

**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 Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services)	RM-10593
)	

To: The Federal Communications Commission

**REPLY COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute (“API”), by its attorneys, hereby submits these Reply Comments in response to Comments filed by other participants regarding revisions to the regulations governing the rates for interstate special access services provided by incumbent local exchange carriers (“ILECs”) subject to price cap regulation.¹

I. REPLY COMMENTS

The record in this proceeding underscores the distinct “perceptions” with respect to the market for interstate special access services. As previously noted by API, these services are essential inputs for wireline voice and data interexchange services and wireless services offered

¹ Order and Notice of Proposed Rulemaking, *Special Access Rates for Price Cap Local Exchange Carriers*, 20 FCC Rcd. 1994 (2005).

in the United States and will remain essential inputs for the foreseeable future.² One perception is that the market for interstate special access services is robustly competitive. This is the predominant view of the Regional Bell Operating Companies (“RBOCs”) supported primarily by statistics and argument based on the existence of competitive infrastructure and collocation arrangements in selected urban markets, notwithstanding the questionable financial status of many of these competitors.³

The second perception is that the market for interstate special access services is anything but competitive. This perception is much closer to reality in API’s view because the RBOCs have: (1) *increased* rates for these services -- based on conclusively erroneous, misplaced and misleading indicia of competition -- through their exercise of competitive pricing flexibility;⁴ and (2) imposed patently anti-competitive pricing term and volume discount schemes—that provide discounts from artificially inflated, unjust and unreasonable month-to-month rates for special access services.⁵

Several explanations offered in support of the RBOC perception clearly raise more questions than answers.⁶ Verizon even goes so far as to argue that the extensive use of its special access services proves the reasonableness of its rates for such service.

² This is true for interexchange voice services and interexchange data communications, regardless of whether the “interexchange data transport” is frame relay service, ATM service, private line service or an IP-VPN solution that relies on high speed Internet access service and the public Internet.

³ API Comments, p.8, n. 20.

⁴ Comments of CompTel/ALTS, Global Crossing North America, Inc., and NuVox Communications (“Comments of CompTel”), pp. 6-8; Comments of Ad Hoc Telecommunications Users Committee (“Comments of Ad Hoc”), p. 16-26 (also noting that the ILECs have increased earnings under pricing flexibility in instances where no rate increase is made because these rates were insulated from price cap regulation).

⁵ Comments of CompTel, pp. 11-20.

⁶ In a declaration submitted by Verizon, William E. Taylor postulates that the rates for special access services may have been artificially constrained by price cap regulation and the RBOCs’ practice of increasing rates after satisfying the pricing flexibility criteria may be rational economic behavior in a competitive environment.

Treating a small but significant non-transitory increase in price as an exercise of market power assumes that the initial price is a competitive market price. Suppose 10 years of price cap

Competitors are using Verizon's DS1 and DS3 special access services to provide high-capacity services to tens of thousands of business end users of all types and sizes, The success of competitors in using Verizon's special access services to reach even the smallest of business users provides irrefutable evidence that Verizon's special access rates are reasonable.⁷

API would add simply that, if the RBOC is the only supplier, "even the smallest of business users" have no other choice.

The RBOCs' arguments stressing that the mere presence of competitive facilities as effective restraints against excess rates are largely reformulations of the criteria upon which pricing flexibility was granted several years ago. Contrary to Verizon's assertions, "collocation statistics" and other information regarding competitive infrastructure are not "compelling."⁸ If truly compelling, the RBOCs would not be *increasing* rates or *maintaining* rates in areas for which these carriers have obtained pricing flexibility. To its credit, SBC takes a more credible position in distinguishing between actual and potential competition:

The widespread proximity of SBC's DS_n-level customers to competitive fiber underscores the immense scope of *potential* entry. Competing providers *could* bridge the

regulation had constrained ILEC special access prices to lie below a competitive market level. In that case, a significant and sustained price increase when price cap regulation was removed would be welfare-increasing rather than an exercise of market power.

Comments of Verizon, Attachment C, Declaration of William E. Taylor, ¶ 36. Similarly and without explanation Taylor suggests (incorrectly) that the costs of providing DS-3 service are proportional to the increase in throughput achieved by a DS-3 circuit over a DS-1 circuit and baldly states, that regardless of the inflated nature of the "standard" month-to-month rates, customers have no reason to complain about volume and term plans because these plans provide cost savings:

A shift of customers to lower-priced, high-bandwidth services reduces the price that a customer pays, whether or not any price that the carrier charges is actually reduced. Similarly, when customers move to discounted contract services, they pay a lower price and are (by revealed preference) better off for having the option. Thus, whether competition forces actual tariffed prices to fall or forces Verizon to offer lower-priced service packages that customers prefer, the competitive process is working, and all customers are better off.

Id. at ¶ 39.

⁷ Comments of Verizon, pp. 10-11.

⁸ *Id.* at 24.

1000-foot gap to these customers at limited expense and *could* more than offset that expenses with the resulting revenues.⁹

In a similar vein, SBC stresses prospective competition from cable operators in the special access market.¹⁰

As an abstract proposition, potential competition may be an effective constraint against excessive rates as SBC suggests. However, the RBOCs' practice of *increasing* or *maintaining* rates in areas in which the carriers have secured pricing flexibility authority and their restrictive multi-year volume pricing plans strongly indicate that "potential" competition in the market for special access services is not yet sufficient to ensure just and reasonable rates under Section 201(b) of the Act. Further, SBC proves too much in citing the potential deployment of WiMAX as a competitive threat.¹¹ While existing competitive infrastructure may be entitled to some weight in evaluating the merits of continued rate regulation, new, unproven technologies not even deployed should not even be considered by the Commission.

From the end-user perspective, the Commission could put to rest the debate over the extent of competition in special access services in isolated markets by requiring that in the event an RBOC satisfies the pricing flexibility criteria, however modified in this proceeding, the RBOCs may only exercise *downward* pricing flexibility, for all customers in the area in which the competitive criteria are satisfied. This obligation would apply to both monthly rates and to term and volume plans and should apply prospectively and to instances in which the Commission has granted pricing flexibility. In light of the practice of the RBOCs, to date, of *increasing* or *maintaining* special access rates when pricing flexibility is authorized, this requirement is an

⁹ Comments of SBC Communications Inc., p. 15 (emphasis added).

¹⁰ *Id.* at 17.

¹¹ *Id.* at 19.

essential component of the Commission's obligation of ensuring that the customer's interest under the just and reasonable standard of Section 201(b) is reasonably addressed and protected.

A particular concern for API member companies is that the RBOC pricing strategies focus on "extracting the bulk of their supra-competitive profits from the distance sensitive component of their special access pricing."¹² Operating facilities of API member companies are located in remote areas of the country. Interstate product and crude oil pipelines and refineries are not located in financial districts of major metropolitan areas. Natural gas gathering and transmission facilities are located throughout rural areas. Mileage on many of these special access circuits utilized at these remote locations often exceed 50 miles. The vast preponderance of these circuits are provided by the RBOCs, as opposed to other ILECs. Suffice it to say, there are few facilities-based competitors in these areas. Retailers, other natural resource-based industries, many manufacturing facilities of large and small enterprises, as well as countless local governments, do not have and are unlikely to see facilities-based competitors for the foreseeable future.

Similar to the different perceptions of the extent of competition in the market for special access services, a sharp contrast exists between the RBOCs' position of deregulation of all special access rates¹³ and the user position articulated by Ad Hoc. API supports the latter. Briefly, Ad Hoc proposes the reinitialization of rates based on an 11.25% rate of return for special access services, the use of an X-Factor, and downward pricing flexibility.¹⁴ Most importantly, Ad Hoc reasonably addresses arguments questioning the validity of data derived

¹² Comments of Comptel, pp. 9-11.

¹³ Bell South essentially calls for the phased deregulation of special access services including a transitional period in which Phase II pricing flexibility would be granted for all service areas for two years. Comments of Bell South, p. 46.

¹⁴ Comments of Ad Hoc, pp. 35-54.

from the ARMIS reports for calculating the rates of return upon which reinitialization of rates may be based.¹⁵

II. CONCLUSION

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully submits the foregoing Comments and urges the Federal Communications Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

**TELECOMMUNICATIONS COMMITTEE
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¹⁵ Id at 28-32.

CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that on this 29th day of July, 2005, a true and correct copy of the foregoing Reply Comments of the American Petroleum Institute in the Matter of Special Access Rates for Price Cap Local Exchange Carriers, AT&T Corp., Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services (WC Docket No. 05-25) was submitted electronically to the Federal Communications Commission and served via electronic mail upon the following:

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