

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

In the Matter of)	
)	
Special Access Rates for Price Cap Local)	
Exchange Carriers)	WC Docket No. 05-25
)	
AT&T Corp. Petition for Rulemaking to)	RM-10593
Reform Regulation of Incumbent Local)	
Exchange Carrier Rates for Interstate Special)	
Access Services)	

COMMENTS OF T-MOBILE USA, INC.

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SUMMARY

T-Mobile urges the Commission to reinvigorate its regulation of the special access services provided by price cap ILECs. As a purchaser of such services and as a competitor of the ILECs and their affiliates, T-Mobile has not seen a competitive marketplace develop for two important types of special access services that are key inputs to T-Mobile's wireless offerings: the DS1 links between T-Mobile's wireless base stations and the ILEC's central office, which T-Mobile purchases as channel terminations, and the DS1 and DS3 interoffice transport links between ILEC central offices, which T-Mobile purchases as channel mileage. T-Mobile relies predominantly on ILECs for these special access services, and in T-Mobile's experience, few if any alternatives are available.

In MSAs where price cap ILECs have received pricing flexibility under the Commission's current rules, T-Mobile has seen no evidence of increased competitive entry for these links that it relies on to knit together its network. To the contrary, T-Mobile analyzed its special access costs between 2002 and 2005 and found that the prices charged by Qwest Communications, Southwestern Bell and Pacific Bell rose by approximately 62%, 27% and 15%, respectively, during that time. Similarly, some parties have calculated ILEC rates of return on special access services for 2003, finding an average rate of return for the BOCs of over 43%, and rates of return of almost 70% for two of the BOCs.

T-Mobile, which operates in the vigorously competitive wireless market, is well aware of the virtues of competition in driving lower prices and higher quality. As a result, in the presence of competition, deregulatory policies are the best course. In the absence of a competitive marketplace, however, the Commission must regulate the rates, terms, and conditions of the special access services provided by the price cap ILECs. The Commission should act quickly to

reform its pricing flexibility rules for special access as well as the price caps regulatory regime for special access.

T-Mobile has serious concerns with the lack of competitive alternatives for special access services. As one of the few nationwide, independent wireless carriers – not affiliated with any ILEC – T-Mobile competes vigorously with the wireless affiliates of many of the price cap ILECs. Moreover, T-Mobile is poised to begin competing on an intermodal basis against the wireline dial tone services of the ILECs. The current lack of competition in the supply of special access services gives the ILECs the ability and the incentives to take anticompetitive actions against T-Mobile.

The present rules for special access pricing flexibility are fundamentally flawed, and the Commission must tighten its pricing flexibility regime for special access services to reflect the lack of competition in the supply of special access. The current metrics or “triggers” for granting pricing flexibility apply throughout an MSA, a large area in which competitive conditions are not uniform. In parts of virtually all MSAs, there is no competition and such competition will likely never occur. A basic problem is that even if the current metrics accurately find competition for a service in part of the MSA (in dense urban areas, for example), pricing flexibility for that service will apply throughout the MSA, even in those areas where no competition exists. This constrains wireless providers like T-Mobile that seek to compete by providing coverage throughout MSAs for their wireless offerings. In addition, the triggers do not accurately predict competition for special access services. They fail as proxies for irreversible market entry, as the Commission intended in the *Pricing Flexibility Order*.

The Commission therefore should change its rules to impose much more granular market definitions and measures before it grants pricing flexibility. The Commission should

significantly limit geographic areas in which pricing flexibility may apply for the price cap ILECs. The geographic analysis adopted in the *Triennial Review Remand Order* for loops and transport may be one means of doing so. That approach focuses on wire centers (for loops) and pairs of wire centers (for transport). For service definitions, the Commission should treat separately: (1) the links from customer premises to central offices (channel terminations); (2) interoffice transport links (channel mileage); and (3) links from wire centers to mobile switching centers, and other special access service.

The Commission also must change its rules to adopt more stringent triggers for price cap ILECs to satisfy before pricing flexibility can be permitted. The Commission should consider making the triggers consistent with its triggers in the *Triennial Review Remand Order* for unbundling the high-capacity loop and transport network elements, which are functionally equivalent to special access services.

Although term and volume discounts can be efficient market mechanisms, the Commission should bar price cap ILECs from all forms of anti-competitive exclusionary behavior in their terms and conditions for special access services, especially for channel terminations and interoffice transport, which face little or no competition.

Once the Commission adopts new pricing flexibility rules, it should apply the new rules to all areas and services for which the price cap LECs now have pricing flexibility. The rates for special access services that currently are subject to pricing flexibility but will not have flexibility under the new rules should be the same as the rates under the new rules for services that have never been subject to pricing flexibility.

It also is essential for the Commission to reform its price cap regulation of special access services to ensure that price cap ILECs have incentives to provide special access services

efficiently. Robust price cap regulation will ensure that, consistent with how a competitive market would work, the benefits of such efficiencies are passed on to purchasers of special access. The Commission should therefore account for both firm-wide productivity growth as well as increases in scale economies for special access services, through mechanisms such as the X and g factors. The Commission's price cap rate structure should recognize that different types of special access service face different degrees of competition, and place such services in separate service categories within the special access basket to prevent anticompetitive price manipulation. Re-initialization of rates for special access services subject to price caps is critical. The Commission should base rates for these services, like functionally equivalent UNEs, on forward-looking economic costs.

As an interim measure until this rulemaking is completed, the Commission should impose a 5.3% X-factor on special access services, effective on July 1, 2005. This interim measure is necessary because of the strong evidence in the Notice and the record that current special access rates are not just and reasonable. Such interim relief is necessary as a substantive matter and it is proper as a procedural matter.

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COMMENTS OF T-MOBILE USA, INC.

I. INTRODUCTION.

Because of the lack of competition in the marketplace for special access services, T-Mobile USA, Inc. (“T-Mobile”)¹ urges the Commission to reinvigorate its regulation of the special access services provided by price cap incumbent local exchange carriers (“ILECs”). T-Mobile welcomes the opportunity to comment on the issues raised by the Notice in this long-overdue proceeding.² The Commission’s current regulatory treatment of the special access services of price cap ILECs does not recognize the ILECs’ market power in providing these services. T-Mobile relies on special access links provided by the ILECs as vital inputs for intramodal and emerging intermodal competition. Improved

¹ As a national wireless provider, T-Mobile owns licenses covering 253 million people in 46 of the top 50 U.S. markets. T-Mobile currently serves more than 18 million customers in the United States. Via its HotSpot service, T-Mobile also provides Wi-Fi (802.11b) wireless broadband Internet access in about 5,700 convenient U.S. locations, such as Starbucks coffee houses, Hyatt hotels, airports, and airline clubs, making it the largest carrier-owned Wi-Fi network in the world.

² See *Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) (the “Notice”).

special access regulation – with respect to both pricing flexibility and price caps - is needed to control the ILECs’ market power over these inputs.

This should not be considered a plea for regulation for its own sake, nor a conclusion that competition fails to lower prices and drive higher quality. Rather, it is a request that the Commission examine its special access policies to determine whether those policies have accurately identified the areas where effective competition in special access services exists. T-Mobile is confident that, when the Commission undertakes such an examination, it will find that it has granted “competitive freedoms” to ILECs in areas where those companies continue to exercise substantial market power.

T-Mobile is one of the few remaining independent national wireless carriers, with a rapidly growing base of mass market and business customers throughout the United States. As such, although T-Mobile is a customer of many price cap ILECs throughout the United States for special access services, it also is a retail competitor of those ILECs and their wireless affiliates for end user customers. T-Mobile uses special access services as the inputs that provide the links to knit together its network from its cellular base stations to its mobile switching centers (“MSCs”).

In particular, price cap ILECs are virtually the sole source in their service areas for the special access services that T-Mobile needs for the critical initial link from its cellular base stations to ILEC central offices. Price cap ILECs also are T-Mobile’s primary providers of special access circuits for the interoffice transport links that T-Mobile requires for backhaul.³

³ Attachment A is a schematic diagram, showing a typical design of T-Mobile’s network using these links.

T-Mobile is not only a large customer but also a competitor of most of the price cap LECs. T-Mobile competes vigorously in the U.S. mobile wireless marketplace, where T-Mobile's competitors include national and regional wireless carriers that are affiliates of the same price cap ILECs that supply T-Mobile with special access circuits.

T-Mobile also is poised to become an important competitor in the emerging "intermodal" marketplace for the local exchange services for which price cap ILECs are the dominant providers in their territories. T-Mobile is very motivated to provide high-quality wireless service to the American public, so that consumers can "cut the cord" and rely on T-Mobile, rather than dominant wireline dial-tone providers, for their communications needs.⁴ But T-Mobile's ability to become an effective force in fostering such nascent intermodal competition depends on its ability to obtain critical services and facilities from ILECs on nondiscriminatory terms and reasonable cost-based prices.

Improving the regulation of special access services is essential to meet the fundamental requirements of the Communications Act (the "Act") that rates, terms, conditions, and practices of the price cap ILECs' special access services be just and reasonable.⁵ Robust special access regulation also will serve the important policy goal of promoting intermodal competition, and all forms of competition, to benefit consumers. The Commission found in late 2004 that although such intermodal competition is beginning to emerge, wireless service is not yet an effective competitor to wireline local

⁴ In September 2004, the Commission staff cited estimates that 5 to 6 percent of all households have wireless phones only. *See Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Ninth Report, 19 FCC Rcd 20597, 20683 n.575 (2004). *See also id.* at 20684 ("Evidence continues to mount, however, that consumers are substituting wireless service for traditional wireline communications.").

⁵ *See, e.g.*, Sections 201 and 202 of the Act, 47 U.S.C. §§ 201, 202.

telephone service.⁶ However, in the Verizon-MCI merger proceeding, the Competitive Enterprise Institute (“CEI”) disagreed, stating that its own analysis shows that the two services are now direct competitors. CEI found that “if a local phone company raised its rates by just one percent, wireless demand would increase by two percent.”⁷ Regardless of which of these analyses correctly describes the present state of intermodal competition, the facts remain that, first, T-Mobile and other wireless providers rely on ILECs for inputs to their wireless offerings, and, second, these ILECs have strong incentives to raise the price and degrade the quality of those inputs in order to protect their wireline dial tone offerings from wireless competition. The Commission should adopt rules in this proceeding to control special access prices and prevent such anticompetitive behavior because the marketplace cannot do so. Effective regulation of special access services will mean more intra- and intermodal competition and, therefore, less need for regulating retail services, where wireless carriers already are competing vigorously among themselves and are beginning to compete against the wireline incumbents.

The Notice rightly asks searching questions about the two regulatory regimes that govern ILECs’ interstate special access services: the pricing flexibility rules⁸ and price caps regulation as implemented in the CALLS plan.⁹ As T-Mobile demonstrates in these

⁶ See *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp.*, 19 FCC Rcd 21522, 21611-19 (2004).

⁷ See CEI Reply Comments, WC Docket No. 05-75, at 4 (filed May 10, 2005).

⁸ See 47 C.F.R. §§ 69.701 *et seq.*; *Access Charge Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221 (1999) (“*Pricing Flexibility Order*”), *aff’d WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

⁹ See *Access Charge Reform*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000), *aff’d in part, rev’d in part, and remanded in part, Texas Office of Public Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), *cert. denied, Nat’l Ass’n of State Util. Consumer Advocates v. FCC*, 535 U.S. 986 (2002), *on remand, Access Charge Reform*, Order on Remand, 18 FCC Rcd 14976 (2003). See

comments, the pricing flexibility rules have two major flaws that the Commission must address. First, even assuming the reasonableness of the metrics or measures that the Commission uses to predict the presence of competition in order to “trigger” Phase I and Phase II pricing flexibility,¹⁰ the geographic areas – Metropolitan Statistical Areas or “MSAs” – to which pricing flexibility applies are simply too large to reflect the competitive conditions that would warrant such flexibility. Second, experience indicates that the metrics used to trigger pricing flexibility are not reasonable predictors of competition. The Commission should adopt more granular definitions of both the geographic areas to which pricing flexibility applies and the triggers for permitting such flexibility in the first place. It should require price cap ILECs to re-apply for pricing flexibility under these stricter definitions.

The Commission should also reform its price caps regime for special access as the CALLS plan nears the end of its five-year life. When the Commission adopts, as it must, more realistic pricing flexibility rules that better reflect the very limited competition that

also Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps, 17 FCC Rcd 10868 (2002), *aff’d*, *Nat’l Ass’n of State Util. Consumer Advocates v. FCC*, 372 F.3d 454 (D.C. Cir. 2004).

¹⁰ The *Pricing Flexibility Order* adopted the following triggers: To obtain Phase I pricing flexibility for interstate special access services other than channel terminations between a LEC end office and an end user’s customer premises, a price cap LEC must demonstrate that unaffiliated competitors have collocated in at least 15 percent of the LEC’s wire centers within an MSA or have collocated in wire centers accounting for 30 percent of the LEC’s revenues from these services within the MSA. To obtain Phase I pricing flexibility for channel terminations between a LEC end office and a customer premises, the LEC must demonstrate that unaffiliated competitors have collocated in at least 50 percent of the LEC’s wire centers within an MSA or collocated in wire centers accounting for 65 percent of the LEC’s revenues from these services within the MSA. To obtain Phase II pricing flexibility for special access services other than channel terminations to end users, a price cap LEC must demonstrate unaffiliated collocation in 50 percent of the LEC’s wire centers or in wire centers accounting for 65 percent of the LEC’s revenues from these services within the MSA. For Phase II flexibility for channel terminations to end users, the price cap LEC must demonstrate unaffiliated collocation in 65 percent of the LEC’s wire centers or in wire centers accounting for 85 percent of the LEC’s revenues for these services. Notice at 2001-02, nn.56, 58 (citations omitted). Throughout the remainder of these Comments, T-Mobile refers to the first of each of these triggers as the “total collocators trigger” and the second of each of these triggers as the “revenue trigger.”

exists for special access, price caps regulation will become much more important because it will apply more broadly. The Commission should therefore account for both firm-wide productivity growth as well as increases in scale economies for special access services, through mechanisms such as the X and g factors. The price cap rate structure should recognize that different types of special access service face different degrees of competition, and place such services in separate service categories within the special access basket to prevent anticompetitive price manipulation. Rates for special access services subject to price caps should be reinitialized based on forward-looking economic costs.

Because the current regulation of price cap ILECs' interstate special access offerings is flawed, the Commission should give this rulemaking priority consideration and adopt new rules as quickly as possible. As an interim measure until this rulemaking is completed, the Commission should impose a 5.3% X-factor on special access services, effective on July 1, 2005. T-Mobile has advocated that the Commission condition approval of the Verizon-MCI and SBC-AT&T mergers on improved regulation of those firms' special access services.¹¹ Those conditions are essential because of the size and market power of the surviving firms, especially if the Commission addresses those mergers on a self-imposed short schedule. However, to address the broader problems with special access pricing, terms, and conditions throughout the United States, the Commission must adopt more effective regulations nationwide.

¹¹ See, e.g., Response of T-Mobile, WC Docket No. 05-75, at 9-14 (filed May 24, 2005) ("T-Mobile's MCI/Verizon Merger Response"); Response of T-Mobile, WC Docket No. 05-65, at 7-11 (filed May 10, 2005) ("T-Mobile's AT&T/SBC Merger Response").

The Commission should look closely at the special access pricing data filed with the Commission and/or the Department of Justice in these two merger proceedings and consider that data in this proceeding as well.

II. MUCH OF THE SPECIAL ACCESS MARKETPLACE IS NOT COMPETITIVE.

Because much of the special access marketplace is not competitive, that marketplace warrants improved regulation of these services. The Notice presents compelling data indicating that the Bell Operating Companies (the “BOCs”) - the largest price cap ILECs - have realized substantial scale economies in providing these services throughout the term of the CALLS plan and, indeed, throughout the price cap era.¹² The BOCs evidently are satisfying growing demand for these services while increasing their accounting rates of return and operating revenues, even as their average investment shrinks, all signs that these price cap ILECs are benefiting from scale economies in providing special access. This data indicates that the BOCs have a significant degree of market power and charge supra-competitive prices for special access services.¹³ Indeed, as a major purchaser of special access services, T-Mobile has seen no indication that the benefits of these scale economies have flowed through to special access customers, as would occur in a competitive market.

T-Mobile’s experience is that it has very little competitive choice among suppliers of the special access links that it relies on for inputs in its retail wireless offerings. As the declaration of Chris Sykes, T-Mobile’s Director of Carrier Management, explains, competition is almost non-existent for the DS1 base station-to-central office links that T-

¹² See Notice at 2004-06 (noting, for example, increases in BOC special access operating revenues, accounting rates of return, and access lines throughout the term of the CALLS plan, compared with much smaller increases in operating expenses and decreases in BOC special access average investment over the same period). See also Noel D. Uri & Paul R. Zimmerman, *Market Power and the Deregulation of Special Access Service by the Federal Communications Commission*, 13 Information and Communications Technology Law 129, 134, 135 (2004) (“Uri & Zimmerman”).

¹³ See Attachment B, Declaration of Simon J. Wilkie, ¶¶18-21 (“Wilkie Declaration”).

Mobile buys as special access channel terminations.¹⁴ These links function as high-capacity loops. These links have the economic characteristics of loops and thus would be expected to be available only from the ILEC in its service area.¹⁵ Indeed, T-Mobile purchases more than 96% of these links from ILECs in their service areas.¹⁶ Moreover, the Wilkie Declaration demonstrates that rates for these special access “loops” are supra-competitive.¹⁷

The situation is almost as bad for interoffice transport links, which T-Mobile purchases as special access channel mileage between the ILECs’ central offices.¹⁸ For DS1 circuits, T-Mobile purchases channel mileage service together with channel termination service as a unified package from the ILEC.¹⁹ For DS3 circuits, T-Mobile usually purchases channel mileage service separately from channel termination service, usually from the ILEC providing the channel termination service, but in some instances from other providers.²⁰ Nationwide, T-Mobile obtains approximately 94% of its channel mileage services from the ILECs in their service areas.²¹ As the Wilkie Declaration indicates, rates for special access transport services are supra-competitive as well.²²

¹⁴ See Attachment C, Declaration of Chris Sykes, ¶ 5 (“Sykes Declaration”). The base station-to-central office links are denoted by “CT” in the network diagram of Attachment A.

¹⁵ See Wilkie Declaration ¶¶5-8.

¹⁶ See Sykes Declaration ¶ 5.

¹⁷ See Wilkie Declaration ¶¶19-20.

¹⁸ The interoffice transport links are denoted by “IOT” in the network diagram of Attachment A.

¹⁹ See Sykes Declaration ¶ 6.

²⁰ See *id.*

²¹ See *id.*

²² See Wilkie Declaration ¶18.

The fact that ILECs dominate in the provision of these links has major consequences for other links that T-Mobile purchases as special access, such as those between T-Mobile's MSCs and the ILECs' serving wire centers.²³ As T-Mobile has demonstrated in other proceedings, for operational and reliability reasons, T-Mobile strongly prefers to purchase from one provider all special access links in a connection from a base station to its MSC.²⁴ Because ILECs dominate the supply of both base station-to-central office links and interoffice transport links, T-Mobile generally must purchase other special access links such as the MSC-to-wire center link from the ILECs as well.

As a nationwide wireless service provider, T-Mobile purchases special access in multiple MSAs where price cap ILECs have obtained pricing flexibility.²⁵ The Commission has granted some form of pricing flexibility for channel termination service in over 150 MSAs and has granted some form of pricing flexibility for channel mileage and other special access services in over 200 MSAs.²⁶ T-Mobile operates in 176 of the top 200 MSAs.²⁷ Therefore, T-Mobile operates in virtually all of the MSAs in which the ILECs have obtained pricing flexibility, where price cap regulation does not control the rates for special access circuits.²⁸ These MSAs include many of the largest U.S. cities,

²³ The links between the MSCs and the serving wire centers are denoted by "EF" in the network diagram of Attachment A.

²⁴ See Declaration of Tim R. Wong, at 3, Attachment A to Comments of T-Mobile, WC Docket No. 04-313 (filed Oct. 9, 2003).

²⁵ See Sykes Declaration ¶7.

²⁶ See *id.*

²⁷ See *id.*

²⁸ See *id.*

such as New York, Los Angeles, Boston and San Francisco, and many smaller ones, such as Anderson, Indiana and Joplin, Missouri.²⁹

As explained in the Sykes Declaration, in MSAs where T-Mobile operates and where ILECs have obtained special access pricing flexibility, T-Mobile has seen little or no evidence of new entry by suppliers of special access services other than the ILECs. Rather, T-Mobile has faced continued high prices from price cap ILECs.³⁰ For example, T-Mobile analyzed its special access costs between 2002 and 2005 and found that the prices charged by Qwest Communications, Southwestern Bell and Pacific Bell rose by approximately 62%, 27% and 15%, respectively, during that time.³¹

The Wilkie Declaration states that some parties have calculated the price cap ILECs' rates of return under the current pricing flexibility regime using data from the Commission's ARMIS (Automated Reporting Management Information System) database.³² According to the Wilkie Declaration, a recent study by Commission economists Noel Uri and Paul Zimmerman definitively assesses the nature of special access competition.³³ Uri and Zimmerman found that, based on then-current cost allocations, the BOCs' unweighted average rates of return on special access for calendar year 2002 exceeded 37%.³⁴ For 2003, the BOCs' average rate of return was over 43%.³⁵

²⁹ *See id.*

³⁰ *See id.* ¶ 9.

³¹ *See id.*

³² *See* Wilkie Declaration ¶ 20.

³³ *See id.*, *citing* Uri & Zimmerman at 129-173 (2004).

³⁴ Uri & Zimmerman at 135.

³⁵ *See* Wilkie Declaration ¶ 20, *citing* Economics and Technology, Inc., "Competition in Access Markets: Reality or Illusion" at iii-iv (Aug. 2004), attached to Letter from Colleen Boothby, Counsel for

For Bell South and Qwest, these rates of return were almost 70%.³⁶ By comparison, the last Commission-authorized return for the BOCs when they were still subject to rate-of-return regulation was 11.25%.³⁷ Thus, the BOCs' rates of return from their special access services exceed not only competitive levels, but also the legacy regulated rate. The Wilkie Declaration notes that these accounting rates of return suggest a significant degree of market power and supra-competitive prices and are significantly above the ILECs' cost of capital.

Of course, there have been a limited number of competitors to the ILECs in providing special access services, especially in densely populated and built-up urban areas, where it is most economical for them to collocate at ILEC central offices and to build high-capacity fiber networks. MCI and AT&T have been two of the most important such providers.³⁸ But whatever discipline MCI and AT&T might exert in the special access marketplace will disappear if the Commission approves the proposed Verizon-MCI and SBC-AT&T mergers. An independent MCI will no longer exist as a source of potential competition or potential competition in Verizon's territory. Similarly, an independent AT&T will no longer exist to compete in SBC's territory. This is troubling because Verizon and SBC are the two largest price cap ILECs. Even more troubling, ILECs such as Verizon and SBC historically have not engaged in vigorous

Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, FCC, WC Docket No. 04-313 (Sept. 30, 2004) ("ETI").

³⁶ See ETI at 28.

³⁷ *Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Order, 5 FCC Rcd 7507 (1990).

³⁸ See Sykes Declaration ¶ 10.

wireline competition against other ILECs.³⁹ Based on this history, there is no reason to believe that any price cap ILEC, including the post-merger Verizon and SBC, will compete against any other price cap LEC in the provision of special access.

III. THE COMMISSION MUST REFORM ITS PRICING FLEXIBILITY RULES.

A. The Present Rules for Granting Special Access Pricing Flexibility Are Fundamentally Flawed.

The current metrics or “triggers” for granting pricing flexibility apply throughout an entire MSA, which is a large area in which competitive conditions are not uniform.

As the Commission itself noted in the recent *Triennial Review Remand Order*:

We reject the proposals by Verizon and BellSouth that the Commission adopt conclusions on transport that apply to entire MSAs. The Commission previously determined that a geographic area as large as a [sic] MSA is so large and varied that such a grouping is prone to significantly overbroad impairment determinations. MSAs are comprised of communities that share a locus of commerce, but not necessarily common economic characteristics as they related to telecommunications facilities deployment. For example, the Washington, D.C. MSA includes outlying counties, such as Warren County, Virginia; Jefferson County, West Virginia; and Calvert County, Maryland. While these areas undoubtedly represent communities with ties to the Washington, D.C. area, the economic characteristics of fiber deployment in these areas lack a commonality with the economic characteristics of deployment in the urbanized areas of Washington, D.C. . . . [The deployment maps submitted by the BOCs] confirm that competitive fiber consistently is located in and around the core business district of every major city – and not necessarily elsewhere. Due to the wide variability in market characteristics within an MSA, MSA-wide conclusions would substantially over-predict the presence

³⁹ See T-Mobile’s MCI/Verizon Merger Response at 7-8; T-Mobile’s AT&T/SBC Merger Response at 5-6.

of actual deployment, as well as the potential ability to deploy.⁴⁰

Thus, as the Commission found earlier this year, in virtually all MSAs, there are some areas in which there is no competition and little likelihood that such competition will ever emerge.

MSAs are far too large to accurately define the relevant geographic markets for special access competition. Even if the current pricing flexibility triggers accurately measure competition for a special access service in some portion of an MSA, the resulting pricing flexibility for that service will apply throughout the entire MSA, even in those areas in which little or no competition exists. Accordingly, one might see competitive entry for the provision of transport in the New York financial district between Wall Street and Midtown Manhattan, for example, but not see any competitive entry at all for an isolated DS1 transport link in the same MSA from a cell site in the Bronx to the Verizon network.⁴¹ Indeed, the nature of competition for the provision of a Wall Street/Midtown Manhattan transport link is more similar to the competition that might exist in other urban areas across the country than it is to the nature of competition in other parts of the same New York MSA.⁴² The deregulation of rates for special access services over broad geographic areas, coupled with the lack of competition for these

⁴⁰ *Unbundled Access to Network Elements*, Order on Remand, 20 FCC Rcd 2533, 2583-84 (2005) (citations omitted) (“*Triennial Review Remand Order*”). Despite this clear acknowledgement in 2005 of the overbreadth of the MSA as a measure of competition, under the existing pricing flexibility triggers, the Commission had granted pricing flexibility relief in 2001 for the entire Washington, D.C. MSA. See *Verizon Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services*, 16 FCC Rcd 5876 (2001) (granting Phase I relief for channel termination in the Washington, D.C. MSA and granting Phase II relief for special access and dedicated transport in the Washington, D.C. MSA).

⁴¹ As T-Mobile has argued in other cases, this is true because the link between the cell site and the ILEC’s end office is essentially the equivalent of a loop.

⁴² See Wilkie Declaration ¶¶22-23.

services, is particularly harmful to wireless providers such as T-Mobile, which seek to compete and provide seamless coverage throughout entire MSAs.

In addition to the general geographic overbreadth of the current pricing flexibility rules, an additional complicating factor is the fact that the geographic areas of little or no competition can vary by type of service. For example, little competition exists anywhere, even in the most urban areas, for base station-to-central office links,⁴³ but those services are eligible to receive pricing flexibility through an MSA because the pricing flexibility rules make no attempt to distinguish the degrees of competition among types of special access services.

An additional weakness of the pricing flexibility rules is that the present “triggers” for pricing flexibility are ineffective. The Commission intended the triggers adopted in the *Pricing Flexibility Order* to be proxies for irreversible market entry, but unfortunately the triggers have not led to the results the Commission intended. As T-Mobile demonstrates in Section II above, there is very little competition for the special access services on which it relies from the price cap ILECs, even though pricing flexibility has been granted widely where T-Mobile provides service.

As the Commission acknowledged in the Notice, every petition for special access pricing flexibility filed to date, and every order granting such petitions, including the two most recently granted in May 2005, has relied on the “revenue trigger” that, in a given MSA, measures the percentage of revenue associated with wire center collocation (rather than the “total collocators trigger” that measures the percentage of wire centers with

⁴³ See *supra* Part II; Sykes Declaration ¶ 5.

collocation).⁴⁴ By definition, this “revenue trigger” requires collocation in fewer wire centers than the “total collocators trigger.” This anomaly further suggests both that the existing triggers are far too permissive and that the MSA is an over-broad geographic area for pricing flexibility determinations.

B. The Commission Should Impose Much More Granular Market Definitions And Measures For Pricing Flexibility.

Due to these flaws in the current geographic and service market definition and triggers in the current pricing flexibility rules, the Commission must revise those rules in several respects. First, the Commission should significantly limit the size of the geographic area eligible for pricing flexibility. One analytic approach would be to adopt the geographic approach used in the *Triennial Review Remand Order* to analyze impairment for transport and loops. This approach uses a per-wire center approach (for loops) and pairs of wire centers (for transport).⁴⁵ For purposes of evaluating pricing flexibility, the Commission would limit the area in which pricing flexibility might apply to a wire center for special access links between customer premises and a price cap ILEC’s central office, and to the route between pairs of wire centers for special access interoffice transport. Using this approach, the Commission’s analysis would narrow its focus from fewer than 800 MSAs/RSAs⁴⁶ to approximately 11,000 wire centers in the United States.⁴⁷ This alone would result in a more tailored and granular analysis that

⁴⁴ Notice at 2024.

⁴⁵ *Triennial Review Remand Order* at 2619-20 (adopting a wire center approach for loop market analysis) and 2581-82 (adopting a route-by-route approach for transport market analysis).

⁴⁶ See 47 C.F.R. § 22.909 (setting forth definitions of 306 MSAs and 428 Rural Service Areas (“RSAs”)).

⁴⁷ *Triennial Review Remand Order* at 2622 n.449.

would better assess the true state of competition in a market. Another reasonable alternative would be to use a zone definition based upon line densities, as suggested in the Notice.⁴⁸

Second, as suggested in the Notice,⁴⁹ the Commission should define the following categories of special access services to which pricing flexibility triggers should apply separately in the more granular service areas: (1) customer premises-to-central office links (channel terminations); (2) interoffice transport links (channel mileage); and (3) other forms of special access, including links between ILEC wire centers and MSCs and ILEC OCn services. These service categories should be analyzed separately because the competition in these three markets varies significantly even within a particular geographic area. As set forth in Section II above, competition for channel terminations is almost nonexistent, and competition for channel mileage is not significantly better.

Third, after narrowing the geographic and product markets as discussed above, the Commission should adopt more stringent triggers for price cap LECs to satisfy before obtaining pricing flexibility of these newly defined markets. One possibility for new triggers would be to adopt the *Triennial Review Remand Order* triggers for the unbundled network elements (“UNEs”) that are functionally equivalent to special access services, *i.e.*, high-capacity loops and transport.⁵⁰ These triggers are both more granular and more current than the old triggers adopted in 1999 in the *Pricing Flexibility Order*, which have been so unsuccessful at predicting competitive entry for special access services. The

⁴⁸ Notice at 2024.

⁴⁹ *Id.* at 2021-22.

⁵⁰ *Triennial Review Remand Order* at 2597-2604 (setting forth transport triggers) and 2629-2633 (setting forth loop triggers).

UNE triggers would serve as a much better predictor of the type of competitive pressures that will discipline interstate special access rates. Further, because the *Triennial Review Remand Order* impairment triggers are more demanding than the current triggers for pricing flexibility,⁵¹ this more conservative approach would better protect against supra-competitive pricing of special access services and other abuses of market power.

Fourth, although T-Mobile recognizes that term and volume discounts can be efficient market mechanisms, certain other conditions tend to restrict competition unduly. Accordingly, the Commission should bar price cap ILECs from all forms of anti-competitive exclusionary behavior regarding the terms and conditions of their special access services. As the Commission acknowledges in the Notice,⁵² market power can be exercised not only through price increases, but also through exclusionary conduct that can be memorialized in tariffed terms and conditions. This conduct could include (amongst other practices) anticompetitive restrictions against purchases from other competitors, loss of discounts or additional costs in the event of purchases from other competitors, or anticompetitive early termination penalties. It is particularly important that the Commission's bar on exclusionary behavior apply to channel terminations and channel mileage services, which face little or no competition. In those areas and for those services in which competition is well established, such a bar need no longer apply, but the Commission should be cautious in relaxing this bar in order to protect against anticompetitive abuses.

⁵¹ *Id.* at 2569 n.167.

⁵² Notice at 2031-32.

Finally, as the Commission tentatively concluded in the Notice,⁵³ the Commission should apply any new pricing flexibility rules to *all* areas and services, including those for which the price cap LECs already have obtained pricing flexibility. Due to the numerous deficiencies described above in the current pricing flexibility rules, a failure to apply the new rules to all areas and services would only entrench the price cap LECs' market power in those MSAs in which they have previously obtained pricing flexibility. For services currently subject to pricing flexibility that will lose this eligibility under the new rules, the Commission should set the rates for these services to be the same as the rates under the new rules for services that have never been eligible for pricing flexibility.

IV. THE COMMISSION MUST REFORM PRICE CAP REGULATION OF SPECIAL ACCESS SERVICES.

A. The Commission Should Design Price Cap Regulation To Include Efficiency Incentives.

For special access services not subject to the new pricing flexibility rules, T-Mobile agrees with the Commission that some form of price cap regulation continues to be the appropriate form of rate regulation.⁵⁴ Indeed, because the Commission must adopt a much more narrowly focused and rigorous pricing flexibility regime to reflect the lack of competition for special access services, an effective form of price cap regulation becomes increasingly important.

Price cap regulation can be an effective means of protecting consumers from unreasonable rates in markets exhibiting little or no competition.⁵⁵ Improving price caps

⁵³ *Id.* at 2034.

⁵⁴ *Id.* at 2004.

⁵⁵ *See id.* *See also Revisions to Price Cap Rules for AT&T Corp.*, 10 FCC Rcd 3009, 3023-24 (1995); *Policy and Rules Concerning Rates for Dominant Carriers*, 8 FCC Rcd 3715, 3716 (1993).

for special access is especially timely due to the competitive weakness of the marketplace and the fact that the CALLS plan is reaching the end of its planned five-year term. Indeed, because some of the features of the CALLS plan are insufficient to protect customers from supra-competitive rates for special access services, the Commission should adjust the current price cap regulations to ensure that price cap LECs have incentives to provide special access services efficiently and, importantly, that the benefits of such efficiencies are passed on to special access customers as would occur in a competitive marketplace.

Specifically, an improved price cap regime should account for both firm-wide productivity growth and increases in scale economies for special access services, using appropriate X-factor and g-factor mechanisms. As the Commission noted, special access services “have significant economies of scale and scope.”⁵⁶ Unfortunately, T-Mobile’s experience is that the benefits of these scale economies have not flowed through to special access customers, as should happen in a competitive market. The Commission should provide incentives for the price cap ILECs to set their rates to reflect these scale economies and also to continue to increase their efficiency based on such economies. The current X-factor for special access services in the CALLS plan – which has been set at the same magnitude as the inflation factor, measured as Gross Domestic Product (chain weighted) Price Index, in order to cancel out that factor in the price cap formula – is not related to productivity at all. An improved, revised form of price cap regulation should include a productivity factor that reasonably accounts for the price cap ILECs’ scale economies in the provision of special access. In order to control individual price cap

⁵⁶ Notice at 2004.

ILECs' average cost decreases due to demand growth, the Commission should include a growth or g-factor as well.

Further, the Commission's revised price cap rate structure should recognize that different types of special access services face differing degrees of competition. As a result, as the Commission suggests in the Notice, services facing different levels of competition should be placed into separate service categories within the special access basket to prevent any anticompetitive price manipulation.⁵⁷ T-Mobile suggests that the Commission should consider one category for channel termination/channel mileage (which face little or not competition) and a separate category for links between LEC wire centers and MSCs, and other services, including ILEC OCn services.⁵⁸

B. The Commission Should Re-Initialize Rates For Special Access Services Subject To Price Caps.

In revising the special access regulatory regime, the Commission must re-initialize rates for special access services that will be subject to price caps. As the Commission established in the *Triennial Review Remand Order* with respect to UNEs, special access rates should be based upon forward-looking economic costs rather than embedded costs. As the Commission explained in the Notice, forward-looking costs are the more acceptable basis for setting prices in a competitive market and would comply with the Commission's goal that interstate access charges reflect the forward-looking costs of providing such services.⁵⁹

⁵⁷ *Id.* at 2012-13.

⁵⁸ *See supra* Part II (discussing differing levels of competition between these different types of special access services).

⁵⁹ Notice at 2016-17.

In the Notice, the Commission presented for comment a simplified method for establishing initial special access rate levels.⁶⁰ Although T-Mobile appreciates the relative simplicity of this approach, the Commission should take adequate steps to assure itself that this methodology actually would result in rates that would approximate rates based upon forward-looking economic costs.⁶¹ Whatever method ultimately is adopted for the re-initialization of special access rates, however, must clearly result in rates that approximate those based upon forward-looking economic costs.

V. AS AN INTERIM MEASURE UNTIL THIS RULEMAKING IS COMPLETED, THE COMMISSION SHOULD IMPOSE A 5.3% X-FACTOR ON SPECIAL ACCESS SERVICES.

In light of the supra-competitive special access prices that have resulted from the current regulatory regime, the Commission should impose an interim 5.3 percent X-factor on special access services. Accordingly, T-Mobile supports the request for such relief that was filed in this proceeding by the eCommerce & Telecommunications User Group and the Telecommunications Committee of the American Petroleum Institute (collectively “eTUG/API”).⁶² BellSouth D.C., Inc. (“BellSouth”) and Verizon have opposed this interim relief, arguing that the record does not support the need for any such

⁶⁰ *Id.* at 2016.

⁶¹ Another relatively simple alternative that the Commission could consider would be to initialize an ILECs’ federal rates for price-capped special access services at the average of the state rates for functionally equivalent UNEs in the relevant ILEC’s service area.

⁶² *See* Letter from Brian R. Moir, Counsel, eTUG and C. Douglass Jarett, Counsel, API, to Marlene H. Dortch, Secretary, FCC (May 10, 2005) (“*eTUG/API Ex Parte*”). T-Mobile filed an *ex parte* letter in this proceeding on June 3, 2005 supporting the relief requested in the *eTUG/API Ex Parte*, which sets forth many of the same arguments repeated here. *See* Letter from Thomas J. Sugrue, Vice President, Government Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC (June 3, 2005) (“*T-Mobile Ex Parte*”).

relief.⁶³ As stated above in Section II, however, T-Mobile’s experience has been quite different. In MSAs where T-Mobile operates and where ILECs have obtained special access pricing flexibility, T-Mobile has seen little or no evidence of new entry by suppliers of special access services other than the ILECs. T-Mobile has faced continued high prices from price cap ILECs. The record in this proceeding provides ample substantive evidence that the current interstate special access rates are excessive, and thus supports the interim imposition of a 5.3 percent X-factor effective July 1, 2005.

BellSouth also has opposed the eTUG/API request on procedural grounds.⁶⁴ Specifically, BellSouth claims that granting interim relief effective July 1, 2005 – prior to the completion of the full pleading cycle in this proceeding – would violate the Administrative Procedure Act (“APA”).⁶⁵ The APA, however, is by no means as absolute as BellSouth asserts. The Commission has ample authority under Section 553 of the APA, 5 U.S.C. §553, and under its own regulations to issue the requested interim rule prior to the completion of the full pleading cycle and to make that rule effective on July 1.⁶⁶

As a general matter, of course, the APA requires that when the Commission makes a rule, it must: (1) provide notice of the proposed action, (2) provide interested parties “an opportunity to participate in the rule making,” and (3) publish the substantive

⁶³ See Letter from Bennett L. Ross, General Counsel-D.C., BellSouth, to Marlene H. Dortch, Secretary, FCC (May 27, 2005) (“*BellSouth Ex Parte*”); and Letter from Donna Epps, Vice President – Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC (June 7, 2005) (“*Verizon Ex Parte*”).

⁶⁴ See *BellSouth Ex Parte* at 1-3. Verizon also briefly raises similar APA procedural arguments. See *Verizon Ex Parte* at 6-7.

⁶⁵ *BellSouth Ex Parte* at 1-2.

rule not less than 30 days before its effective date.⁶⁷ These requirements, however, are subject to certain exceptions that BellSouth completely fails to address. With respect to the notice and comment requirements, the APA expressly allows an agency to modify or eliminate notice-and-comment procedures if it finds that “good cause” exists such that the standard procedures are “impractical, unnecessary, or contrary to the public interest.”⁶⁸ Similarly, the APA expressly allows an agency to make a new rule effective sooner than 30 days after Federal Register publication upon a finding of “good cause” alone.⁶⁹

The Commission has satisfied the APA’s first relevant procedural requirement. The Commission provided timely and specific notice of the requested interim relief. No one can dispute that the Notice presented precisely the interim relief – the imposition of a 5.3 percent X-factor – that eTUG/API has requested.⁷⁰ The Commission duly published the Notice in the Federal Register over six weeks ago.⁷¹

As to the APA’s second procedural requirement, interested parties will have had ample “opportunity to participate” in the decision to adopt the needed interim relief. The Commission can evaluate the initial round of comments, due on June 13, 2005, before ruling on the requested interim relief. The Notice expressly states that the Commission

⁶⁶ In the alternative, if the Commission decides not to grant the requested interim relief, T-Mobile supports eTUG/API’s request to delay the annual access filings pending determination of an appropriate X-factor. *eTUG/API Ex Parte* at 3.

⁶⁷ 5 U.S.C. § 553(b) through (d).

⁶⁸ *Id.* § 553(b)(3)(B).

⁶⁹ *Id.* § 553(d)(3).

⁷⁰ Notice at 2036.

⁷¹ *Special Access Rates for Price Cap Local Exchange Carriers*, 70 Fed. Reg. 19381 (Apr. 13, 2005) (setting a June 13, 2005 deadline for the filing of comments, and a July 12, 2005 deadline for the filing of reply comments in this proceeding).

“anticipate[s] adopting an order prior to July 1, 2005 that will establish an interim plan,” so the public has already received notice that the Commission intends to act on this issue prior to the due date for reply comments.⁷² When coupled with the numerous *ex parte* filings that have been made in this proceeding on this issue of relief,⁷³ parties will have had plentiful opportunities to meaningfully participate with respect to this issue. Nothing in the APA requires any specific number of rounds of comment prior to adopting such relief. Although the Commission’s rules generally provide for reply comments,⁷⁴ the Commission’s rules also permit it to waive any provision of its rules, including reply comments, for “good cause.”⁷⁵ The Commission in the past has exercised this authority to dispense with reply comments and such action has been upheld by the D.C. Circuit.⁷⁶

Finally, with respect to the third relevant APA requirement, today’s excessive special access rates already noted in the record constitute “good cause” for the Commission to waive the requirement that the requested interim rule be published 30 days prior to its effectiveness.⁷⁷ In fact, the Commission has exercised this authority to

⁷² Notice at 2036.

⁷³ In addition to the *eTUG/API Ex Parte*, the *BellSouth Ex Parte* and the *T-Mobile Ex Parte*, at least three other parties have filed *ex parte* letters in support of eTUG/API’s request. See Letter from Michael H. Pryor, Counsel, Comptel/ALTS, to Marlene H. Dortch, Secretary, FCC (May 13, 2005); Letter from Paul Kouroupas, Vice President & Senior Counsel, Global Crossing, to Marlene H. Dortch, Secretary, FCC (May 24, 2005); and Letter from Robert W. Quinn, AT&T, to Marlene Dortch, Secretary, FCC (May 26, 2005).

⁷⁴ 47 C.F.R. § 1.415(c).

⁷⁵ *Id.* § 1.3.

⁷⁶ See *Omnipoint Corp. v. Federal Communications Commission*, 78 F.3d 620, 629-31 (D.C. Cir. 1996) (“*Omnipoint*”) (finding that a shortened, single-round pleading cycle of only seven days, without opportunity for reply comments, was sufficient to comply with the APA’s notice-and-comment requirements in order to adopt a rule in light of the need for rapid action).

⁷⁷ See 47 C.F.R. § 1.103(a) (noting that the Commission may designate an effective date that is earlier than the date of public notice of an action); *id.* § 1.427(b) (noting specifically that the Commission

waive the advance publication requirement of the APA in numerous circumstances.⁷⁸

Accordingly, the Commission is fully justified in issuing an interim rule after initial comments have been filed (but prior to the completion of the reply round) with an effective date of July 1.

VI. CONCLUSION.

Genuine reform of special access regulation has significant, immediate potential to improve competition, minimize regulation of retail services, and benefit consumers. T-Mobile urges the Commission to tighten the geographic areas to which any pricing flexibility would apply and to adopt more stringent triggers for permitting pricing flexibility. T-Mobile further urges the Commission to regulate special access rates by reinvigorating the price cap regime as applied to interstate special access services. While

may, for “good cause,” make a new rule effective within less than 30 days from the time of Federal Register publication).

⁷⁸ See *Omnipoint*, 78 F.3d at 630-31 (finding that the Commission’s decision to make a rule effective immediately upon publication was justified under the circumstances); *Unbundled Access to Network Elements*, Order and Notice of Proposed Rulemaking, 19 FCC Rcd 16783, 16796-97 (2004) (noting that Commission rules permit it to render an order immediately effective upon Federal Register publication where good cause warrants, and doing so to establish immediately effective unbundled network element rules on an interim basis); *Federal-State Joint Board on Universal Service*, Third Order on Reconsideration, 12 FCC Rcd 22801, 22804-05 (1997) (waiving APA’s 30-day requirement “because the rules adopted herein are critical to the expeditious and efficient implementation of the new federal universal service support mechanisms”).

At least one federal appellate court specifically has acknowledged that this “good cause” standard for waiving the 30-day requirement is an even “broader” standard than the standard for waiving notice-and-comment requirements. See *United States Steel Corp. v. EPA*, 605 F.2d 283, 286, 289-90 (7th Cir. 1979), *cert. denied* 444 U.S. 1035 (1980) (finding that EPA had good cause to justify dispensing with prior notice-and-comment procedures, and “unquestionably” good cause to justify dispensing with the advance publication requirement, which is assessed under a broader standard).

this proceeding is pending, T-Mobile supports the interim imposition of a 5.3% X-factor on special access services, effective on July 1, 2005.

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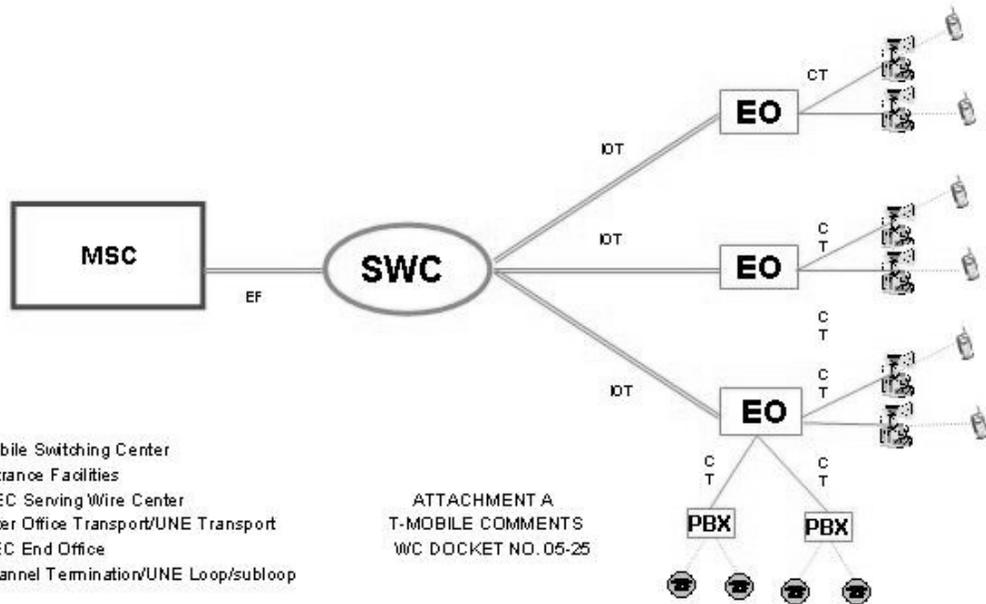
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June 13, 2005

ATTACHMENT A

Schematic View of CMRS Network



- MSC - Mobile Switching Center
- EF - Entrance Facilities
- SWC - ILEC Serving Wire Center
- IOT - Inter Office Transport/UNE Transport
- EO - ILEC End Office
- CT - Channel Termination/UNE Loop/subloop

ATTACHMENT A
 T-MOBILE COMMENTS
 WC DOCKET NO. 05-25

ATTACHMENT B

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In The Matter Of)
)
)
Special Access Rates for Price Cap Local)
Exchange Carriers) WC Docket No. 05-25
)
)
AT&T Corp. Petition for Rulemaking to) RM-10593
Reform Regulation of Incumbent Local)
Exchange Carrier Rates for Interstate)
Special Access Services)
)

**DECLARATION OF
SIMON J. WILKIE**

I. Introduction.

1. My name is Simon J. Wilkie. I am Senior Research Associate in Economics at the California Institute of Technology. From 2002 through 2003, I was Chief Economist of the Federal Communications Commission. I previously was a Member of Technical Staff, Bell Communications Research. I am also an Affiliate of the ERS Group, an economics and financial consulting firm. I specialize in analyses involving industrial organization, regulation, public finance, and the design of institutions, with applications to the economics of telecommunications and network industries. I have conducted economic research and prepared testimony on a variety of antitrust and regulatory issues in a number of industries, including the telecommunications industry. I have also consulted on matters involving mergers and acquisitions in the satellite industry and the cable industry, and issues related to local service competition and wireless competition. My research has appeared in a number of academic journals, including the *Review of Economic Studies*, *Journal of Economics and Management Strategy*, and the *Journal of Industrial Economics*. I received a Ph.D. and an M.A. in economics from the University of Rochester and a B. Comm. in economics from the University of New South Wales, Australia.

2. I have been retained by T-Mobile USA, Inc., a Commercial Mobile Radio Service (CMRS) provider, to evaluate certain economic issues that arise in the Notice of Proposed Rulemaking in this docket.¹ The Notice requests comment on a variety of issues regarding the FCC's pricing flexibility rules and price cap rules for special access

¹ *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, 20 FCC Rcd 1994 (2005) (Notice).

services. In particular, the Notice requests comment on the issues that the FCC addressed in its 1999 *Pricing Flexibility Order*, which among other things used “triggers” based on the number of competitive LECs located in a particular Metropolitan Statistical Area (MSA) to deregulate, partially or fully, special access pricing in that MSA.²

3. In the following discussion of special access, I distinguish among the three links T-Mobile purchases from incumbent LECs as special access circuits to connect its cellular base stations (known as base stations or cell sites) to its mobile switching centers (MSCs): (1) base station to nearest CO; (2) CO-Serving Wire Center (SWC) (the SWC is the CO nearest the MSC); and (3) SWC-MSC (entrance facilities). I focus on the economic characteristics of the base station-to-CO link because of its importance to wireless carriers and others that compete with incumbent LECs.

4. To summarize, for the reasons explained below, I find that base station-to-CO links share the economic characteristics of loops, including paucity of competition and high sunk costs. I also find that special access prices are at supra-competitive levels and prevent CMRS from being a substitute for local exchange services. The assumption of the Commission’s current pricing flexibility rules that an MSA is the correct definition of the relevant market is wrong as a matter of fundamental economic analysis. Moreover, the MSA market definition is thoroughly discredited by the available empirical evidence.

II. Economic Characteristics of Base Station-to-CO Links.

5. The transmission link between a base station and an incumbent LEC CO has the same economic characteristics as a local loop. Specifically, there is only one customer location served by the link, namely the CMRS carrier’s base station; the link

² *Access Charge Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221 (1999) (*Pricing Flexibility Order*).

typically carries relatively low volumes of traffic; and most of the costs incurred to provide the link are sunk costs. This creates significant barriers to market entry for any competitor for several reasons. First, any firm that enters and loses the sole customer will lose its sunk investment. If several competitors enter, competition between the incumbent and the new entrants will drive prices down toward the level of incremental costs and the new entrant will not be able to recover its sunk investment even if it wins the customer. Moreover, because most of the costs of this transmission link are sunk, the incumbent LEC can effectively deter entry either through a contractual clause that promises to meet or beat any entrant's offering or by locking in existing customers through the use of long term contracts with discounts and penalty clauses. As a result, it is improbable that an entrant would enter and incur the sunk costs to win one customer. Only if a competitive LEC has already deployed infrastructure that meets the CMRS carrier's requirements is competitive entry a realistic possibility.

6. For this loop-like transmission link there is insufficient customer base and traffic density to support multiple firms. Therefore, an unregulated market, which is the effective result where the incumbent has obtained pricing flexibility, would permit the incumbent LEC to act as a natural monopoly. In general, the CMRS carrier will have only two alternatives: to self provision or to purchase from the incumbent LEC. Of course, when the required link can be provided over existing facilities, the incumbent LEC – having already incurred the sunk cost of building its existing network – is able to provide the link at a lower cost than the CMRS carrier's cost of self-provisioning. Similarly, the incumbent LEC has several cost advantages in those situations in which it must provision new infrastructure. In particular, it has the local access and existing rights

of way that permit it to avoid the legal challenges and local regulatory burdens that a new entrant would encounter when attempting to deploy new facilities. In addition, the incumbent LEC has a base of skilled labor and other in-house expertise that a new entrant does not possess. Moreover, the CMRS carrier, in determining how to spend its capital budget, has a choice between building out its network or investing in deploying links duplicative of those of the incumbent LEC. The competitive pressures to serve the CMRS market clearly drive carriers to focus on expanding and improving coverage by investing in new base stations rather than duplicative infrastructure. Thus, CMRS providers face a distinct cost disadvantage relative to the incumbent LECs, both for existing and new facilities. Therefore, the most likely outcome for any market that has received pricing flexibility is that the incumbent LEC will sell to the CMRS carrier at the “extractive price,” that is, the incumbent LEC will charge the CMRS carrier just slightly less than the cost that the CMRS carrier would incur to self-provision the link.

7. To the extent that wireless and wireline services are actual or potential substitutes, the outcome is even worse. If so, the incumbent LEC will charge a price for the required links higher than the stand-alone monopoly price in an attempt to make the CMRS offering less competitive. Based on economic theory, incumbent LECs should have a near-monopoly in the provision of base station-to-CO links, with prices significantly above competitive levels.

8. Reality conforms to economic theory in this instance. As Chris Sykes of T-Mobile states in her declaration, T-Mobile purchases over 96% of its base station-to-CO links from incumbent LECs.³ Because of the above analysis and the particular

³ Sykes Declaration ¶ 5.

economic characteristics of the base station-to-CO link, it should rightly be treated as a loop and recognized -- and regulated -- as a natural monopoly until there is evidence of competitive supply.

9. Therefore, as a general matter only incumbent LECs can economically provide base station-to-CO links. Absent regulation, the incumbent LECs will charge a monopoly price. However, in addition to these links, CMRS carriers must also purchase interoffice transport links. In both cases, CMRS carriers purchase these links as special access services, at “special access” prices. Together, the costs of purchasing these links from the incumbent LEC are a major element of CMRS carriers’ incremental operational costs.⁴

III. Price Levels of Special Access Services.

10. In the following, I summarize a study of these topics conducted with my colleague Dr. Michael A. Williams of the ERS Group. The best means of addressing whether special access prices are competitive would be to compare these prices with data from “benchmark” competitive markets to determine whether the special access prices are above or below the competitive benchmark. For special access transport services, several sources of benchmark data exist. This permits comparisons between special access prices and the rates charged for the same transport services in competitive marketplaces. When benchmark data does not exist, economic theory can be applied to make the same comparisons. In the case of loops - that is, base station-to-CO links - no competitive market has developed that would provide benchmark data.

⁴ See Sykes Declaration ¶ 5.

11. For transport services, we compare ILEC interstate special access rates with the competitive prices for similar transport rates between cities on routes where there are several competitors with their own facilities. The benchmark data we use consists of actual single route prices quoted in contracts that were set in markets where there are several competitive suppliers. We can then divide the route price by the length of the route to obtain a per mile price for DS3 or OC3 transport. We can then use this information to build an econometric model of the transport market to estimate the competitive price for transport of a certain distance. We can then compare the special access price to the competitive price for transmitting traffic over the same distance. If the special access markets are competitive, then prices should not be significantly different from the estimated price from the benchmark model. If the special access prices are not comparable, then we can reject the hypothesis that special access prices approximate competitive prices.

12. Consider the market for DS3 (45 Mbps) level transport from New York to Los Angeles, a distance of approximately 2,500 miles. In June 1999, such a circuit could be leased for \$55,000 per month.⁵ In February 2004, the price was \$3,500.⁶ This represents a price decline of over 90%. Normalizing for distance we find that long distance DS3 circuits are priced at approximately \$1.40 per mile in a competitive market. Similarly, we can examine the price of a DS3 circuit on the transatlantic New York-to-

⁵ See PriMetrica, Inc., Telegeography Bandwidth Pricing Database Service, *available at*: <http://www.telegeography.com/products/bandwidth_pricing/index.php> (“Telegeography Bandwidth Pricing Project”). All prices quoted here are from that database.

⁶ Indeed, other recent contracts from November 2003 are as low as \$2750, with no installation fee. *Id.*

London route. In January 1999, the lease price for a DS3 circuit was \$80,000.⁷ In December 2003, the price was \$4,000 a month.⁸ This amounts to a price decline of 95%.

13. Let us now consider the same product, DS3 transport, in an area where the infrastructure is owned by a BOC. For example, in New York, Verizon's monthly special access price for DS3 interoffice transport is \$118.60 per mile, plus a \$631.12 fixed fee.⁹ Thus, the cost of a 10 mile Verizon special access DS3 circuit in New York is \$1,817.12, or over 100 times the \$14.00 per mile price of a circuit of the same length along the New York-Los Angeles route.¹⁰

14. These price discrepancies between the services are revealing. If a new firm could readily enter the New York area to provide competing transport services along routes where the prevailing prices are 50 to 100 times the prices for comparable services in competitive marketplaces, then such entry almost certainly would have already occurred and the price discrepancies would have disappeared. This entry has not happened, leading us again to the conclusion that the combination of sunk costs and smaller size of the market for the short-haul links are barriers to entry that make entry uneconomic.

15. The above examples are subject to the criticism that there are economies of scale and scope on the long-haul routes that cannot be realized on shorter haul routes. Of course, economic theory tells us that in a competitive market, prices are determined by *marginal cost*, that is, the incremental cost of carrying extra traffic. It is difficult to see

⁷ *Id.*

⁸ *Id.*

⁹ *Verizon Tariff F.C.C. No. 11*, § 31.7.9, 1st Rev. p. 31-150, after calculating 36-month commitment discount per *id.* § 25.1.4., 1st Rev. p. 25-10.

why the marginal cost per mile of carrying a call should vary with the length of the route. However, if the total sunk costs per mile decrease per mile, then there will be greater barriers to entry on shorter haul routes, and so the equilibrium price per mile would be higher the shorter the route. Indeed, we do see differences in the cost per mile on competitive routes as the distance falls. Thus, for example, the December 2003 cost of an OC3 circuit from New York to Washington D.C. is \$1,500, which would indicate a cost per Mbps/mile of \$0.047. This would lead to a cost estimate of $10 \times 45 \times 0.047 = \21.15 , which is higher than the \$14.00 rate charged for a comparable 10 mile length of DS3 transport based on the price of transport between New York and Los Angeles. Thus, it seems that the longest routes provide us with an estimate of marginal cost and the shorter routes are priced with a higher markup factor. However, we can construct a competitive price estimate based on the data from many competitive long-haul routes to estimate the magnitude of the economy-of-scale factor.

16. The methodology is as follows. We can collect contract prices for a class of transport and then normalize that into a price per mile per month for carriage. We then can regress the price per Mbs mile per month on the inverse of the distance of that route. This regression gives us two numbers, a constant, telling us how much transport should cost for an arbitrarily small distance, and the coefficient on distance, telling how much price per mile falls as distance increases due to the increased competition from entry or economies of scale. If we assume that entry is feasible in local transport markets, and these short-haul markets covered by special access are competitive, the regression price for 10 miles of DS3 transport should provide the unbiased estimate of the competitive

¹⁰ Telegeography Bandwidth Pricing Project. *Compare supra* (finding that DS3 circuits between New York and Los Angeles are priced at approximately \$1.40 per mile).

price. We can then compare this price with the actual special access prices. This regression will enable us to test the hypothesis that the special access market is competitive. Further details concerning the methodology are presented in Appendix 1.

17. Running the test regression we obtain the following equation; at the price per mile regressed on inverse link miles: $price = 1.77 + (223/link\ miles)$.

18. This leads to the price of a 10 mile DS3 circuit as follows: A DS3 circuit is 45 Mbps and at a length of ten miles the estimated competitive price would be $10 \times (1.77 + (223/10)) = \240.60 . Thus, we find that even allowing for the distance effect, the special access price of transport is significantly higher than the competitive benchmark produced by the regression analysis. As noted above, the cost of our sample 10-mile circuit priced at special access rates in New York is \$1,817, or more than six times higher than the benchmark competitive price of approximately \$250. Indeed, the special access price in every market analyzed ranges from two to six times the estimated competitive price (see Appendix 2). This methodology again provides clear and compelling evidence that special access prices are supra-competitive. In the absence of competition, special access prices should be regulated to prevent supra-competitive pricing.

19. In contrast to interoffice transport, the base station-to-CO links, as discussed in section I above, have the economic characteristics of loops. Because loops have not been subject to competition, there is no competitive market to provide a data source from which we could calculate the competitive rate. Therefore, we use UNE rates as a basis for comparison. T-Mobile compared the prices for DS1 channel terminations to the prices for DS1 UNE loops in Florida, Illinois, New York, Texas, and

Washington.¹¹ In every instance, the DS1 channel termination rate exceeded by a large margin the UNE rate for the comparable circuit. In Illinois, for example, SBC charged \$102 for a DS1 channel termination, but only \$27.72 for a DS1 UNE loop.¹²

20. If one examines the rates of return on special access service, they provide yet further proof of the supra-competitive nature of special access prices. A recent study by FCC economists Noel Uri and Paul Zimmerman definitively assesses the nature of special access competition.¹³ Uri and Zimmerman note that from December 2000 to the time of their article, the BOCs had been granted pricing flexibility for channel termination in over 150 MSAs and for transport in over 180 MSAs.¹⁴ The authors examine the impact of this “flexibility” on the firms’ rates of return, which are taken from ARMIS (Automated Reporting Management Information System) reports that the BOCs are required to file annually with the FCC. Based on then-current cost allocations, the BOCs’ unweighted average rates of return on special access for calendar year 2002 exceeded 37%.¹⁵ For 2003, the BOCs’ average rate of return was over 43%.¹⁶ For Bell South and Qwest, these rates of return were almost 70%.¹⁷ By comparison, the last FCC-authorized return for the BOCs when they were still subject to rate-of-return regulation

¹¹ See Appendix 2.

¹² See *id.* at 1.

¹³ Noel D. Uri & Paul R. Zimmerman, “Market Power and the Deregulation of Special Access Service by the Federal Communications Commission,” *Information & Communications Technology Law*, Vol. 13, No. 2, pp. 129-173 (2004) (“Uri & Zimmerman”).

¹⁴ See Uri & Zimmerman at 134.

¹⁵ *Id.* at 135.

¹⁶ See Economics and Technology, Inc., “Competition in Access Markets: Reality or Illusion” at iii-iv (Aug. 2004), attached to Letter from Colleen Boothby, Counsel for Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, FCC, WC Docket No. 04-313 (Sept. 30, 2004) (“ETI”).

¹⁷ See ETI at 28.

was 11.25% (a relic of the high inflation era).¹⁸ Thus, the BOCs' rates of return from their special access services far exceed not only competitive levels, but also the legacy regulated rate. The magnitude of these accounting rates of return suggests a significant degree of market power and supra-competitive prices. Further, these rates of return are significantly above the incumbent LECs' cost of capital.

21. It is thus apparent that the incumbent LECs' special access rates of return reflect an enormous degree of monopoly power and supra-competitive prices, which create a significant cost disadvantage for CMRS carriers that seek to compete against the incumbent LECs. Moreover, when we compare the level of these prices with the prices on competitive transport routes with multiple facilities-based providers, we find an enormous disparity, again confirming that these prices are supra-competitive.

IV. Market Definitions.

22. The Commission requests comment on whether the MSA is the appropriately sized market for application of its pricing flexibility rules.¹⁹ This can be analyzed in a straightforward manner. To assess the scope of competition in a market, first we identify the availability of substitute products to the consumer, in this case the CMRS carrier.²⁰ Consider first the link from a base station to the incumbent LEC's CO.

¹⁸ *Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Order, 5 FCC Rcd 7507 (1990).

¹⁹ Notice at ¶¶ 87-93.

²⁰ *See, e.g.*, U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, §§ 1.1 and 1.2 (1992), *available at*: <<http://www.ftc.gov/bc/docs/horizmer.htm>>. To define the product market one begins with the narrowest definition and asks whether a monopolist owning the product under consideration and the putative substitute could raise prices by having a monopoly on both goods. In this case, the answer is no. Consider a central office, A, and base stations B and C in the same MSA. The links are A-B and A-C. The CMRS provider needs both A-B and A-C to provide service. Assume there is a monopolist on A-B, while there is competition on A-C. Obviously, the monopolist will charge the monopoly price for A-B. Now suppose there is also a monopolist on A-C. The product market definition hinges on whether this market power in A-C leads to a rise in the price of A-B. But it cannot, because the seller is already charging the monopoly price for A-B. The price of A-C will rise but

CMRS carriers require transport from all of their cell towers in the coverage area to the wireline network. Even if there are competing providers on some routes, that does not help the CMRS carrier with respect to the remaining routes where there is no competition. For example, if a carrier were to offer local telephony service in New York, it is impossible to substitute more links along routes in Manhattan - where there are multiple competitive providers - for a high priced link in the Bronx, where Verizon may be the only provider. Therefore, the relevant factors that determine the pricing are the number of competitors, or evidence of self provisioning, on a specific point-to-point route, not the number of providers with some limited presence within a broader area such as an MSA.²¹

23. Some may argue that competitive entry on some routes in an MSA indicates that entry is feasible on all routes within that MSA, and that such entry is predictive of future entry on other routes in that MSA. Again, basic economic principles indicate that these conclusions are false. The conditions for entry depend on the level of the sunk costs and the size of the relevant market. The market for transport between Wall Street and Midtown Manhattan is enormous, since there is a large number of brokerage and other financial firms that have offices in both locations and these firms transport huge volumes of data among those locations. Thus, we would expect to see new firms entering the market for transport service between those points in Manhattan. However, this tells us nothing about the market conditions for our hypothetical CMRS carrier that needs

the price for A-B will remain the same. Therefore, the two goods (A-B and A-C) are not in the same product market. In this particular case the geographic market and the product market coincide.

²¹ Even if there are several links along routes with multiple providers, the incumbent LEC can extract rent based on the value of the entire service area from those links for which the incumbent LEC is the sole provider. Therefore, for CMRS providers, the presence of alternative suppliers on a few links in an MSA may be entirely irrelevant.

isolated DS1 transport links from base stations in the Bronx to the Verizon network. The fact is that the DS1 link in the Bronx still involves a single customer with a low volume of traffic and the costs are mostly sunk, so the link is a natural monopoly. Indeed, the nature of competition on our sample Wall Street/Midtown link provides more information about the nature of competition, for example, in downtown Chicago, or in Los Angeles between downtown and Culver City, than it provides about the rest of the New York MSA. Moreover, timing is also an issue. Thus, even on the routes on which entry is economically feasible, competitive carriers may not be able to offer service to the CMRS carrier for several years - far enough beyond the horizon that such entry would not serve to discipline prices.

24. The record is clear regarding the effect of an overbroad market definition. In the *Pricing Flexibility Order*, the FCC used “triggers” based on the number of competitors collocating in COs in an MSA to deregulate transport prices in the MSA. The acid test for evaluating whether the market definition is correct is to examine actual prices. The analysis of Uri and Zimmerman cited above is especially relevant. They found that, in stark contrast to the experience of long-haul markets where prices fell dramatically - as much as 90% - the flawed MSA market definition generally led to price increases. For example, in Alabama, where Bell South was granted pricing flexibility, rates increased 35.7% for fixed charges and 48.9% for variable charges since pricing flexibility was granted.²² Rather than competition leading to the predicted price increases, the incumbents were able to make triple the most recently authorized rate of return of 11.25%. Indeed, the rates of return and degree of monopoly power are getting

²² Uri & Zimmerman at 150.

worse over time. The important point here is that the incorrect market definition has disastrous effects. Economics principles tell us, and the empirical record overwhelmingly demonstrates, that the appropriate geographic market for loops and transport is point-to-point or route-by-route. To suggest that the MSA, or any other artificially constructed geographic area, defines a market across which special access customers face uniformly comparable competitive conditions is erroneous. Applying “triggers” to pricing flexibility using such an erroneous market definition would essentially leave monopoly prices intact, defeating the purpose of the Act.

25. In conclusion, the market definition implicitly used in the *Pricing Flexibility Order* has no basis in economic theory, and the subsequent history of special access prices has been shown it to be unsound. We have three compelling pieces of economic evidence that, rather than lower prices and enhance competition, the *Pricing Flexibility Order* has harmed competition and raised prices. First, the excess rates of return based on the FCC’s ARMIS data are indicative of market power. Second, the discrepancy between special access prices and benchmark competitive prices is significant. The third piece of evidence is the discrepancy between special access prices and UNE prices, which are meant to proxies for the prices set in a contestable market.

26. Together the data present a compelling case that the *Pricing Flexibility Order* has harmed competition and raised consumer prices. In particular, because special access prices are a key component of CMRS carriers’ marginal costs, supra-competitive prices for special access have in turn raised CMRS prices, and induced subsequent competitive harms.

27. This concludes my declaration on behalf of T-Mobile USA, Inc. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Simon J. Wilkie
Simon J. Wilkie

Executed on June 13, 2005.

APPENDIX 1

APPENDIX 1

TECHNICAL APPENDIX

1. In this technical appendix, we describe the methodology used to compute the competitive transport price index used in the text.

2. Transport markets are characterized by (i) homogeneous product markets (all firms in each market are offering the same good e.g., DS3 circuit from Boston to Washington), and (ii) large sunk costs. The structure of these markets is studied extensively in the classic book by John Sutton, whose methodology we adapt.¹ In particular under the hypothesis that entry is possible in a market then entry should happen until it is no longer profitable. Thus, in comparing several different sized markets there should be an inverse relationship between the ratio of the size of the market to the fixed costs and the markup factor (and thus, prices), observed in a market. In large markets there should be more entry and lower markups. In the limit, the market will shrink to the point where it is a natural monopoly. In that case we see a lack of market discipline and prices rising to the monopoly level.

3. We assume that the longer haul markets have a larger ratio of market size to sunk costs. Thus, we should see more entry the longer the distance and so the price per mile of transport should be closer to marginal cost the longer the route. Indeed the data bear this out, price per mile is generally falling as distance increases. Thus, if the markets are contestable, that is entry is possible when price is above average cost, we should see that price per mile times the mileage of a route should equal the fixed cost, F ,

¹ John Sutton, *Sunk Costs and Market Structure* (MIT Press 1991).

plus distance sensitive cost, c times distance d per user. That is $p(d)d = F + cd$. Dividing both sides by d yields the equation $p(d) = F/d + c$. This is the equation we use to obtain our cost estimates. It will give us an estimate of the zero rent price in a market of any given distance, as well as the marginal cost of transport per mile.

4. We obtain data on DS3 and OC3 level transport from the Telegeography data set, see < http://www.telegeography.com/products/bandwidth_pricing/index.php>. This data set is composed of the monthly rental rate and installation fees in actual contracts from the December 2003 time frame. We have few DS3 contracts, thus we look at the ratio of DS3 contract prices to OC3 prices to get a conversion factor. We know that, to prevent arbitrage, it must be that a DS3 circuit is priced at between a third and 100% of the OC3 price on each route. We find that in December 2003, an OC3 circuit from New York to Los Angeles cost \$10,500 per month, but DS3 circuits sold at \$3,737 per month with a \$4,000 initial fee which amortized over 36 months gives us a lease rate of \$3,848 per month, thus the scaling factor for DS3/OC3 prices is $\$3,848/\$10,500 = 36.6\%$ which we round up to 37%. To compute the distance of each route we use the U.S air mile distance as computed by Web Flyer, *available at*: <<http://www.webflyer.com/travel/milemarker/>>. Where there are multiple airports in a market we choose the one closet to the city center. Thus for example we chose the 34th Street heliport in New York City.

5. We run a standard Ordinary Least Squares Regression (OLS) to estimate the coefficients. The coefficients of the regression of interest are the constant and the coefficient on inverse distance. The constant is interpreted as the marginal cost of transport. The coefficient on inverse distance then captures the level of average fixed

costs that must be recovered by raising price above marginal costs. This then tells us what the price would be if the same competitive framework held in local markets. Under the hypothesis that these markets are indeed competitive, this calculated price should be close to special access prices.

APPENDIX 2

APPENDIX 2

DS1 -- Channel Termination/Loop

ILEC	State	Special Access Rate (\$)	UNE Rate (\$)	SPA to UNE Comparison
SBC				
	Illinois	102.00	27.72	367.97%
	Texas	112.00	76.92	145.61%
BellSouth				
	Florida	124.00	70.74	125.25%
Verizon				
	New York	132.84	82.92	160.20%
Qwest				
	Washington	102.53	68.86	148.90%

- Notes:
- (1) Special access rates are based on a 36-month term.
 - (2) Zone 1/Urban rates are used for both special access and unbundled network element pricing.

DS1 -- Channel Mileage/Interoffice Transport

ILEC	State	Special Access - - Channel Mileage (fixed) (\$)	UNE Transport (fixed) (\$)	SPA to UNE Comparison	Special Access -- Channel Mileage (per mile) (\$)	UNE Transport (per mile) (\$)	SPA to UNE Comparison	Mileage Break-Even Point	Special Access -- 10 Mile Circuit (\$)	UNE -- 10 Mile Circuit (\$)	SPA to UNE Comparison
SBC											
	Illinois	35.00	17.35	201.73%	13.25	1.88	704.79%	N/A	167.50	36.15	463.35%
	Texas	39.00	38.15	102.23%	12.25	0.35	3500.00%	N/A	161.50	41.65	387.76%
BellSouth											
	Florida	70.00	88.44	79.15%	4.90	0.19	2640.09%	3.91	119.00	90.30	131.79%
Verizon											
	New York	35.34	54.72	64.58%	14.38	2.05	701.46%	1.57	179.14	75.22	238.15%
Qwest											
	Washington	59.50	33.12	179.65%	8.50	0.65	1307.69%	N/A	144.50	39.62	364.71%

- Notes:
- (1) The "Mileage Break-Even Point" represents the distance (in miles) where UNE transport (fixed plus mileage) costs less than special access.
 - (2) Special access rates are based on a 36-month term.
 - (3) Zone 1/Urban rates are used for both special access and unbundle network element pricing.

DS3 -- Channel Mileage/Interoffice Transport

ILEC	State	Special Access -- Channel Mileage (fixed) (\$)	UNE Transport (fixed) (\$)	SPA to UNE Comparison	Special Access -- Channel Mileage (per mile) (\$)	UNE Transport (per mile) (\$)	SPA to UNE Comparison	Mileage Break-Even Point	Special Access -- 10 Mile Circuit (\$)	UNE -- 10 Mile Circuit (\$)	SPA to UNE Comparison
SBC											
	Illinois	250.00	146.93	170.15%	55.00	29.81	184.50%	N/A	800.00	445.03	179.76%
	Texas	510.00	417.24	122.23%	65.00	9.29	699.68%	N/A	1,160.00	510.14	227.39%
BellSouth											
	Florida	956.25	1,071.00	89.29%	46.75	3.87	1208.01%	2.68	1,423.75	1,109.70	128.30%
Verizon											
	New York	631.12	711.09	88.75%	118.60	15.21	779.75%	0.77	1,817.12	863.19	210.51%
Qwest											
	Washington	297.00	225.41	131.76%	35.10	11.55	303.90%	N/A	648.00	340.91	190.08%

- Notes:
- (1) The "Mileage Break-Even Point" represents the distance (in miles) where UNE transport (fixed plus mileage) costs less than special access.
 - (2) Special access rates are based on a 36-month term.
 - (3) Zone 1/Urban rates are used for both special access and unbundle network element pricing.

References:

Illinois

Ameritech Operating Companies, Access Service

DS1	Local Distribution Channel	\$102.00	Zone 1	36 Month, Optional Payment Plan	Tariff FCC No. 2, 44 th Revised p. 411
DS1	Channel Mileage Term.	\$35.00	Zone 1	36 Month, Optional Payment Plan	Tariff FCC No. 2, 10 th Revised p. 411.2
DS1	Channel Mileage	\$13.25	Zone 1	36 Month, Optional Payment Plan	Tariff FCC No. 2, 8 th Revised p. 411.4
DS3	Channel Mileage Term.	\$250.00	Zone 1	36 Month, Optional Payment Plan	Tariff FCC No. 2, 20 th Revised p. 413.3
DS3	Channel Mileage	\$55.00	Zone 1	36 Month, Optional Payment Plan	Tariff FCC No. 2, 20 th Revised p. 413.4

Illinois Bell Telephone Company, Unbundled Network Elements

DS1	Digital Interface Loop	\$27.72	Zone A	ILL. C.C. No. 20, Part 19, Sec. 2, 6 th Revised Sheet No. 31
DS1	Interoffice Mileage Term.	\$17.35	Zone 1	ILL. C.C. No. 20, Part 19, Section 12, Orig. Sheet No. 30
DS1	Interoffice Mileage	\$1.88	Zone 1	ILL. C.C. No. 20, Part 19, Section 12, Orig. Sheet No. 30
DS3	Interoffice Mileage Term.	\$146.93	Zone 1	ILL. C.C. No. 20, Part 19, Section 12, Orig. Sheet No. 32
DS3	Interoffice Mileage	\$29.81	Zone 1	ILL. C.C. No. 20, Part 19, Section 12, Orig. Sheet No. 32

Texas

Southwestern Bell Telephone Company, Access Service

DS1	Channel Termination	\$112.00	Zone 1	3 Year Monthly Rate	Tariff FCC No. 73, 5 th Revised p. 7-189.39
DS1	Channel Mileage (fixed)	\$39.00	Zone 1	3 Year Monthly Rate	Tariff FCC No. 73, 5 th Revised p. 7-189.41
DS1	Channel Mileage (per mile)	\$12.25	Zone 1	3 Year Monthly Rate	Tariff FCC No. 73, 5 th Revised p. 7-189.41
DS3	Interoffice Fixed	\$510.00	Zone 1	3 Year Monthly Rate	Tariff FCC No. 73, 14 th Revised p. 20-47.9
DS3	Interoffice Per Mile	\$65.00	Zone 1	3 Year Monthly Rate	Tariff FCC No. 73, 24 th Revised p. 20-47.17

Southwestern Bell Telephone Company, UNE Pricing (T2A)

DS1	4 Wire Digital Loop	\$76.96	Zone 1	Appendix Pricing UNE (T2A), Schedule of Prices (04/16/01)
DS1	Interoffice Transport Term.	\$38.15	Urban	Appendix Pricing UNE (T2A), Schedule of Prices (04/16/01)
DS1	Interoffice Transport Mileage	\$0.35	Urban	Appendix Pricing UNE (T2A), Schedule of Prices (04/16/01)
DS3	Interoffice Transport Term.	\$417.24	Urban	Appendix Pricing UNE (T2A), Schedule of Prices (04/16/01)
DS3	Interoffice Transport Mileage	\$9.29	Urban	Appendix Pricing UNE (T2A), Schedule of Prices (04/16/01)

Florida

BellSouth Telecommunications, Inc., Access Service

DS1	Local Channel	\$124.00	Zone 1	Plan A, 24 to 48 Months	Tariff FCC No. 1, 9 th Revised p. 7-144.1
DS1	Interoffice Channel (fixed)	\$70.00	Zone 1	Plan A, 24 to 48 Months	Tariff FCC No. 1, 14 th Revised p. 7-146
DS1	Interoffice Channel (per mile)	\$4.90	Zone 1	Plan A, 24 to 48 Months	Tariff FCC No. 1, 13 th Revised p. 7-146.2
DS3	Interoffice Channel (fixed)	\$956.25	Zone 1	LightGate 1, Plan A, 12 to 36 Months, Mileage Band 9-25	Tariff FCC No. 1, 7 th Revised p. 7-147.0.3.4
DS3	Interoffice Channel (per mile)	\$46.75	Zone 1	LightGate 1, Plan A, 12 to 36 Months, Mileage Band 9-25	Tariff FCC No. 1, 9 th Revised p. 7-147.0.3.5

BellSouth Telecommunications, Inc., UNE Prices – BST/MCI Agreement (9/12/01) (http://cpr.bellsouth.com/clec/docs/all_states/80073e90.pdf, accessed 6/13/05)

DS1	4-Wire DS1 Digital Loop	\$70.74	Zone 1	BST/MCI FL Agreement, Exhibit 1, p. 3 of 49 (ver. 3Q02 – 10/07/02)
DS1	Interoffice Chan. (facility term.)	\$88.44	N/A	BST/MCI FL Agreement, Exhibit 1, p. 8 of 49 (ver. 3Q02 – 10/07/02)
DS1	Interoffice Chan. (per mile)	\$0.1856	N/A	BST/MCI FL Agreement, Exhibit 1, p. 8 of 49 (ver. 3Q02 – 10/07/02)
DS3	Interoffice Chan. (facility term.)	\$1,071.00	N/A	BST/MCI FL Agreement, Exhibit 1, p. 9 of 49 (ver. 3Q02 – 10/07/02)
DS3	Interoffice Chan. (per mile)	\$3.87	N/A	BST/MCI FL Agreement, Exhibit 1, p. 9 of 49 (ver. 3Q02 – 10/07/02)

New York

The Verizon Telephone Companies, Access Service

DS1	1.544 Mbps Channel Terminations	\$132.84	(\$177.12)	Zone 1	Tariff FCC No. 11, 4 th Revised p. 31-122
DS1	1.544 Mbps Channel Mileage (fixed)	\$35.34	(\$47.12)	Zone 1	Tariff FCC No. 11, 3 rd Revised p. 31-147
DS1	1.544 Mbps Channel Mileage (per mi.)	\$14.38	(\$19.17)	Zone 1	Tariff FCC No. 11, 3 rd Revised p. 31-147
DS3	44.736 Mbps Channel Mileage (fixed)	\$631.12	(\$701.25)	Zone 1	Tariff FCC No. 11, 1 st Revised p. 31-150
DS3	44.736 Mbps Channel Mileage (per mi.)	\$118.60	(\$131.78)	Zone 1	Tariff FCC No. 11, 1 st Revised p. 31-150

All Verizon FCC special access tariffs identified above include a 36-month commitment discount. This results in a 25% and 10% discount for DS1 and DS3 services, respectively (Tariff FCC No. 11, 1st Revised p. 25-10). The published tariff rate is enclosed in parentheses.

Verizon New York Inc., Network Elements, Public Service Commission of New York

DS1	1.544 Mbps Conditioned Link	\$82.92	Density Zone 1A#	PSC NY No. 10, Section 5, 2 nd Revised p. 45
DS1	Interoffice Transport Mileage (fixed)	\$54.72	N/A	PSC NY No. 10, Section 5, 1 st Revised p. 23
DS1	Interoffice Transport Mileage (per mile)	\$2.05	N/A	PSC NY No. 10, Section 5, 1 st Revised p. 23
DS3	Interoffice Transport Mileage (fixed)	\$711.09	N/A	PSC NY No. 10, Section 5, 1 st Revised p. 23
DS3	Interoffice Transport Mileage (per mile)	\$15.21	N/A	PSC NY No. 10, Section 5, 1 st Revised p. 23

Washington

Qwest Corporation, Access Service

DS1	Channel Termination	\$102.53	Zone 1	36 Months	Tariff FCC No. 1, 3 rd Revised p. 7-347
DS1	1.544 Mbps Transport Chan. (fixed)	\$59.50	Zone 1	36 Months, Mileage Band over 8 to 25	Tariff FCC No. 1, 5 th Revised p. 7-355
DS1	1.544 Mbps Transport Chan. (per mile)	\$8.50	Zone 1	36 Months, Mileage Band over 8 to 25	Tariff FCC No. 1, 5 th Revised p. 7-355
DS3	Transport Channels (fixed)	\$297.00	Zone 1	36 Months, Mileage Band over 8 to 25	Tariff FCC No. 1, 7 th Revised p. 7-416
DS3	Transport Channels (per mile)	\$35.10	Zone 1	36 Months, Mileage Band over 8 to 25	Tariff FCC No. 1, 7 th Revised p. 7-416

Qwest Corporation, WN U-42 Interconnection Services, Washington

DS1	DS1 Capable Loop	\$68.86	Zone 1		WN U-42, Section 3, 4 th Revised Sheet 8.1
DS1	Direct-Trunked Transport (fixed)	\$33.12	Mileage Band over 8 to 25		WN U-42, Section 3, 1 st Revised Sheet 2
DS1	Direct-Trunked Transport (per mile)	\$0.65	Mileage Band over 8 to 25		WN U-42, Section 3, 1 st Revised Sheet 2
DS3	Direct-Trunked Transport (fixed)	\$225.41	Mileage Band over 8 to 25		WN U-42, Section 3, 1 st Revised Sheet 2
DS3	Direct-Trunked Transport (per mile)	\$11.55	Mileage Band over 8 to 25		WN U-42, Section 3, 1 st Revised Sheet 2

ATTACHMENT C

DECLARATION OF CHRIS SYKES

I, Chris Sykes, hereby declare the following:

1. I am the Director of Carrier Management for T-Mobile USA, Inc. (“T-Mobile”).

Under the direction of Vice President Dave Mayo, I am responsible for purchasing telecommunications services for T-Mobile, including special access services.

2. I have worked in the wireless business since 1989. I have worked for T-Mobile (or its predecessor companies) from 1996 to the present. I also was the Network Administration Manager for US WEST New Vector Group from 1989 to 1996.

3. In this Declaration, I describe T-Mobile’s experience purchasing special access services from wireline carriers. These special access services are key inputs to T-Mobile’s retail wireless services. T-Mobile uses these special access services to connect its cellular base stations to its Mobile Switching Centers (“MSCs”) to form an integrated wireless network.

4. Throughout the United States, the incumbent local exchange carrier (“ILEC”) in any given area is T-Mobile’s primary source for the special access services that are essential to the operation of T-Mobile’s network in that area. Because few competitive alternatives exist, T-Mobile relies on the ILEC’s special access offerings within its service area to provide the several types of high-capacity links that connect T-Mobile’s base stations and MSCs.

5. One type of special access service especially important to T-Mobile is the “last-mile” link between a T-Mobile base station or cell site and the ILEC central office serving that location. T-Mobile typically purchases these links as DS1 channel terminations from the ILEC’s special access tariffs. These links essentially are wireline loops. They are critical to T-Mobile’s competitive operations. The prices that T-Mobile must pay for these links are a

substantial portion of its overall costs and affect the prices it must charge for its retail services. In an ILEC's service territory, T-Mobile currently purchases the vast majority of these base station-to-central office links from the ILEC. Nationwide, T-Mobile obtains over 96% of these wireline circuits from ILECs. Competition is almost non-existent for the base station-to-central office links.

6. Another type of special access link used by T-Mobile is interoffice transport connecting the ILECs' central offices. T-Mobile routinely purchases these links from ILECs as special access channel mileage services. For DS1 circuits, T-Mobile purchases these channel mileage services together with the channel termination service as a unified package from the ILEC. For DS3 circuits, T-Mobile usually purchases DS3 transport as channel mileage service separately from the channel termination service. T-Mobile usually purchases the DS3 channel mileage service from the ILEC providing the channel termination service, but it does in some instances purchase channel mileage service from other providers. Although competitors have deployed interoffice facilities connecting ILEC central offices on some routes, competition for interoffice transport is limited, although slightly more competitive than the market for base station-to-central office links as described above. Nationwide, T-Mobile obtains approximately 94% of its channel mileage service from ILECs.

7. I understand that the Commission has granted some form of pricing flexibility for channel termination service in over 150 MSAs and that it has granted some form of pricing flexibility for channel mileage and other special access services in over 200 MSAs. T-Mobile operates in 176 of the top 200 MSAs. T-Mobile therefore operates in virtually all of the MSAs in which the ILECs have obtained pricing flexibility, and for which price cap regulation does not control the rates for special access circuits. These MSAs include many of the largest U.S. cities,

such as New York, Los Angeles, Boston and San Francisco, and many smaller ones, such as Anderson, Indiana and Joplin, Missouri.

8. MSAs are such large areas that even if a competitive service provider exists in some parts of the MSA for some special access services, this does not mean that a competitive alternative exists in all portions of the MSA or for all special access services.

9. In MSAs where T-Mobile operates and where ILECs have obtained special access pricing flexibility, T-Mobile has seen little or no evidence of new entry by suppliers of special access services other than the ILECs. T-Mobile has faced continued high prices from price cap ILECs. For example, T-Mobile analyzed its special access costs between 2002 and 2005 and found that the prices charged by Qwest Communications, Southwestern Bell and Pacific Bell rose by approximately 62%, 27% and 15%, respectively, during that time.

10. To the limited extent that alternative suppliers of special access exist, AT&T and MCI are two of the most important such suppliers. But, because of the pending Verizon-MCI and SBC-AT&T mergers, these sources of special access competition will be absorbed into the largest price cap ILECs. This is particularly troubling for T-Mobile, because Verizon and SBC each have wireless affiliates that compete directly with T-Mobile in the provision of retail wireless services. In addition, T-Mobile is poised to begin competing on an intermodal basis against the ILECs' wireline dial tone offerings.

11. Moreover, in T-Mobile's experience, ILECs have not competed vigorously against each other in the provision of any wireline service, including special access service. Effective regulation is needed to control the prices and the terms and conditions at which price cap ILECs offer special access services.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Chris Sykes

Chris Sykes

Executed on June 13, 2005.