

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

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

REPLY COMMENTS OF VALOR TELECOMMUNICATIONS ENTERPRISES, LLC

Valor Telecommunications Enterprises, LLC (“Valor”) submits the following Reply Comments in response to AT&T’s Petition for Rulemaking in the above-captioned proceeding (“AT&T Petition”).¹

Valor is a private company, formed in 2000 for the purpose of purchasing approximately 550,000 mostly rural access lines from GTE (now Verizon) in Arkansas, Oklahoma, Texas and New Mexico. In 2002, Valor acquired Kerrville Communications, Inc., whose wholly-owned subsidiary Kerrville Telephone Company also serves rural customers in Texas. By making significant investments in the network acquired from GTE, Valor has been able to offer new and improved voice and data services to its rural customers.

As a mid-size independent incumbent local exchange carrier (“ILEC”) whose interstate access service prices are regulated under the FCC’s price cap rules, Valor urges the Commission to dismiss the AT&T Petition. The petition requests that the Commission initiate a rulemaking to reform regulation of price cap ILEC rates for interstate special access services. The petition also asks the agency, during the pendency of the rulemaking, to reduce all special access rates

¹ *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 (filed Oct. 15, 2002).

subject to Phase II pricing flexibility to prices reflecting an 11.25% rate of return and to impose a moratorium on consideration of further pricing flexibility applications. At a minimum, the Commission should summarily deny the petition as it applies to small and mid-size ILECs because no party in this proceeding has presented any allegation or evidence that such carriers' special access rates are unlawful or otherwise improper. Furthermore, because the record shows that the special access market is competitive even with respect to areas not served by large ILECs, the FCC should dismiss the petition in its entirety because the relief sought by AT&T would conflict with the Commission's deregulatory mandate under the Telecommunications Act of 1996 ("Telecommunications Act").

DISCUSSION

I. The Commission Must Deny AT&T's Petition As It Applies to Mid-Size and Small ILECs.

Although "the Bells" traditionally are a repeated bogeyman for AT&T, the special access pricing rules apply to all price cap LECs, not just the Bell Operating Companies.² Indeed, one mid-size ILEC, Frontier, has already begun to obtain pricing flexibility on various access services in one of its primary service areas.³ The record is devoid of any evidence or suggestion that non-Bell ILEC rates are excessive, unreasonable, anticompetitive, or otherwise unlawful. The vast majority of AT&T's petition itself is directed at "the Bells" (with a fleeting reference to "large ILECs" in the first paragraph), and none of the commenters in this proceeding have

² Although the record contains no evidence supporting the grant of the AT&T Petition as to any ILEC, Valor is not in a position to address the allegations leveled against the Bell companies in this pleading.

³ Comments of the Frontier and Citizens Incumbent Local Exchange Carriers at 2 ("Frontier Comments").

proffered any evidence that any ILEC other than a Bell Operating Company has engaged in allegedly anticompetitive conduct.⁴

In fact, the record overwhelmingly supports the conclusion that the Commission's existing price cap rules with respect to special access pricing do not lead to unreasonable prices. Competition is vigorous throughout the country for special access services.⁵ The FCC has established special access rules over the past several years with the purpose to deregulate those rates or to relax regulation where those rules are not necessary to protect consumers from unreasonable prices.⁶ If anything, the record demonstrates that special access pricing should be deregulated further. Whatever AT&T's motive in filing this frivolous pleading, the record clearly demonstrates that its petition should be dismissed.

II. Changing Existing Pricing Rules Is Antithetical to the Commission's Deregulatory Mandate and Would Greatly Disrupt a Competitive Market.

One of the cornerstones of the Telecommunications Act of 1996 was a mandate that the Commission reduce regulation where it promotes, or is justified by the presence of, competition. For example, Section 10 of the Act requires the Commission to forbear from applying any regulation or provision of the Act if the rule is unnecessary to protect consumers, the elimination of the rule will not lead to unreasonable rates, and the rule's elimination is in the public interest.⁷

⁴ See, e.g. Comments of AT&T Wireless Services, Inc. at 2 (referring to the "Bell Operating Companies"); Comments of Cable & Wireless USA, Inc. at 5 (same); Comments of the Competitive Telecommunications Association at 3 (same); Comments of Sprint Corporation at 5 (same).

⁵ See Section II *infra*.

⁶ E.g. *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA*, 14 FCC Rcd 14221 (1999) at ¶ 67 (Fifth Report and Order) ("Pricing Flexibility Order"), *aff'd*, *WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

⁷ 47 U.S.C. § 160.

In addition, Section 11 of the Act directs the Commission to review all of its regulations biennially and repeal or modify any regulation it determines to be no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.⁸ AT&T's petition, if granted, would be inconsistent with that mandate.

The record does not justify tightening the pricing rules for any carrier. The comments show that competition is flourishing in special access markets:⁹

- Competitive local exchange carriers (CLECs) have captured 28-39% of all special access revenues.
- Competitive service providers have deployed at least 184,000 route miles of fiber.
- There are now nearly 1800 fiber networks in the top 150 metropolitan statistical areas (MSAs).
- Competitive access providers have built out fiber to at least 30,000 buildings nationwide.
- According to its own statements, AT&T itself has built 18,000 route miles of fiber in 90 cities, and to at least 7,000 buildings nationwide.

In addition to the record's persuasive showing of competition for special access services, Valor's own experience suggests that facilities-based CLECs can and are competing vigorously under the current special access rules. For example, CLECs have collocated in Valor's most densely populated exchanges (four CLECs in Broken Arrow, Oklahoma, and two CLECs in Texarkana, Texas), and have interconnected with Valor's network in Hobbs and Carlsbad, New Mexico. In West Texas, three CLECs have built their own networks and bypassed Valor's facilities entirely in seven exchanges (each consisting of fewer than 5,000 lines). These CLECs have garnered 40 to 50 percent of available access lines in those exchanges. This experience

⁸ 47 U.S.C. § 161.

⁹ See Comments of the United States Telephone Association at 5; Opposition of SBC Communications, Inc. at 10-15 ("SBC Opposition"); Opposition of BellSouth Corporation at 14-15 ("BellSouth Opposition"); Opposition of Verizon at 12-14 ("Verizon Opposition").

supports the proposition that no justification exists to change the rules for any mid-size or small ILEC. Therefore, the Commission must deny the petition as it applies to any non-BOC.

Given the competitive landscape, AT&T's demand that the Commission retrench on its decade-long advance toward greater deregulation conflicts with the Congressional mandate in the Telecommunications Act, which directs the Commission to establish a "pro-competitive, deregulatory national policy framework." Since adopting incentive regulation in 1991, the Commission has gradually peeled back layers of regulation to allow market forces to operate where competition was present.¹⁰ In the 1999 *Pricing Flexibility Order*, the Commission adopted revised rules permitting price cap LECs to obtain greater flexibility in the pricing of interstate access services upon making a showing that market conditions in a particular area are sufficiently competitive.¹¹ In that order, the Commission reaffirmed that because "market forces, as opposed to regulation, are more likely to compel LECs to establish efficient prices," regulatory constraints become "counter-productive" as the market becomes more competitive.¹² When it adopted additional access charge reform measures in the 2001 *CALLS Order*, the Commission again noted its goal to move the marketplace closer to economically rational competition.¹³

Grant of AT&T's petition would not only conflict with the above statutory and regulatory objectives, but would disrupt one of the most competitive segments in the telecommunications

¹⁰ Opposition of Qwest Communications International Inc. at 15-17 ("Qwest Opposition"); Verizon Opposition at 6-9.

¹¹ *Pricing Flexibility Order* at ¶¶ 67-157.

¹² *Id.* at ¶¶ 19, 21.

¹³ *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*, 15 FCC Rcd 12962 (2000) at ¶¶ 36-37 (Sixth Report and Order) ("CALLS Order").

sector.¹⁴ AT&T seeks to revisit the present special access rules less than two years after the adoption of the *CALLS Order*, and less than two years after the Commission granted pricing flexibility to the first ILECs. In adopting the CALLS plan, the Commission recognized that regulatory uncertainty (*i.e.* “the controversy regarding the current status of the X-Factor and the concurrent uncertainty over the resolution of the controversy”) “disrupts business expectations and future investment decisions of both LECs and new entrants.”¹⁵ The Commission recognized that as a transitional plan, the CALLS Plan needed five years “for competition to develop sufficiently to begin to control access rates,”¹⁶ but that the plan would provide “relative certainty in the marketplace during its five-year term” and gave all parties “a much clearer blueprint for developing their business plans and attracting capital than they would in the absence of CALLS.”¹⁷ Such certainty is even more imperative given the currently depressed state of the economy in general and the telecommunications sector in particular. Given that the rules are serving their purpose – enabling the market to set prices in the presence of significant competition – revisiting the rules prior to the expiration of the CALLS plan in 2006 would not only be premature, but would also exacerbate the regulatory uncertainty which the plan was designed to alleviate.

III. AT&T Supported Adoption of the Present Rules.

The *CALLS Order* was the result of a negotiated agreement among historically adverse ILECs and interexchange carriers (“IXCs”) that attempted to “develop a comprehensive solution

¹⁴ Verizon Opposition at 12 (“As the Commission and the D.C. Circuits have recognized, special access is a mature competitive market in which artificial, regulatorily-imposed price reductions would undermine facilities-based competition”).

¹⁵ *CALLS Order* at ¶ 174.

¹⁶ *Id.* at ¶¶ 44.

¹⁷ *Id.* at ¶¶ 36-37.

of historically contentious issues” that “have dragged on for years and could do so indefinitely.”¹⁸ AT&T was an active advocate of and a signatory to that agreement, yet it now apparently seeks to upend the very regulatory framework it sought to establish. At the urging of AT&T and others, the Commission adopted the CALLS proposal as an integrated, comprehensive scheme. As a party to the CALLS agreement, and as a sophisticated player in the telecommunications industry, AT&T was fully aware that the special access measures adopted in that agreement would work in tandem with the Commission’s pricing flexibility rules. In these circumstances, it is unconscionable for AT&T to now seek to invalidate certain portions of those rules that it finds less advantageous to itself.

For example, it is inappropriate to evaluate special access rate levels in isolation from the other measures adopted in the *CALLS Order* because the rate level for an individual element will not always correlate accurately to costs. For instance, the order requires rural carriers such as Valor to incorporate mandatory reductions into the carrier common line charge (CCL) until the charge is eliminated, regardless of cost or other special circumstances.¹⁹ Furthermore, the rules resulting from the order require exogenous cost increases, including Lower Formula Adjustment Mechanism (LFAM) amounts, to be recovered from services other than those used to calculate the ATS charge (*i.e.* common line and special access).²⁰ Because “this mismatch ... between cost causation and cost recovery ... is codified into the Commission’s rules,”²¹ the agency cannot modify special access rates without appropriately adjusting other access charge elements .

¹⁸ *Id.* at ¶¶ 26-28.

¹⁹ *CALLS Order* at ¶ 144; 47 C.F.R. § 61.45(i)(4).

²⁰ Frontier Comments at 6-7; 47 C.F.R. § 61.45(d).

²¹ Frontier Comments at 7.

IV. AT&T's Requested Relief is Unnecessary Because "Excessive" Special Access Rates Should Encourage, Rather than Impede, the Deployment of Alternative Facilities.

AT&T makes the "counterintuitive argument"²² that high rates *impede* the ability of CLECs to self-deploy switches and alternative transmission facilities. If special access costs are so "excessive," however, those rates should be an incentive to CLECs, including AT&T, to invest in deploying their own facilities. As explained by several commenters, special access services are point-to-point, and competitors can therefore engage in a targeted and incremental build-out of facilities as they acquire customers.²³ The record in this proceeding, as well as AT&T's own deployment and self-provisioning of facilities, shows that competitors have in fact done so. By claiming that it is "fundamentally uneconomic" to build alternative loop and transport facilities,²⁴ AT&T appears to be "seeking to avoid responsibility for building its own facilities, and would prefer to rely on the incumbents' networks."²⁵ Indeed, AT&T's suggestion that CLECs need ILEC transmission facilities at TELRIC rates to meet market share merely suggests that the true target of the petition is the Commission's rules restricting the use of transport UNEs, rather than the supposed lack of competition in the special access market.²⁶

V. Conclusion

Less than two years ago, the Commission adopted a comprehensive, industry-negotiated agreement that resolved a host of thorny access charge issues for price cap LECs, including special access rates. AT&T, a party and beneficiary of that agreement, now asks the agency to

²² Qwest Opposition at 18.

²³ Qwest Opposition at 20; BellSouth Opposition at 16; SBC Opposition at 33-34.

²⁴ AT&T Petition at 25.

²⁵ Qwest Opposition at 19.

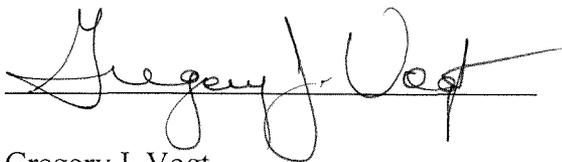
²⁶ SBC Opposition at 26-27.

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overturn the special access rules for all price cap carriers, based on a record that shows vigorous competition in the service areas of the Bell Operating Companies and contains no allegations of anticompetitive or unlawful behavior at all for other price cap LECs. The relief requested by AT&T would clearly contravene the FCC's statutory mandate and would turn the clock back on ten years of progressive deregulation when justified by market circumstances. Therefore, Valor urges the Commission to dismiss the AT&T Petition.

Respectfully submitted,

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