

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

In the Matter of)
)
AT&T Petition for Rulemaking to Reform Regulation)
of Incumbent Local Exchange Carrier Rates for)
Interstate Special Access Services) RM No. 10593
)

**COMMENTS OF AD HOC
TELECOMMUNICATIONS USERS COMMITTEE**

The Ad Hoc Telecommunications Users Committee (the “Ad Hoc Committee”) submits these Comments pursuant to the Commission’s October 29, 2002 Public Notice in the docket captioned above.¹ Ad Hoc urges the Commission to grant AT&T’s petition and immediately begin a rulemaking to reform its regulation of price caps carriers’ rates for interstate special access.

AT&T is sounding the alarm over an issue that Ad Hoc first raised with the Commission nearly nine months ago, in the *Performance Standards Rulemaking*.² As Ad Hoc emphasized in its pleadings in that proceeding as well

¹ *Wireline Competition Bureau Seeks Comment on AT&T’s Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Public Notice, DA 02-2913, rel. October 29, 2002 (“Notice”).

² *Performance Measurements and Standards for Interstate Special Access Services*, CC Docket Nos. 01-321, 00-51, 98-147, 96-98, 98-141, 96-149, 00-229, Notice of Proposed Rulemaking, 16 FCC Rcd 20896 (2001) (“*Performance Standards Rulemaking*”).

as those it filed in the *Wireline Broadband Dominance Rulemaking*³ and the *Broadband Wireline Internet Access Rulemaking*⁴; effective competition in the provision of broadband business services, which dominant LECs like the BOCs provide through their special access tariffs, has simply failed to materialize. The scant handful of limited competitive alternatives available to business end users has proven to be wholly insufficient to discipline the BOCs' prices and protect end users from unjust and unreasonable prices, terms, and conditions. Under these market conditions, the FCC cannot continue to abandon the regulatory field and still ensure that the statutory objectives of the Communications Act are met.

The Ad Hoc pleadings described above, which are hereby incorporated by reference, reiterated two core points that are equally relevant to AT&T's petition for rulemaking: (1) actual end users seeking actual service providers in real markets have found few, if any, competitive alternatives to the price caps carriers' special access services; and (2) when LECs obtain pricing flexibility under the FCC's current special access pricing rules, their prices and earnings only go up, an outcome wholly inconsistent with a fully competitive marketplace.

For the *Performance Standards Rulemaking*, Ad Hoc's economic consultants examined pricing data for the Market Service Areas ("MSAs") in which ILECs have been granted pricing flexibility on the basis of their

³ *Review of Regulatory Requirements for Incumbent LEC Broadband Services; SBC Petition for Expedited Ruling That It Is Non-Dominant in its Provision of Advanced Services and for Forbearance From Dominant Carrier Regulation of These Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, FCC 01-360, 16 FCC Rcd 22745 (2001) ("*Wireline Broadband Dominance Rulemaking*").

⁴ *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, CC Docket Nos. 02-33, 95-20, and 98-10, Notice of Proposed Rulemaking, FCC Rcd (2002) ("*Broadband Wireline Internet Access Rulemaking*").

demonstration that competing service providers are present. Ad Hoc's review revealed that ILECs are charging higher prices in those MSAs – where competition is presumably greatest – than in the non-Phase II areas in the same states and density zones, where competition supposedly has not developed. Indeed, Ad Hoc's analysis revealed no instance of lower prices for generally available services in the MSAs to which Phase II pricing flexibility applies. Ad Hoc observed that

If meaningful competition existed in special access markets, all providers' performance would improve and FCC regulation of carrier performance would be unnecessary. But despite the ILECs' repeated claims to the contrary, competition has not yet developed in special access markets, as even a cursory analysis of the ILECs' special access pricing demonstrates. Rates are higher in markets where the Commission has granted ILECs Phase II pricing flexibility than in markets still subject to price cap regulation – an outcome that is exactly the opposite of what a competitive market would produce and completely consistent with a market in which the ILECs are maintaining their legacy market power.

Comments of Ad Hoc Telecommunications Users Committee in *Performance Standards Rulemaking*, filed February 12, 2002, at 2-3 (emphasis added; citations omitted).

In its Comments in the *Wireline Broadband Dominance Rulemaking*, Ad Hoc identified a number of factors which demonstrated the lack of competition for special access service, including the price review mentioned in the preceding paragraph and the results of a member survey which revealed a dearth of competitive alternatives:

- The Commission's deregulation of the ILECs' prices for special access services...has resulted in increased prices, despite record earnings by the ILECs, a result that is fundamentally inconsistent with the outcome of a market with effective competition.

- Ad Hoc’s members – whose combined annual spend in the billions of dollars for telecommunications services makes them the first customers new entrants would seek out – have in fact experienced few viable competitive alternatives for their broadband service requirements.
- Intermodal competition via cable modem service is not a factor for large business users due to the limited deployment of cable infrastructure in business areas and the severe security and reliability concerns raised by cable-based services.
- Meanwhile, the capital markets for CLECs as a whole have crumbled over the past few years, placing severe restrictions on CLECs’ ability to remain in the market, let alone expand their service capabilities.
- By contrast, the financially secure ILECs have refrained from aggressively pursuing out-of-region local markets, notwithstanding the specific “commitments” by both SBC and Verizon to do so in exchange for FCC approval of their respective merger applications.

Comments of Ad Hoc Telecommunications Users Committee in *Wireline Broadband Dominance Rulemaking*, filed Mar. 1, 2002, at 10 (emphasis added).

Accordingly, Ad Hoc urged the Commission to acknowledge the lack of competition for broadband special access services and to re-impose incentive regulation to protect end users:

For a variety of reasons, the broadband business services market is not yet sufficiently competitive to discipline prices and ensure adequate service quality. Therefore, the FCC cannot abdicate its statutory responsibility to protect customers from unjust and unreasonable rates, terms, and conditions by summarily de-regulating the broadband business services market and allowing incumbent local exchange carriers (“ILECs”) to exploit their considerable market power.

Moreover, the Commission’s existing regime of pricing flexibility for special access services has proven to be premature because of the failure of competition to develop as the Commission had hoped when it adopted that regime for special access services. The ILECs have used the pricing flexibility granted to them under the existing rules to raise prices, confirming that significant countervailing competitive forces that could discipline market prices have simply failed to emerge.

Accordingly, the Commission must not only continue regulation of the broadband business services market but it must re-visit and re-tool its regulatory regime for that market to reflect current competitive realities. In particular, the Commission should re-impose its "price caps"/incentive regulation to ensure just and reasonable prices in the broadband business services market.

Comments of Ad Hoc Telecommunications Users Committee in *Wireline Broadband Dominance Rulemaking*, filed March 1, 2002, at i-ii (emphasis added; citations omitted).

In its Reply Comments in the same docket, Ad Hoc emphasized that its members were supporting re-imposition of price caps/incentive regulation only reluctantly. Ad Hoc noted that its members stand to benefit the most from de-regulatory initiatives because, as large users of telecommunications, they have the buying power to extract reasonable prices, terms, and conditions from the ILECs and thereby push down market prices for all when markets become competitive. And, as the biggest potential beneficiaries of de-regulation, Ad Hoc members have not been shy about demanding de-regulatory reform when market conditions justify it. But since those conditions simply aren't present in the broadband business services market, Ad Hoc urged the Commission to:

- Enforce the non-discrimination, pricing, and tariffing requirements in Sections 201, 202, and 203 of the Act
- Revive incentive regulation of ILEC prices for broadband business services
 - Initialize ILEC special access rates at the price cap-regulated levels in place before MSA pricing
 - Initiate and complete an X factor specification before the CALLS plan re-targets the X to GDP-PI in July 2004
- Continue the ILECs' contract tariff authority so that ILECs and customers can negotiate to respond to competition if it emerges

Reply Comments of Ad Hoc Telecommunications Users Committee in *Wireline*

Broadband Dominance Rulemaking, filed April 22, 2002, at 18-19.

Finally, in its Reply Comments in the *Broadband Wireline Internet Access Rulemaking*, Ad Hoc reminded the Commission of the abysmal competitive records established in the *Wireline Broadband Dominance Rulemaking* and the *Performance Standards Rulemaking*, which demonstrated that “the present state of competition in the local services market does not warrant the adoption and implementation of regulatory flexibility at this time.” Reply Comments of Ad Hoc Telecommunications Users Committee in *Broadband Wireline Internet Access Rulemaking*, filed July 1, 2002, at 5.

The BOCs, of course, stoutly maintain in these same proceedings that they have no market power and even claim that their rates are subject to rigorous price regulation or “pervasive regulation” by which they are “severely constrained” and which would “foreclose any attempt” to exercise market power.⁵

If only that were so. As large users of special access services, Ad Hoc members are only too familiar with the ILECs’ pricing practices. And those practices have been to engage in precisely the type of behavior the ILECs themselves say would occur where a carrier is in control of bottleneck facilities and is able to leverage its control over these facilities to the detriment of its competitors, *i.e.*, to increase special access rates above the price cap ceiling in every market in which they have qualified for pricing flexibility

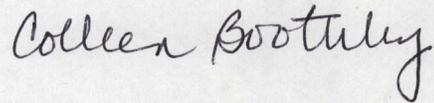
Accordingly, as it did in the *Broadband Wireline Internet Access Rulemaking*, Ad Hoc urges the Commission to adapt its regulatory regime to the

⁵ See Reply Comments of Ad Hoc Telecommunications Users Committee in *Wireline Broadband Dominance Rulemaking*, filed April 22, 2002, at 14-15.

competitive realities of the market and protect the interests of consumers. The Commission should therefore grant AT&T's petition.

Respectfully submitted,

AD HOC TELECOMMUNICATIONS
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Certificate of Service

I, Michaelleen I. Williams, hereby certify that true and correct copies of the preceding Comments of Ad Hoc Telecommunications Users Committee was served this 2nd day of December, 2002 via the FCC's ECFS system, and by first class mail upon the following:

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