policy decisions was the reliance on facilities-based competitive entry, rather than prescriptive rate reductions, to drive ILEC access charges down. That policy has been very successful. Competitive carriers have built a tremendous amount of fiber."

Comments of Time Warner Telecom, at 1-2, CC Docket No. 96-98 (filed Jan. 19, 2000) ("*Time Warner Telecom Comments*"). As the review of marketplace evidence in Section III below confirms, Time Warner Telecom is absolutely correct.

AT&T, of course, has never agreed – not just with the *Pricing Flexibility Order*, but with virtually every step of the Commission's progressive deregulation of ILEC special access rates. Indeed, AT&T's current claim that special access pricing flexibility has produced "a \$5 billion annual direct tax on American businesses and consumers," is recycled from its opposition to price cap regulation of the ILECs. Special Access Petition at 3 (emphasis in original). There – more than ten years ago – AT&T likewise alleged that the change in regulatory approach would "unjustly enrich[] the LECs by approximately \$5 billion."¹⁷ Subsequently, AT&T attempted to prevent volume discounts, the elimination of sharing, and pricing flexibility.¹⁸

(Continued . . .)

the market is open and entry barriers are sufficiently low that some firms are actively investing in sunk assets.").

¹⁷ *LEC Price Cap Order* at 6791, fn 37 ("A number of parties argue the price cap system as proposed will produce prices that will unjustly enrich the LECs by approximately \$5 billion over the next four years.").

¹⁸ *Special Access Expanded Interconnection Order* at 7449 ¶ 167 ("The CAPs and the IXC generally argue that the LECs already have substantial pricing flexibility under price caps, and that until additional competition for both switched and special access has developed, no further flexibility is appropriate... They argue that pricing flexibility is inappropriate because local access competition has not yet developed sufficiently."); *LEC Price Cap Review Order* at 9040 ¶ 177; Reply Comments of AT&T Corp., at 37, CC Docket 96-262 (filed Feb. 14, 1997) ("current price cap flexibilities are adequate").

While AT&T may get points for tenaciousness, the facts, the law, and more than fifteen years of increasingly market-oriented regulatory policy are against it. Given the vigorously competitive nature of the special access market, the appropriate question to be asking at this point is whether to deregulate all special access services – not whether to re-impose an intrusive scheme of rate base regulation that was properly discarded more than a decade ago. The answer is clear: the pricing flexibility regime is working, the market is competitive, and non-ILEC facilities continue to be deployed at a rapid rate, as discussed below.

III. THE SPECIAL ACCESS MARKET IS VIGOROUSLY COMPETITIVE.

Turning a blind eye to reality – and contradicting its own statements to analysts – AT&T claims that strict regulation of special access rates is necessary because “in the vast majority of cases, there are no alternatives to the Bells’ special access services.” Special Access Petition at 25. The gap between the truth and AT&T’s assertions is shockingly wide. The reality is that the special access market is vibrantly competitive. Indeed, special access competition has developed in much the same way as long distance competition did – entrants began by deploying facilities on select point-to-point routes, filled in the gaps by reselling the ILECs’ services, and gradually expanded into smaller markets and thinner routes, all without unbundling or TELRIC rates.¹⁹ Moreover, facilities-based competitors (including AT&T) continue to gain market share even as the RBOCs increasingly secure pricing flexibility, and AT&T and others are using special access today – at the very market-disciplined rates that AT&T claims here are “exorbitant” – to compete successfully for both long distance and local services.²⁰

¹⁹ See 2002 Special Access Fact Report at 11-12.

²⁰ For this reason, AT&T’s claim that the Commission is compelled to re-visit the “failed predictive judgment” made in the *Pricing Flexibility Order* is baseless. Special Access Petition at 35-37. The Commission predicted that competition would continue to develop in the special access market and would produce market-driven rates. That prediction was one hundred percent on the mark.

A. The Overwhelming Evidence of Special Access Competition Belies AT&T's Hollow Claims.

As the Commission and D.C. Circuit have recognized, special access is a mature competitive market in which artificial, regulatorily-imposed priced reductions would undermine facilities-based competition. That reality is all the more true today, three years after adoption of the *Pricing Flexibility Order* and not quite two years after grant of the first pricing flexibility petition.

As of year-end 2001, competitors had captured roughly 36 percent of special access revenues, up from 33 percent when the *Pricing Flexibility Order* was adopted.²¹ The revenue earned by competing providers has skyrocketed from \$5.7 billion in 1999 to \$10 billion in 2001 – approximately 56 percent of the RBOCs' cumulative estimated special access revenues.²²

Investment in competing facilities also has continued to grow markedly notwithstanding both the extensive grants of pricing flexibility and the industry's travails. There are now nearly 1800 fiber networks in the top 150 MSAs, compared to 1100 in 1999. These networks typically connect to multiple interexchange carrier POPs and undeniably are used to provide special access services. There are an average of 32 CLEC networks in each of the top 25 MSAs, 15 in MSAs 26-50, 9 in MSAs 51-75, and almost 7 in MSAs 76-100. Ninety-one of the top 100 MSAs are served by at least three CLEC networks, 77 are served by at least 7 CLEC networks, and 59 are served by at least 10 CLEC networks. 2002 Special Access Fact Report at 12-13 and Table 5. In contrast, when the Commission approved AT&T's acquisition of Teleport Communications Group (TCG) a few months before adopting the *Pricing Flexibility Order*, it

²¹ See 2002 Special Access Fact Report at 27 (CLEC special access revenues of \$10 billion out of an estimated total market of \$28 billion).

²² *Id.* (estimating the RBOCs' 2001 special access revenue at \$18 billion).

noted that TCG “faces competition from five to twelve other operating CLECs” in its top ten markets.²³

Competitive fiber miles, collocations, and buildings served by CLEC fiber have increased dramatically as well. Conservatively estimated, CLECs have deployed almost 184,000 route miles of fiber, the vast majority of which is local,²⁴ and according to ALTS, the actual number may be far greater.²⁵ Even the lower number represents an 80 percent increase over the past three years. By the end of 2001, fiber-based competitors had collocated in central offices accounting for 55 percent of Verizon’s business lines, and one or more CLECs had obtained fiber-based collocation in two-thirds of Verizon’s wire centers with more than 10,000 business lines.²⁶ The existence of such facilities-based collocation confirms that the market is competitively disciplined because it reflects irreversible, sunk entry and therefore makes “exclusionary pricing behavior costly and highly unlikely to succeed.” *Pricing Flexibility Order* at 14264 ¶ 80. And, competitive access providers have built out fiber to at least 30,000 buildings nationwide – a number that seems vastly understated, given the substantial numbers of buildings served by individual competitors,²⁷ but even so is sure to account for a very substantial portion of

²³ *Application of Teleport Communications Group, Inc. and AT&T Corp. for Consent to Transfer of Control*, Memorandum Opinion and Order, 13 FCC Rcd 15236, 15251 at ¶ 27 (1998) (“AT&T/Teleport Order”).

²⁴ 2002 Special Access Fact Report at 11-12. The comparable figure in 1999 was approximately 100,000 fiber miles. *Id.*

²⁵ ALTS, *The State of Local Competition 2002, Annual Report*, at 17 (Apr. 2002) (reporting that CLECs have deployed over 339,000 route miles of fiber) (“ALTS 2002 Report”).

²⁶ 2002 Special Access Fact Report at 14. These figures are a conservative measure of the extent to which CLECs are using their own facilities to provide special access, because a considerable amount of traffic bypasses ILEC wire centers completely (as the *Pricing Flexibility Order* (at 14274-76 ¶ 95) recognizes). *Id.* at 14-15.

²⁷ Indeed, WorldCom has fiber to some 50,000 office buildings or campuses in more than 100 markets in the United States. See Eric Krapf, “Fiber Access: The Slog Continues; Industry Tent or Event,” *Business Communications Review* (Aug. 1, 2001) (“Eric Krapf, ‘Fiber Access’”).

special access demand.²⁸ (AT&T's claim that fiber-based competitors collectively serve fewer than 1000 buildings in LATA 132 (New York City) blatantly mischaracterizes a decision by the New York PSC and thus lacks all credibility.²⁹) As impressive as they are, these facts and figures tell only part of the story, since they do not include access facilities and services provided by wholesalers,³⁰ utility companies,³¹ long distance companies,³² and self-provisioning end users.

Notably, AT&T itself has continued to expand its access networks. When AT&T acquired TCG in 1998, TCG provided service to 83 markets, had deployed 9,500 route miles, and had obtained access to more than 3500 buildings. *AT&T/Teleport Order* at 15239 ¶ 5. Today, AT&T "has built 18,000 route miles of fiber in 90 cities and ... [has] 7,000 buildings on net and that's growing every day." *Dorman Remarks*. And even those numbers seem remarkably

²⁸ See 2002 Special Access Fact Report at 13. Notably, the 30,000 figure includes only buildings served entirely by the CLECs' fiber; it does not include buildings served in part by a CLEC's fiber (for example in the transport portion) in combination with facilities leased or resold from another competing carrier or an ILEC. With respect to the concentration of demand in relatively few buildings, it has been estimated that fewer than 300 out of 15,000 multi-tenant units in a typical Tier 1 MSA generate 80 percent of the data revenues. And just four MSAs (New York, San Francisco, Washington, D.C., and Los Angeles) generate some 40 percent of all data revenues nationwide. Accordingly, the 30,000 buildings referenced in the text undoubtedly account for a very substantial portion of special access demand. *Id.*

²⁹ AT&T asserts (Special Access Petition at 28) that "the New York PSC has found [that] Verizon serves 7354 buildings in LATA 132 (Manhattan) over fiber while CLECs serve fewer than 1000 buildings." In reality, the PSC held that "Verizon has 7,364 buildings on a fiber network compared to less than 1,000 buildings for most competing carriers." *Opinion and Order Modifying Special Services Guidelines for Verizon New York Inc., Conforming Tariff, and Requiring Additional Performance Reporting*, Case Nos. 00-C-2051, at 7 (NYPSC June 15, 2001) (emphasis added). AT&T's statement is an indefensible distortion of the PSC's actual finding; indubitably, the CLECs collectively serve far more than 1000 buildings in LATA 132.

³⁰ A Web-based trading site includes over 35 wholesalers listing over 10,000 local route miles of fiber in more than 60 cities in 23 states. 2002 Special Access Fact Report at 10-11.

³¹ Utility companies, which control 35 percent of the nation's fiber infrastructure and account for half of all new metropolitan fiber networks, are an important wholesale source. See 2002 Special Access Fact Report at 18-20 and Table 7.

³² Long distance carriers are leasing dark fiber on their local networks to CLECs. See 2002 Special Access Fact Report at Table 8.

low,³³ given that AT&T reportedly has invested somewhere between \$20 billion and \$46 billion in its access network since acquiring TCG.³⁴ In fact, AT&T has spent so much on its access network that it now considers its “core platform investments” to be “behind” it and states that it has “scale and ubiquity” in the provision of local access. *Dorman Remarks*.

Other leading access providers have grown rapidly as well. *ALTS 2002 Report* at 17. As of year-end 2001, Time Warner Telecom had 16,806 route miles (up from 8,872 in 1999), 758,060 fiber miles (up from 332,263 in 1999), and dedicated transport revenues of more than \$425 million (compared to only \$154 million in 1999).³⁵ Likewise, while WorldCom does not report numbers separately for MFS or Brooks Fiber, statements by senior company officials indicate that (at least until filing for bankruptcy protection) WorldCom was aggressively expanding its own access network.³⁶ For example, late last year, WorldCom’s Chief Technical Officer observed that, with technological advancements, “you can afford to extend your local

³³ To the extent AT&T is dissatisfied with the availability of alternative access, the problem may be due to its own mismanagement; a Bear Stearns analyst suggested more than two years ago that AT&T largely wasted its investment in TCG. See Stephanie N. Mehta, “More Not-So-Good News from AT&T,” *Fortune*, at 35 (May 29, 2000) (AT&T should have been “more aggressive with Teleport”).

³⁴ Stephanie N. Mehta, “Say Goodbye to AT&T – It’s Not Your Mother’s Phone Company Anymore,” *Fortune*, at 134 (Oct. 1, 2001) (\$46 billion). Similarly, AT&T’s CEO, Michael Armstrong, has stated that “we invested in our core company some \$40 billion to go into local connectivity, so we could connect end to end our customers we now have three and a half million local lines that connect business customers and 17,000 route miles of local fiber.” *After Hours with Maria Bartiromo* (CNBC broadcast, Aug. 12, 2002). Elsewhere, AT&T’s President, David Dorman, has stated that AT&T “has invested over \$20 billion” in its “access layer.” *Dorman Remarks*.

³⁵ Compare Time Warner Telecom 2001 Annual Report at 3 and Time Warner Telecom, Form 10-K, at 30 (Mar. 23, 2002) with Time Warner Telecom 1999 Annual Report at 2, 9.

³⁶ At the time WorldCom acquired MFS, MFS had 3500 route miles of fiber in 52 markets. Stephen Graham, “Global Grids of Glass: On Global Cities, Telecommunications and Planetary Urban Networks,” *Urban Studies*, at 929 (May 1, 1999); Joseph Epstein, “Your truest choice? (investing in MFS Communications of Omaha),” *Financial World*, at 74 (Aug. 12, 1996). Brooks Fiber, at the time of its acquisition by WorldCom, served 1968 buildings and had 2494 route miles of fiber in 44 markets. Brooks Fiber, SEC Form 10-K, at 5 (Mar. 31, 1998).

footprint. ... A lot of what we do today is simply extending the capability we may already have in an existing metro market.” Eric Krapf, “Fiber Access,” *supra*. And XO, another leading access provider, has stated that it “use[s] a variety of technologies to connect our customers directly to our networks ... [and] can connect a high percentage of the area’s commercial buildings using these technologies, rather than connections leased from third parties.” Nextlink Communications, Inc. (now XO Communications, Inc.), SEC Form 10-K, at 3 (Mar. 30, 2000).

Finally, AT&T and other carriers are extensively using their own and competitors’ special access services and facilities instead of the ILECs’ offerings.³⁷ While AT&T claims that alternative facilities are rarely available and that there are a host of reasons for not using third-party access even when it is available,³⁸ analysts noted as long as five years ago that AT&T was “giv[ing] more than half of all its local dedicated access orders to the CLECs as opposed to the ILECs,” and AT&T undoubtedly self-supplies a very substantial (albeit undisclosed) portion of its special access needs.³⁹ In fact, just last month, AT&T’s President said that the company extends its metropolitan fiber networks “through a variety of means, not just optically, but also

³⁷ As this evidence makes clear, and as Drs. Kahn and Taylor explain in detail, AT&T’s tired arguments about economies of scale and first-mover advantages are grossly overstated. *See* Kahn/Taylor Decl. at 21-22.

³⁸ Special Access Petition at 26-28. The number of special access circuits actually purchased by IXC’s from RBOCs is irrelevant; the only important determination for the Commission is whether the IXC’s have alternatives. It is clear that they do.

³⁹ F.J. Governali, *et al.*, Credit Suisse First Boston Corp., Investext Rpt. No. 2563177, Teleport Communications Group, Inc. – Company Report at *6 (July 7, 1997). Dr. Willig suggests that, despite spending billions of dollars on its access networks, “the lion’s share of AT&T’s access dollars go to the Bells.” *See* Special Access Petition at Tab B, ¶ 35 (“Decl. of Janusz A. Ordover and Robert D. Willig”). All this shows, however, is that much of AT&T’s special access costs are internalized; AT&T undoubtedly uses Teleport’s facilities and does not count the internal costs as “access dollars.” As Drs. Kahn and Taylor note, AT&T is less than transparent in its reporting of self-provisioned access services since AT&T “cannot simultaneously acquire the major wholesale providers of special access circuits and then complain about a shortage of independent suppliers or suppliers on the open market!” Kahn/Taylor Decl. at 24.

with radio and free-[space] optics – any way we can get customers on net, we’re looking at doing.”⁴⁰ Covad, which seeks to blanket any service area that it enters, has revealed that it uses non-ILEC transport on approximately half of its interoffice routes. Covad Comments, at 67-69, CC Docket No. 01-321 (filed Apr. 5, 2002). And WorldCom apparently has contracted with 41 CLECs for competitive access provisioning (again, on top of an undisclosed but undoubtedly significant portion of self-supplied access) and has stated that it will “install[] a diverse lateral to buildings located within a mile of an existing ring” as long as that building has sufficient demand. 2002 Special Access Fact Report at 10 and Table 3. All told, CLECs are providing roughly 95 million voice-grade equivalent special access and private lines *entirely* over their own facilities or those of non-ILEC suppliers. *Id.* at 24.

As this evidence compellingly demonstrates, AT&T’s petition is based on fable, not fact. The sky is not falling; to the contrary, the competitive outlook in the special access market has never been brighter. For this reason alone, its Petition must be rejected.⁴¹

⁴⁰ *Dorman Remarks.* As is evident from the quotes in the Introduction and Summary, AT&T elsewhere has conceded that alternatives to special access are widely available and readily deployed. An additional example of AT&T’s inconsistency on this point comes from the Virginia Arbitration proceeding, where AT&T stated that “Verizon has numerous options for getting its traffic to a POI located adjacent to AT&T’s switch. For example, Verizon can use its existing facilities, it can lease facilities from a third party or it can deliver traffic to AT&T’s collocated space and use AT&T’s facilities to reach its POI.” *Opposition of AT&T Corp., Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Expedited Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, at 2-3, CC Docket No. 00-218 (Sept. 10, 2002).

⁴¹ *See* 47 C.F.R. § 1.407 (a petition for rulemaking “will be denied” where the petition fails to “disclose[] sufficient reasons in support of the action requested”).

B. AT&T and Others Are Using Special Access Today To Compete Successfully in Downstream Markets.

Not only is AT&T grossly mistaken with respect to the competitive nature of the special access market itself, but it is equally wide of the mark regarding the effect of existing special access rates on competition in other markets. In fact, the marketplace evidence reveals that entities are successfully competing in the long distance and local markets using a combination of their own facilities, ILEC special access services, and third-party alternatives.

Looking first at the long distance market, AT&T is far and away the dominant provider of long distance services to enterprise business customers, the sub-category of interexchange services that employs special access as an input. For example, AT&T's national share of ATM and frame relay revenues is far larger than that of all the RBOCs combined. 2002 Special Access Fact Report at 29-31 and Fig. 2. This is hardly surprising; as a group of large customer recently informed the WorldCom bankruptcy court, AT&T, WorldCom, and Sprint "account for over 90% of enterprise telecommunications usage and are widely viewed as the only interexchange carriers capable of providing the full suite of network services required by major corporations."⁴² The Department of Justice likewise has stated that "[n]early all large businesses look to AT&T, WorldCom, and Sprint for competitive [C]ustom [N]etwork [S]ervice bids, and a significant number are unwilling to give serious consideration to any carrier other than the Big 3." Complaint ¶ 158, *United States v. WorldCom, Inc. and Sprint Corporation*, No. 00-CV-1526-158 (D.D.C. filed June 27, 2000). Accordingly, it is difficult to take seriously AT&T's concern that special access rates are "having an increasingly anticompetitive effect in the interexchange

⁴² Motion of the Ad Hoc Committee of WorldCom Enterprise Customer for Entry of an Order Directing the United States Trustee To Appoint an Official Committee of Enterprise Customers Pursuant to 11 U.S.C. § 1102(a)(2), Chapter 11 Case No. 02-13533-AJG (*In re WorldCom, Inc., et al.*), at 6 (filed Oct. 8, 2002).

market,” particularly when AT&T publicly belittles the threat posed by incipient RBOC entry into the provision of enterprise interexchange services. Special Access Petition at 23.

Turning to the local services market, the facts again preclude any argument that RBOC special access rates are either diminishing investment or forestalling competition. *Id.* at 16-18. With respect to investment, the previous section of this Opposition makes clear that alternative special access facilities are abundant and ever-expanding; AT&T’s claim to the contrary is wholly divorced from marketplace realities.⁴³ And the facts indisputably show that AT&T and other CLECs are competing quite successfully in local markets using special access services that are either self-provisioned, obtained from third parties, or purchased from ILECs – and that these entities are making no significant use of UNEs. Nationwide, CLECs have captured roughly one quarter of all business lines. 2002 Special Access Fact Report at 31. In many cases, as AT&T itself concedes, CLECs use ILEC special access circuits in order to connect those customers to the CLECs’ switches.⁴⁴ In fact, Verizon estimates that it provides 46,000 DS1 special access circuits and 2,000 DS3 special access circuits to CLECs that have used those facilities to capture business customers from Verizon. 2002 Special Access Fact Report at 22. Once again, therefore, AT&T’s claims of hypothetical competitive harm cannot be reconciled with what is actually occurring in the marketplace.

⁴³ Moreover, as Drs. Kahn and Taylor point out, it is “peculiar from an economist’s perspective” to argue, as AT&T does, that decreased RBOC special access prices would make CLECs and IXCs “more rather than less inclined to invest in their own facilities rather than use those of the RBOCs.” Kahn/Taylor Decl. at 27.

⁴⁴ Reply Declaration of C. Michael Pfau, at ¶ 26, attached to Reply Comments of AT&T Corp., CC Docket No. 01-338 (July 17, 2002) (“At least in AT&T’s case, the capacity of loops purchased as special access dwarfs the capacity of loops purchased as UNE-L.”); *see also* 2002 Special Access Fact Report at 21.

Notably, AT&T offers no evidence to back its assertions that the existing special access pricing flexibility rules enable RBOCs to engage in price squeezes or predatory pricing.⁴⁵ This failure is not surprising, given that such conduct would be directly contrary both to the law and to the RBOCs' economic interests. As an initial matter, the RBOCs' long distance affiliates must take access services under tariff at the same rates provided to their competitors. 47 U.S.C. § 272(e)(3). In addition, as Drs. Kahn and Taylor explain, it would be irrational for an RBOC to forego long distance profits because of the lost contribution from access revenues that occurs when the RBOC takes traffic from other long distance carriers.⁴⁶ Likewise, the RBOCs could not hope to engage in successful predatory pricing because they have "no reasonable hope of being able to drive [their] IXC competitors out of the market, and then raise toll prices without attracting entry and recoup lost profits." *Kahn/Taylor Decl.* at 35.

At bottom, AT&T has not even come close to demonstrating that market conditions permit the ILECs either to price their special access services unreasonably or to engage in anticompetitive conduct. It certainly has not shown that there are pervasive, nationwide problems sufficient to justify the draconian relief it seeks.⁴⁷

⁴⁵ The only exception is AT&T's reference to a BellSouth plan that offers discounts on special access in purchased in conjunction with frame relay service. Special Access Petition at 24. This is hardly evidence of a price squeeze; rather, the plan is a pro-consumer package that undoubtedly is aimed at helping BellSouth crack the frame relay market, which is dominated by the Big 3 IXCs.

⁴⁶ *Kahn/Taylor Decl.* at 34-35 ("The RBOC affiliate's retail price reflects to the penny what IXCs pay for access, as is required both by the law and by economic self-interest.").

⁴⁷ Nor does AT&T provide any basis for concluding that the complaint process is insufficient to address any legitimate concerns that may arise in the future, contrary to the Commission's finding in the *Pricing Flexibility Order* at 14267 ¶ 83 ("to the extent that an incumbent LEC attempts to use pricing flexibility in a predatory manner, aggrieved parties may pursue remedies under the antitrust laws or before this Commission pursuant to section 208"). While AT&T claims the complaint process is too cumbersome and resource-intensive, Special Access Petition at 37-38, that position is predicated on the ridiculous notion that virtually every special access rate is unreasonable. Moreover, AT&T had no such concerns about the compliant process when urging the Commission to dismiss arguments that AT&T's acquisition of TCG

IV. AT&T'S COMPLAINTS ABOUT THE RBOCS' SPECIAL ACCESS RATES ARE BASELESS.

Setting aside all the overblown rhetoric about a special access monopoly, AT&T's petition rests on the premise that the RBOCs' special access rates are exorbitant, as purportedly demonstrated by category-specific returns reported in ARMIS. What AT&T does not reveal is that those returns are entirely arbitrary and, as the Commission has warned, "do not serve a ratemaking purpose." *Policy and Rules Concerning Rates for Dominant Carriers*, Order on Reconsideration, 6 FCC Rcd 2637, 2730 at ¶ 194 (1991). Nor, tellingly, does AT&T disclose that the RBOCs' allegedly anticompetitive termination charges are more favorable to the customer than AT&T's own. And, of course, AT&T does not bother to admit that the other indicia of supposed market power cited in the petition are in reality signs of competition at work.

A. The Category-Specific ARMIS Returns Are Unrelated to Economic Profit.

In replacing rate-of-return regulation with price cap regulation, the Commission emphasized that the disaggregated, category-specific return data reported in ARMIS might be useful for jurisdictional separations and allocating costs between regulated and non-regulated services, but that they "do[] not serve a ratemaking purpose." *Id.* at 2728, 2730 ¶¶ 194, 198, 199. Similarly, the Commission has noted that "reducing our regulatory reliance on earnings calculations based on accounting data is essential to the transition to a competitive marketplace

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would allow it to impede access competition. In that context, AT&T argued that, "[i]f at some point in the future AT&T engages in any practice that [a competitor] believes is unreasonably discriminatory ... it can ask the Commission to investigate that practice, and if appropriate, devise a remedy, in the context of a section 208 complaint." Reply Comments of AT&T, at 18, CC Docket No. 98-24 (filed Apr. 27, 1998).

⁴⁸ See *Price Cap Performance Review for Local Exchange Carriers*, Fourth Report and Order, 12 FCC Rcd 16642, 16701 ¶ 150 (1997). Indeed, when it has served its purposes, AT&T also has recognized the inherent limitation of rate-of-return regulation: "There is no rational

There is good reason for the Commission's judgment: the category-specific ARMIS data are riddled with arbitrary mismatches between costs and revenues.⁴⁹ For example, marketing expenses are allocated across all access categories, but the associated revenues are recovered predominantly from the common line and special access categories.⁵⁰ Additional mismatches of revenues and expenses occur between the state and interstate jurisdictions. Further evidence of the arbitrary nature of the category-specific ARMIS returns comes from the tremendous year-over-year volatility of those returns compared to overall interstate returns. Between 1997 and 2001, Verizon's total interstate return has fallen within a narrow range.⁵¹ In contrast, the

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basis for believing that rates based on fully allocated costs are either fair or economically justified." Kahn/Taylor Decl. at 8 (quoting Initial Brief of AT&T Communications of New England, Inc., dated April 23, 1992, in the Commonwealth of Massachusetts Department of Public Utilities proceeding DPU 91-79, at 42-43).

⁴⁹ Kahn/Taylor Decl. at 8 ("The allocation of RBOC accounting costs between regulated and unregulated intrastate and interstate services assignments are, of necessity, not based on cost-causation. . . Among interstate services, the allocation of costs to special access services requires additional, similarly arbitrary assumptions. The sources of these difficulties are obvious. Fixed and common costs permeate – indeed dominate - a telephone company's cost structure").

⁵⁰ As another example, amounts collected for universal service recovery are booked as common line revenues, while the amounts due to USAC are recorded in the interexchange category.

⁵¹ The only remotely reliable aspect of the ARMIS rate-of-return reports is the total interstate return – which, for Verizon, has been 17 percent for the last few years, notwithstanding the grant of special access pricing flexibility. Even that figure, however, is distorted due to arbitrary jurisdictional separations. And, in any event, even Verizon's supposed 21.72 percent return on special access must pale beside AT&T's likely returns from local services (where it has stated that it will not enter any market where it is not assured a 45 percent gross margin, *see Abstract of Q2 2002 AT&T Earnings Conference Call*, Financial Disclosure Wire, available at 2002 WL 26338232 (July 23, 2002)) and from business services (where it is the unquestioned leader in a highly profitable market). AT&T is in no position to complain about the RBOCs' earnings.

reported special access returns have varied from 2.10 percent to 21.72 percent, and the reported traffic sensitive returns have ranged from 7.81 percent to 37.60 percent.⁵²

AT&T, in short, is using the category-specific ARMIS returns in a manner that the Commission did not intend and for a purpose for which they are ill-suited.⁵³ In fact, if use of the ARMIS data to ascertain the profitability of specific services were appropriate, which it is not, then AT&T would have to concede that Verizon is entitled to a significant increase in its switched access rates. After all, the company's ARMIS-reported switched access return in 2001 was a paltry 7.81 percent. AT&T cannot have it both ways.

B. Verizon's Special Access Rates Have Declined from Levels that AT&T's Access Subsidiary Once Deemed Predatory and Are Responsive to Consumer Demands.

Further confirming both the cynical nature of AT&T's petition and the reasonableness of Verizon's special access rates, those rates are now well below the levels that prevailed in the early 1990s, when AT&T's now-subsubsidiary TCG and WorldCom's now-subsubsidiary MFS routinely accused the RBOCs of engaging in predatory pricing of special access services. MFS, for example, vehemently objected to granting the ILECs special access pricing relief based on its belief that "LEC special access rates ... are already at discriminatory and predatorily low levels."⁵⁴ Today, representative average DS1 term plan rates are approximately 32 percent lower

⁵² To some extent, the broad variations in switched access and special access returns are due to implementation of the CALLS plan, which involved a substantial one-time reduction in switched access revenues and a one-year reduced X factor for special access.

⁵³ Kahn/Taylor Decl. at 8 ("[D]etermining a cost basis for calculating an economically meaningful rate of return is impossible.").

⁵⁴ MFS Communications Company, Emergency Petition To Hold Proceedings in Abeyance, at 2, CC Docket Nos. 91-141, 92-222 (filed Mar. 24, 1993); *see also Special Access Expanded Interconnection Order* at 7458 ¶ 188, citing an *ex parte* filed by MFS in CC Docket No. 91-141, dated May 27, 1992; Comments of Teleport Communications Group Inc., at 24 CC Docket No. 94-1 (filed May 9, 1994) ("The LECs have been able to aggressively (and in some cases improperly) price their services.").

than they were ten years ago⁵⁵ – yet the new owners of these formerly independent access providers now allege those rates to be unconscionably high.

Finally, as further evidence of the competitive nature of the special access market, Verizon offers customers specific protections against unexpected or significant rate increases. In particular, Verizon provides customers the opportunity to lock in stabilized rates for the duration of some discount plans. *See, e.g.*, Verizon Telephone Companies Tariff FCC No. 11, Section 7.4.10(G). Verizon also protects all of its customers from large annual rate increases by enabling them to cancel their term plans if Verizon initiates a rate increase of 8 percent or more.⁵⁶ If the market were non-competitive, as AT&T alleges, Verizon would have no need to be so responsive. To the contrary, Verizon’s rate stability measures demonstrate that there is no need for Commission intercession; the discipline of the marketplace already assures that customers’ interests are protected.

C. The Other Factors AT&T Points To As Evidencing Market Power Actually Reflect the Operation of a Competitive Market.

According to AT&T, the RBOCs’ power in the special access market is demonstrated by five factors: (1) increases in special access rates under pricing flexibility, (2) term and volume plans that provide discounts in exchange for annual commitments of particular levels of traffic, (3) supposedly “huge penalties for early termination,” (4) increased usage in the face of increased rates, and (5) assertedly “abysmal” provisioning of special access services. Special Access Petition at 14, 15, 22. Once again, AT&T’s arguments are specious.

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⁵⁵ This figure is derived from a DS1 discount plan for Verizon North, and assumes two channel terminations, one fixed mileage component and ten miles of interoffice transport.

⁵⁶ *Id.* at Section 7.4.10(B); Verizon Telephone Companies Tariff FCC No. 1, Sections 7.4.13(C); 7.4.17(C)(6).

Increased special access rates. While AT&T makes much of the fact that ILECs have used pricing flexibility to increase special access rates in some cases, the Commission understood that such increases “may be warranted, because our rules may have required incumbent LECs to price access services below cost.”⁵⁷ The Commission nonetheless found that “the public interest is better served by permitting market forces to govern the rates for access services at this point.” *Pricing Flexibility Order* at 14301 at ¶ 155. And just last Spring, the Commission rejected precisely the same argument AT&T makes here in approving a petition for pricing flexibility filed by SBC, finding “no merit in [the] claim ... that increases in prices in areas where pricing flexibility has been granted proves that pricing flexibility rules are not working.” *Petition for Pricing Flexibility for Special Access and Dedicated Transport Services for Ameritech Operating Companies*, Memorandum Opinion and Order, 17 FCC Rcd 6462, 6466 at ¶ 11 (2002). In fact, the opposite is true: ILEC special access rates prior to pricing flexibility were artificially depressed, and the rationalization of special access rates since that time undoubtedly has helped contribute to the explosion in deployment of alternative access facilities.⁵⁸

⁵⁷ *Pricing Flexibility Order* at 14301 ¶ 155. AT&T also bemoans the fact that special access rates subject to pricing flexibility are not subject to the X factor reduction applicable to price capped rates. Special Access Petition at 12. AT&T itself, however, supported an initial CALLS proposal, CC Docket 96-262, filed August 20, 1999, that would have applied *no* X factor reductions to *any* special access rates, including those remaining under price cap regulation. In fact, the CALLS Coalition, in reply comments, at page 58, CC Docket 96-262 (dated Dec. 3, 1999), opposed WorldCom’s criticism of the plan for not continuing to mandate price cap formula reductions in special access rates, explaining that “[s]pecial access faces more significant competition than other access services and is likely to see even greater competition. Thus, it is not apparent that continued mandated special access reductions will be necessary. In addition, as more special access comes under Phase I and Phase II pricing flexibility, the overall impact of applying an X-factor greater than inflation to special access prices will be reduced.”

⁵⁸ Verizon has filed tariffs to align rates with market conditions. These tariff changes have reduced some rates and increased others. Competitors generally provide higher month-to-month rates combined with steeper volume and term discounts and Verizon has been restructuring its rates to do the same. In addition, Verizon has sought to expand the differential among zones 1, 2, and 3, to align rates between Verizon North and Verizon South and between Verizon East and

AT&T also claims that the gap between TELRIC rates and special access rates demonstrates that the latter are unreasonably high. As a threshold matter, all this shows is that TELRIC has been used to set rates *below* levels that prevail in competitive markets. Moreover, as Drs. Kahn and Taylor point out, “where margins between price and incremental cost are used to measure anything, the incremental cost in question is emphatically never TELRIC” – rather, “the incremental cost in question is the forward-looking economic cost of the firm itself, not the hypothetical cost of a perfectly efficient firm serving the entire market as a wholesale provider using a fully-modern network optimally deployed around the firm’s existing switch locations.” *Kahn/Taylor Decl.* at 10. Further, experience from other segments of the industry – most notably long distance – shows that services with high fixed costs typically have prices that greatly exceed marginal costs; AT&T’s own long distance service is a prime example of this. *Id.* at 10-12.

Term and volume plans. As AT&T well knows, term and volume discount plans are a vital part of a competitive marketplace. AT&T has offered such plans to its business customers at least since the mid-1980s, and the RBOCs have had special access terms plans for more than a decade. As the Commission has found time and again, “volume and term discounts are generally legitimate means of pricing special access services to recognize the efficiencies associated with larger traffic volumes and the certainty of longer-term arrangements.”⁵⁹ In addition, AT&T is

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Verizon West, and to improve the price/cost relationship for older technology products. Moreover, Verizon has introduced contract tariffs that provide additional discounts, *see* Verizon Telephone Companies Tariff FCC Nos. 1, 11, and 14, Transmittal No. 163 (filed Mar. 15, 2002), Verizon Telephone Companies Tariff FCC Nos. 1 and 11, Transmittal No. 268 (filed Nov. 26, 2002), and has other contract tariffs under negotiation.

⁵⁹ *Expanded Interconnection with Local Telephone Facilities*, Memorandum Opinion and Order, 9 FCC Rcd 5154, 5200 at ¶ 168 (1994) (“Virtual Collocation Order”); *Access Charge Reform NPRM* at 21435 ¶ 187 (“We have previously concluded that volume and term discounts can reasonably recognize certain efficiencies that flow from volume or term commitments made by purchasers.”). In this regard, Drs. Kahn and Taylor explain that, “[t]erm and volume

hardly in a position to complain about the RBOCs' special access volume and term discounts, since it is the largest beneficiary of those discounts. Moreover, contrary to its rhetoric, AT&T understands that tying the deepest discounts to the highest volume commitments is a fact of life in a competitive industry.⁶⁰ AT&T does not grant a customer committing to a million dollars a year in business the same discounts that it extends to customers making commitments five or ten times that amount; nor does it give a month-to-month customer the same discounts as a customer who signs a three-year agreement.

Finally, Verizon could not use these discount plans to "lock up" the market, as AT&T alleges. First, the largest special access customers are IXCs, and both AT&T and WorldCom have significant access networks allowing self-provisioning of these services. Second, the access market is growing rapidly, so that "new customer demands come onto the market continuously." *Kahn/Taylor Decl.* at 33. Third, competitive access providers have been active for at least ten years; accordingly, access customers *choose* to enter long-term deals with RBOCs as opposed to competing carriers – they are not compelled to do so.

Termination liability. AT&T's complaints about supposedly onerous termination charges ring particularly hollow, since Verizon's termination liability is less than AT&T's own.⁶¹ Verizon's most common early termination provision requires a customer to reimburse Verizon for the difference between the discount it received under the term plan it selected and the

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discounts expand consumer choice and ultimately expand demand, increasing consumer welfare directly." *Kahn/Taylor Decl.* at 30.

⁶⁰ Drs. Kahn and Taylor show that limiting RBOCs' ability to offer such discounts would hold up prices and reduce consumer welfare. *Kahn/Taylor Decl.* at 30-32.

⁶¹ Further, Drs. Kahn and Taylor demonstrate that termination penalties are necessary for carriers to provide discount plans at all; these penalties protect sunk investments and reduce customer arbitrage opportunities. *Id.* at 30.

discount it would have received for the actual length of time it took service.⁶² Thus, there is no real termination penalty – the customer is merely placed in the same position it would have been had it enrolled in a term plan matching the actual period that it used Verizon’s service. In contrast, AT&T’s early termination penalties are far more burdensome. AT&T’s standard termination liability – which it is unwilling to negotiate, even with the largest customers – is 35 percent of the customer’s gross revenue commitment for the remaining term of the commitment. *See, e.g.,* AT&T Business Service Guide, Version 7, effective Nov. 1, 2002, at 4 (“Digital Services Volume Pricing Plan”). Assuming that most large customers receive a discount of approximately 50 percent off of AT&T’s list rates, AT&T’s termination penalty is equivalent to roughly 70 percent of the customer’s remaining actual commitment.

Growth in revenues. Although AT&T is correct that ILEC special access revenues have grown significantly in the past few years, it makes an unjustified (and unjustifiable) leap of logic in concluding that this results from the unavailability of UNEs and thus evidences ILEC market power.⁶³ The real story is that the growth in demand stems largely from the tremendous increase in data and Internet traffic, not the use of special access to provide local service.⁶⁴ In fact, *all*

⁶² For illustrative purposes, if a customer on a four-year plan terminated service after two years, the customer would owe Verizon the difference between the four-year rate and the two-year rate. *See* Verizon Telephone Companies Tariff FCC No. 1, Section 7.4.17(D)(5)(b). Notably, this is the same type of termination plan prescribed by the Commission for the Special Access Expanded Interconnection fresh look window, as discussed in section VI below. Other Verizon rate plans have termination liabilities ranging from 15 to at most 50 percent of the remaining commitment, far lower than AT&T’s.

⁶³ Special Access Petition at 14-15. Contrary to AT&T’s claims, UNEs are hardly unavailable. As Section III makes clear, alternatives to RBOC high-capacity loops and dedicated transport are widely available through both self-supply and third-party sources. Moreover, Verizon East alone has provided more than 16,000 unbundled DS1 and DS3 loops, more than 15,000 unbundled DS1 and DS3 transport circuits, and 7000 DS1 and DS3 EELs as of August 2002.

⁶⁴ Kahn/Taylor Decl. at 12 (“Data services have been growing much faster than voice services.”). Drs. Kahn and Taylor (at 15-16) also show that the increase in RBOC special access revenue over the past five years is directly due to the increase per year in special access lines.

providers of special access services – ILECs and CLECs alike – have enjoyed a significant growth in special access revenues during that time period. While AT&T claims that ILEC special access revenues increased by some 54 percent between 1999 and 2001,⁶⁵ CLEC private line and special access revenues grew by 60 percent over the same time period,⁶⁶ consistent with their growing share of the overall market.⁶⁷ The special access pie, in short, is getting bigger for everyone (and is getting bigger at a faster rate for the CLECs), once again demonstrating that the RBOCs lack market power. Moreover, to the extent the growth in demand reflects the use of special access circuits (from the ILECs and from alternative providers) to offer local services, it further confirms that requesting carriers are not impaired in providing local services without access to unbundled transport and unbundled high-capacity loops.

Service quality. Finally, there is no basis to AT&T's assertion that RBOC special access service quality is poor. Verizon demonstrated in detail in the Special Access Performance Measure docket that it goes to great lengths to satisfy the expectations of its special access customers. To that end, Verizon provides service quality reports to 51 different carriers; regularly participates in conference calls and face-to-face meetings to discuss special access provisioning; internally tracks its performance; aggressively deploys more advanced technologies such as SONET systems and Dense Wave Multiplexing electronics; and monitors

⁶⁵ See Special Access Petition at 14 (table shows cumulative RBOC special access revenues of approximately \$7.8 billion in 1999 and \$12 billion in 2001, representing an increase of 54 percent). ILEC special access revenues include dedicated services that, in intrastate tariffs, are referred to as "private line."

⁶⁶ 2002 Special Access Fact Report at 5-6, *citing* New Paradigm Resources Group, *CLEC Report 2002*, Ch. 3 at Table 13.

⁶⁷ Using figures from the Commission's 1998 and 2000 Reports on Telecommunications Industry Revenues, the ILECs' total special access and private line revenues grew by 38 percent between those years, while the CLECs' special access and private line revenues grew by 250 percent, and the IXCs' by 35 percent, in that same time period. Compare Table 5, lines 305 and 312 and Table 6, lines 406 and 415, between the two reports.

demand and increases capacity as warranted. *See* Comments of Verizon, at 9-10, CC Docket No. 01-321 (filed Jan. 22, 2002). None of these measures is legally required; rather, Verizon undertakes them in order to be responsive to its customers in a competitive marketplace. AT&T's allegations to the contrary rest solely on the self-serving statements of the so called "Joint Competitive Industry Group." The fact is that Verizon's special access provisioning is good, and it has improved in the time since Verizon began receiving pricing flexibility for its special access services.⁶⁸

V. BEYOND BEING UNNECESSARY, THE RELIEF SOUGHT BY AT&T WOULD BE ANTITHETICAL TO THE PUBLIC INTEREST.

The relief sought by AT&T – a dramatic reduction in special access rates to below competitive levels – undoubtedly would benefit AT&T's bottom line. The Commission does not grant rulemaking petitions based on the private interest of the petitioner, however; to the contrary, it must find that the relief sought would serve the public interest. Here, no such finding is possible.

Slashing the RBOCs' special access revenues would undermine their ability to invest, producing a devastating impact on service quality. Re-pricing special access in Phase II areas to earn an 11.25 percent rate of return would diminish Verizon's revenues by more than one billion dollars based on 2001 data. As the Commission is well aware, while special access is vigorously competitive, it also is one of the few profitable RBOC services. Switched access rates have dropped dramatically as a result of CALLS, and most mass market local phone services are priced below cost. Moreover, AT&T and WorldCom are using UNE-P, which is priced well below cost in most states, to target the small percent of mass market customers that generate

⁶⁸ See Kahn/Taylor Decl. at 16-17 (ARMIS reports show that RBOC performance has improved as RBOCs have received greater pricing flexibility.).

virtually all of the RBOCs' profits from that market segment. UNE Rebuttal Report 2002, at 34-35, CC Docket 01-338 (Oct. 23, 2002). As AT&T itself has warned, "[i]f profit margin is whittled down too much, the company becomes less attractive to investors who in turn will sink less money into [it]. The company then has fewer dollars to enhance services and develop new technology."⁶⁹

Such dramatic re-pricing of special access also would "undercut the market position of" competing carriers, as the Commission recognized in the *Supplemental Order Clarification. Implementation of the Local Competition Provisions Of the Telecommunications Act of 1996*, Supplemental Clarification Order, 15 FCC Rcd 9587, 9597 at ¶ 18 (2000). In this regard, the largest independent facilities-based competitive access provider, Time Warner Telecom, has warned that forcing special access rates down to arbitrary TELRIC levels – AT&T's ultimate goal⁷⁰ – would "substantially reduce TWT's incentive to expand entry in the ... markets it has already entered or to invest in network facilities in new geographic areas."⁷¹ Indeed, the long-term viability of alternative special access providers would be called into doubt, since they would be unable to recover their investments. As AT&T's own economist, Dr. Willig, has

⁶⁹ Scott Wyland, "Dispute with AT&T shapes up as test of wills," *The Olympian*, Feb. 11, 2002, at A1 (reporting AT&T spokesman's comments).

⁷⁰ AT&T urges the Commission to reinitialize price cap rates to levels designed to produce "normal" returns. Special Access Petition at 6. In AT&T's view of the world, this undoubtedly means TELRIC-based rate levels.

⁷¹ *Time Warner Telecom Comments* at 19; *see also ex parte* submission of Bell Atlantic, Allegiance Telecom, Intermedia Communications, and Time Warner Telecom, CC Docket 96-98 (filed Sept. 2, 1999) ("The effect of such substitutions would be to reduce significantly the prices long distance carriers pay today for special access services under the Commission's access regime and to discourage competitors from investing in alternative special access facilities.").

explained, “[n]o reasonable entrepreneur will enter a market if it believes that it has no prospect of recovering its investment, and making at least a competitive return, in the long run.”⁷²

In addition, eliminating pricing flexibility for the ILECs’ special access services would strengthen AT&T’s re-emerging stranglehold over the enterprise market. As explained above, the Big 3 IXCs dominate that market, and AT&T is far and away the leading competitor, with annual revenues of over \$28 billion from its four million business customers. Jeff May, “Top Telecom Salespeople are Flocking to Ma Bell,” *Newark Star Ledger*, at 1 (Sept. 29, 2002). The second-place competitor, WorldCom, currently is under a cloud resulting from its accounting fraud and ensuing bankruptcy, and Sprint lags behind in terms of market share.

Indeed, AT&T has boasted that this is “a time of unprecedented opportunity for” the company with respect to the business market.⁷³ In this regard, outgoing AT&T CEO Michael Armstrong has stated that “AT&T is uniquely positioned to serve the enterprise space.” *After Hours with Maria Bartiromo* (CNBC broadcast, Aug. 12, 2002), and analysts expect AT&T to win 60 percent of the customers who flee WorldCom as their contracts expire. Beatrice E. Garcia, “Calling on Layers of Experience, Dorman, AT&T’s CEO-to-be, Has Long Been Plugged In,” *Miami Herald*, at 1 (Sept. 29, 2002) (“Garcia, Layers of Experience”). AT&T’s efforts already are paying off: AT&T’s top executives have stated that its “win rates clearly have gone up; [its] loss rates have clearly come down,” and “the company is taking market share in all

⁷² Declaration of Dr. Robert Willig, ¶ 57 attached to AT&T Corp, *Motion for Stay of the Pricing Flexibility Order Pending Judicial Review*, (filed Nov. 21, 2000). Drs. Kahn and Taylor concur: if AT&T’s petition was granted, special access customers would rely more heavily on RBOCs circuits to the detriment of facilities-based competitors. Kahn/Taylor Decl. at 27-28.

⁷³ Shawn Young, “Customers Ponder Bolting,” *Wall St. Journal*, at B1 (Oct. 16, 2002) (quoting Betsy Bernard, AT&T’s President of Business Services, who also explained that “[m]aking sure we take advantage of that is our absolute first priority”).

areas of business communications.”⁷⁴ Not only is AT&T gaining market share, but it is flexing its new muscles to the detriment of consumers. A Gartner analyst observed that AT&T is “taking advantage of panicked WorldCom clients by raising their rates and adopting inflexible stances when negotiating new contracts.”⁷⁵ In fact, AT&T’s CEO-in-waiting just told analysts that “we have shown price leadership across all of the business segments” and have implemented “price increases [and] we have not [had] to recant them.”⁷⁶

The only hope for renewed competition in this market lies with the RBOCs, which already face significant challenges in serving enterprise customers. As one analyst has observed, RBOCs “don’t have infrastructure in place for offering national services. AT&T does.” Garcia, *Layers of Experience*, *supra*, at 1. Although Verizon is taking initial steps to go after this AT&T stronghold, it is compelled to focus first on regional opportunities, and it may be several years before Verizon can go after global customers.⁷⁷

Viewed against this background, the strategy underlying AT&T’s petition is clear: do whatever is possible to weaken the RBOCs before they can go after AT&T’s core business. By depriving the RBOCs of revenues from market-priced special access services, AT&T can inhibit

⁷⁴ “AT&T President-Elect Hopes She Can Reverse A Sales Decline,” *Wall St. Journal*, at B3 (Oct. 2, 2002); Jeff May, “Top telecom salespeople are flocking to Ma Bell – Rivals’ ills a boon to AT&T,” *Newark Star Ledger*, at 1 (Sept. 29, 2002) (quoting AT&T Vice President Bill Archer).

⁷⁵ Juan Carlos Perez, “Analysts see opportunities in WorldCom woes,” *InfoWorld Daily News* (Oct. 9, 2002). According to the Gartner Group, Sprint is engaging in the same practices.

⁷⁶ *Dorman Remarks*. Similarly, Sprint’s CFO just stated that “industry disruption has led to a rather abrupt and radical change in the competitive landscape,” with “firmer” pricing now appearing. “SBC’s Whitacre Voices Optimism on UNE-P Outcome at FCC,” *Communications Daily*, at 3 (Nov. 13, 2002).

⁷⁷ See Christine Nuzum, “Verizon Hopes To Sell Big Firms On Its Long-Distance Service,” *Wall St. Journal*, at B6 (Nov. 5, 2002) (quoting the President of Verizon’s Enterprise Solutions Group, Eduardo Menasce, as stating that “it will take the company between 18 and 24 months to complete the infrastructure to offer the new service to customers throughout its territory” and that Verizon does not have immediate plans to expand into global services).

their ability to build out the infrastructure needed to tackle the enterprise market. And by preventing the RBOCs from crafting tailored deals, AT&T can frustrate even their initial efforts to expand offerings for regional business customers. As Drs. Kahn and Taylor explain, prohibiting one party from offering long-term contracts distorts markets in which customer-specific facilities or expensive, tailored network design is an important up-front cost that must be recovered over the life of the relationship. *Kahn/Taylor Decl.* at 29-31. For AT&T, this makes perfect sense. For consumers and competition, it is disastrous.

VI. THE INTERIM RELIEF SOUGHT BY AT&T IS CONTRARY TO THE ACT AND COMMISSION PRECEDENT.

AT&T urges the Commission, as “interim” relief pending a rulemaking, to reduce special access rates in Phase II areas to earn no more than 11.25 percent, to institute a moratorium on new pricing flexibility petitions, and to permit access customers to abrogate existing term plans without paying any termination charges. Just as there is no factual, economic, or policy basis for the relief AT&T seeks, there likewise is no legal basis for restructuring the special access market in accordance with its wish list.

Prescription of interim rates. The Commission lacks authority to declare all RBOC special access rates in Phase II areas unlawful and order that they be re-prescribed to earn 11.25 percent. Section 205 of the Act permits the Commission to re-prescribe rates only after following specific procedures that AT&T ignores. In particular, Section 205 requires a “full opportunity for hearing” based “upon a complaint or under an order for investigation and hearing made by the Commission on its own initiative.” If, after following those procedures, the “Commission [determines] that any charge, classification, regulation, or practice of any carrier or carriers is or will be in violation of any of the provisions of this Act,” *then and only then* may “the Commission ... prescribe what will be the just and reasonable charge.” 47 U.S.C. § 205.

Without even paying lip service to the statutory scheme, AT&T rails that all special access rates must be unjust and unreasonable given the reported returns.⁷⁸ AT&T, however, has failed to demonstrate that any particular rates are unreasonable, let alone that every special access rate in every MSA in which Phase II pricing flexibility has been granted flouts Section 201. Nor has AT&T filed a complaint under Section 208, sought a Commission investigation, or even objected to any of Verizon's tariff filings that have produced the allegedly unlawful rates. "Hang 'em first and ask questions later" may work in old Westerns, but the Commission, notwithstanding AT&T's protestations, is not at liberty to ignore the core requirements of its organic statute. The Commission has rejected similar attempts by AT&T to cut procedural corners in pursuit of lower access charges,⁷⁹ and it must do so again here.

Moratorium on pricing flexibility petitions. AT&T's request for a moratorium on pricing flexibility petitions arrogantly presupposes the outcome of the rulemaking process and would be directly contrary to the public interest. As the Commission has found, pricing flexibility in the face of competition is necessary to assure the efficient functioning of the market. Moreover, pricing flexibility already has been granted in areas accounting for 37 percent of Verizon's wire centers. AT&T has offered no rationale for cutting off such relief in the remaining areas pending consideration of its request for rulemaking, other than its own self-serving claim that rates are higher than they should be.

⁷⁸ Special Access Petition at 34-35. AT&T cites only *Lincoln Telephone* in support of its request, but that case is inapposite. There, the court upheld the Commission's authority to establish interim rates in the context of an interconnection dispute *when no previous rates had existed*. *Lincoln Tel. v. FCC*, 659 F.2d 1092, 1107 (D.C. Cir. 1981).

⁷⁹ *LEC Price Cap Order* at 6817 ¶ 53 ("As the LECs note, our authority to prescribe rate reductions under Section 205(a) depends upon a finding that current rates are or will be unreasonable. The commenters provide no evidence that existing rates for LECs covered by price cap regulation are generally unreasonable, and we are aware of no such evidence.").

In any event, the cases cited by AT&T undercut rather than support its request for a moratorium. Those cases all involve a factual pattern far removed from the current situation. In each of them, an administrative agency, in the context of adopting new licensing rules, adopted a moratorium on new applications where granting them could not be undone or would jeopardize the workability of the agency's new rules. Thus, in *Kessler*, the Commission refused to accept new AM radio applications until new interference rules were established. *Kessler v. FCC*, 326 F.2d 673 (D.C. Cir 1963). The Commission was concerned that permitting additional nonconforming stations would only exacerbate the interference problem and jeopardize the long-term viability of AM broadcasting. *Id.* at 684. Similarly, in *Neighborhood TV*, the Commission suspended the filing of applications for translator licenses while it developed its low power television rules. *Neighborhood TV Co. Inc. v. FCC*, 742 F.2d 629 (D.C. Cir. 1984). And in *Western Coal Traffic League*, the Surface Transportation Board created a moratorium on railroad merger applications while new merger standards were developed. *Western Coal Traffic League v. Surface Transportation Board*, 216 F.3d 1168 (D.C. Cir. 2000). Plainly, there is no equivalent “unscramble the egg” problem here,⁸⁰ and AT&T could not argue otherwise without conceding that there is no way to re-set existing rates in Phase II areas to earn 11.25 percent.

⁸⁰ There is no evidence that the grant of additional pricing flexibility would make the adoption of new rules unworkable or overly complex. MSAs in which additional pricing flexibility was granted during a rulemaking, in the event the Commission chooses to initiate one, could be treated in the same manner as existing MSAs. Nor is there any long-term licensing scheme to protect. Pricing flexibility petitions, in short, do not fit within the limited instances in which agencies have established licensing moratoria.

Abrogation of termination liability. In conjunction with the interim relief discussed above, AT&T urges the Commission to release special access customers from their long-term contracts with RBOCs unconditionally, “without triggering any termination liabilities or other penalties in the Bells’ optional pricing plans.” Special Access Petition at 6. Even if there were some legal justification for granting the requested interim relief, which there is not, AT&T has provided no basis for the Commission to abrogate the termination liability provisions in existing volume and term discount plans. The Commission only permits “the extraordinary remedy of fresh look in limited circumstances, to promote consumer choice.”⁸¹ In the few cases where the Commission has permitted carriers to escape contracts without liability, “the entity holding the long-term contracts [has] ‘lock[ed] up’ the market in such a way so as to create unreasonable barriers to competition,” and even then the Commission grants a fresh look right only if the remedy would not harm the public interest. *Direct Access Order* at 15752 ¶ 119.

AT&T has failed to establish that barriers to entry exist, let alone that the RBOCs’ special access pricing plans “lock up” the market. Nor has AT&T shown that abrogation of private contract rights would serve the public interest; it plainly would not. In addition, AT&T’s request is inconsistent with previous fresh look opportunities, which arose in the context of regulatory changes permitting entry into a previously closed market. Here, the access market has been open to competition for almost twenty years. In reality, AT&T seeks only price reductions. The

⁸¹ *Access to the INTELSAT System*, Report and Order, 14 FCC Rcd 15703, 15751-52 ¶¶ 118-119 (1999) (“*Direct Access Order*”); *Competition in the Interstate Interexchange Marketplace*, Memorandum Opinion and Order on Reconsideration, 7 FCC Rcd 2677 (1992) (allowing AT&T customers to terminate inbound 800 service from AT&T without termination liability within 90 days of 800 numbers becoming portable to prevent AT&T from leveraging its market power to sell other services to its customers.).

Commission has repeatedly rejected similar requests for unwarranted fresh look rights based on a carrier's desire for financial gain.⁸²

Finally, permitting AT&T to walk away from contracts that it voluntarily entered into would be particularly indefensible here, in light of the history of special access pricing flexibility. Ten years ago, when the Commission opened the access market to broad competition, AT&T was given the opportunity to take a limited "fresh look" at its long-term special access contracts with RBOCs. *Special Access Expanded Interconnection Order* at 7463-64 ¶¶ 201. The Commission did not, however, waive all termination liability; it only limited the amount of compensation that access customers had to pay to ILECs.⁸³ There is no conceivable justification for providing a more extensive fresh look opportunity now, in a far more competitive access market.

⁸² *Direct Access Order* at 15754 ¶ 125 ("We will not apply fresh look to these contracts, AT&T and MCI WorldCom entered into them on their own accord based on business judgment.").

⁸³ *Id.* at 7464-65 ¶¶ 201-202. As noted above, Verizon has adopted this limited termination liability for the majority of its special access pricing plans.

VII. CONCLUSION

For the foregoing reasons, AT&T's petition should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a/ Verizon Mid-States
GTE Midwest Incorporated d/b/a/ Verizon Midwest
GTE Southwest Incorporated d/b/a/ Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
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