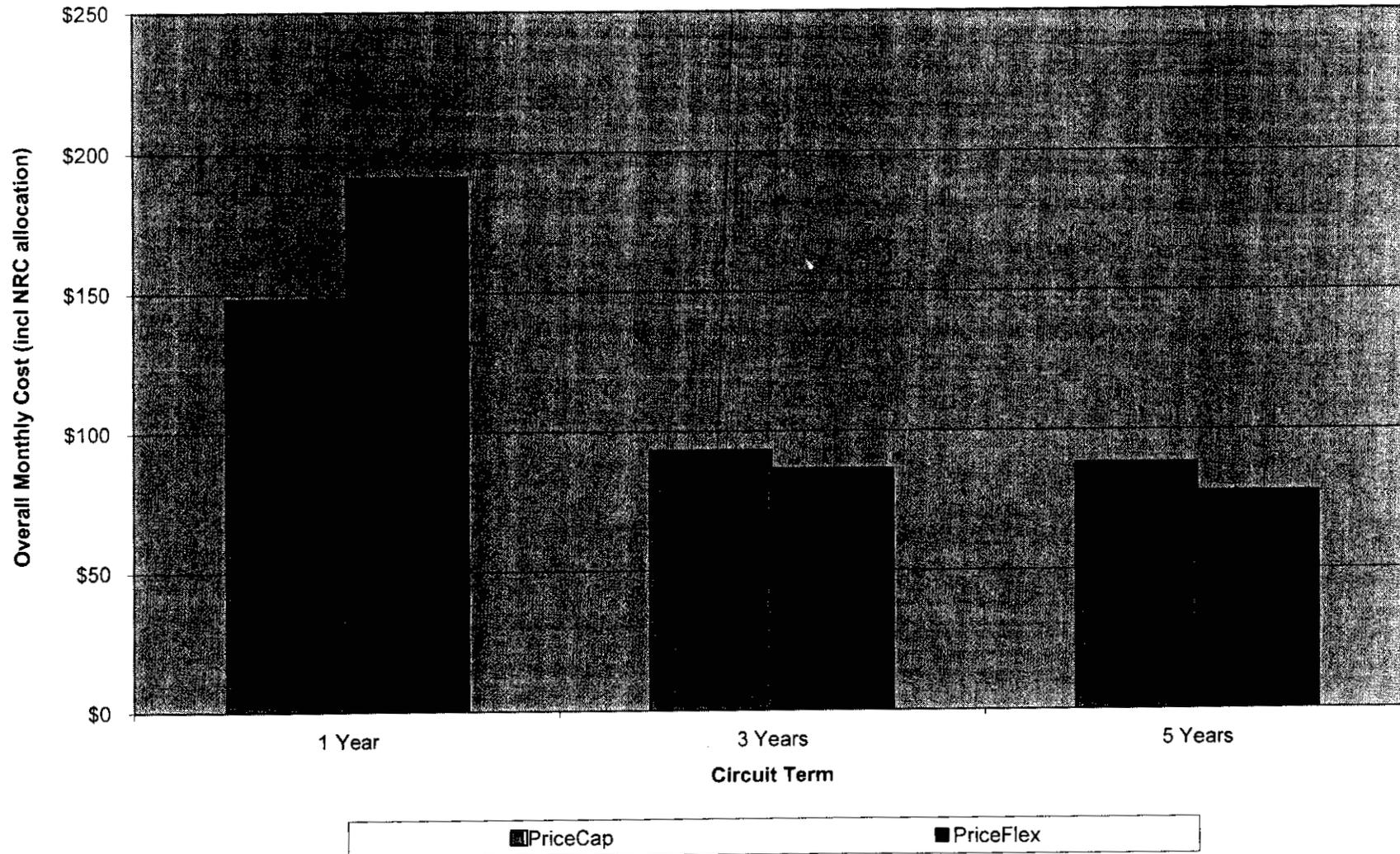
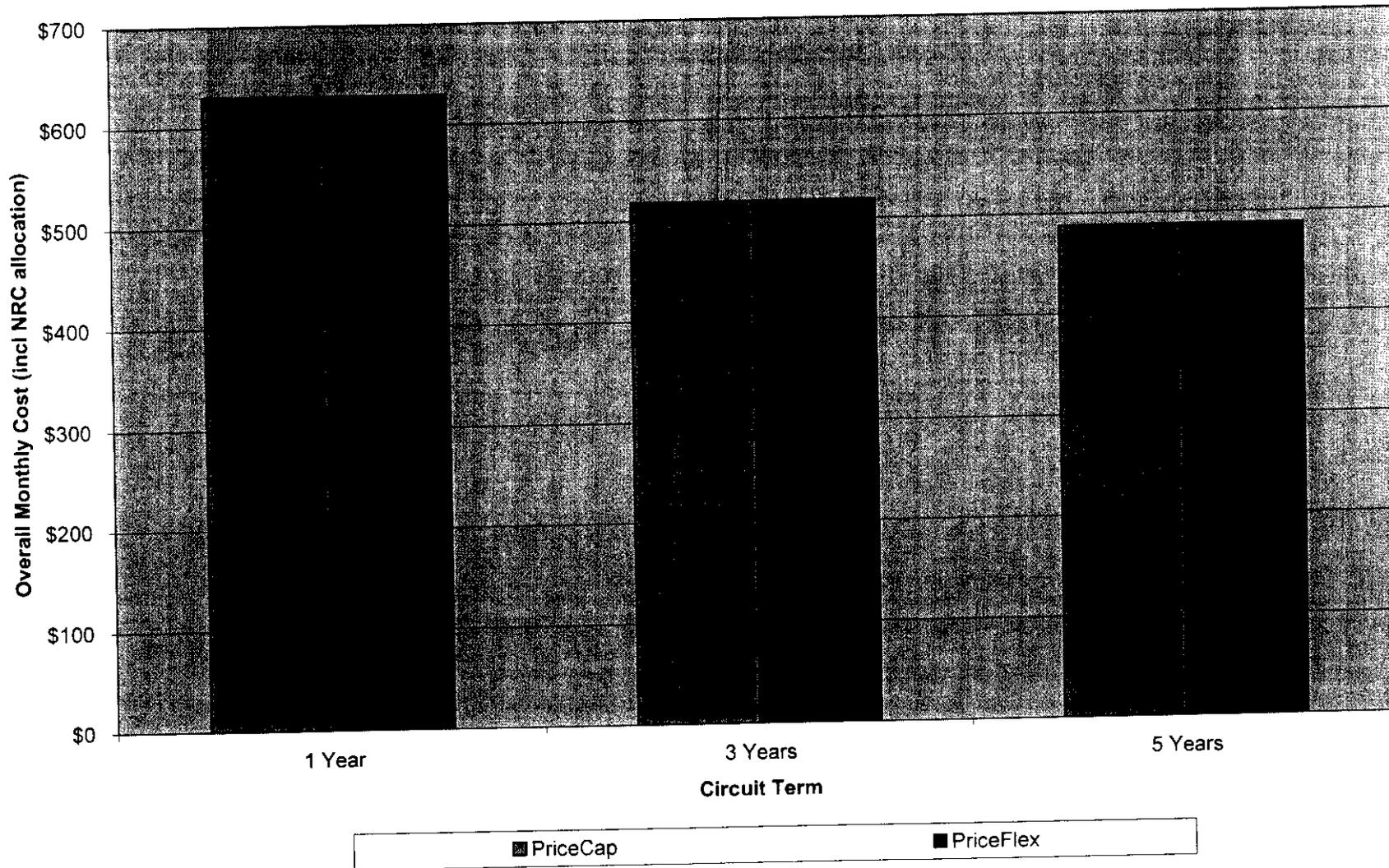


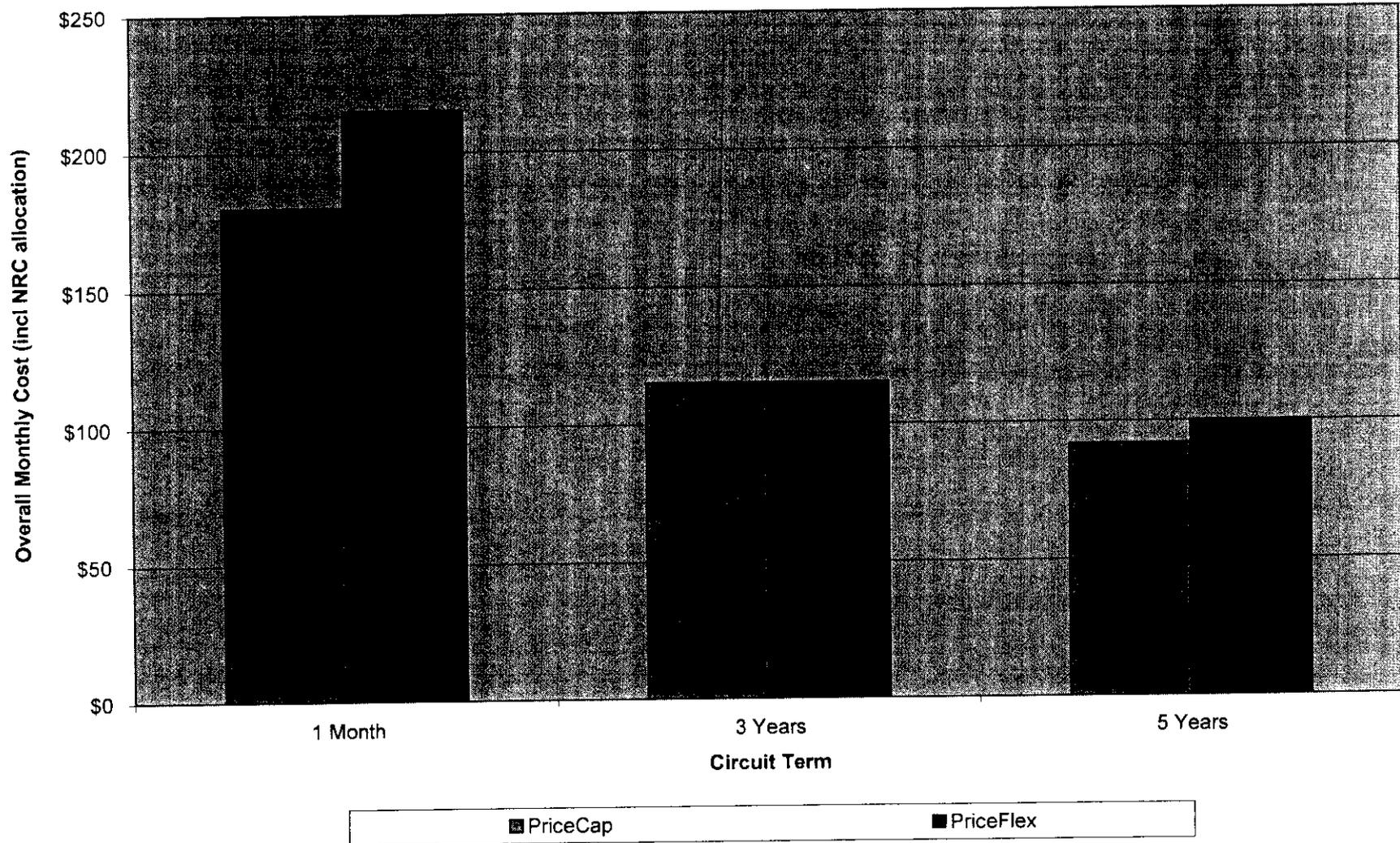
PriceFlex v. PriceCap Comparison of DS1 Charges - Interoffice5Miles  
PacBell FCC 1



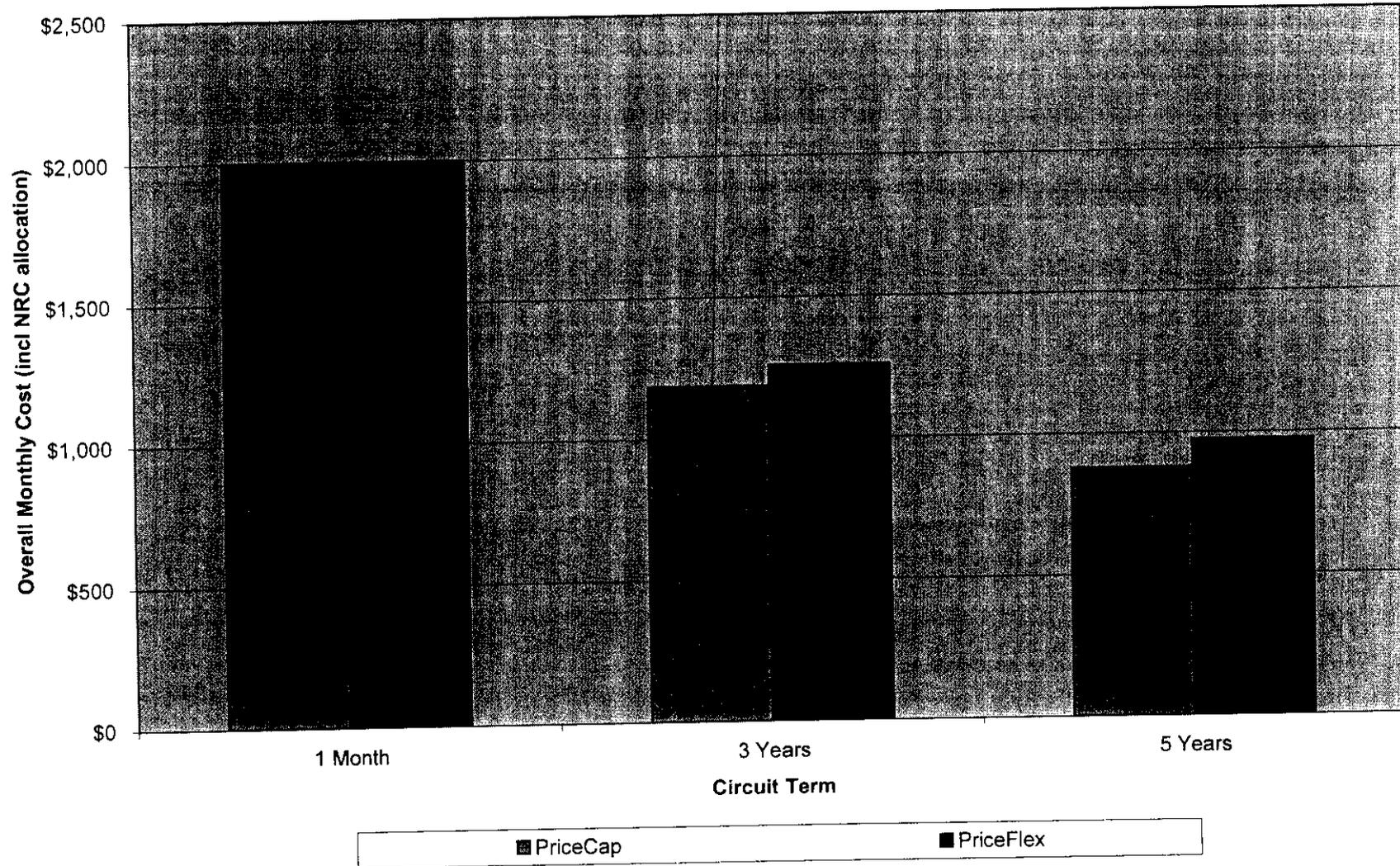
PriceFlex v. PriceCap Comparison of DS3 Charges - Zone 1 - Interoffice5Miles  
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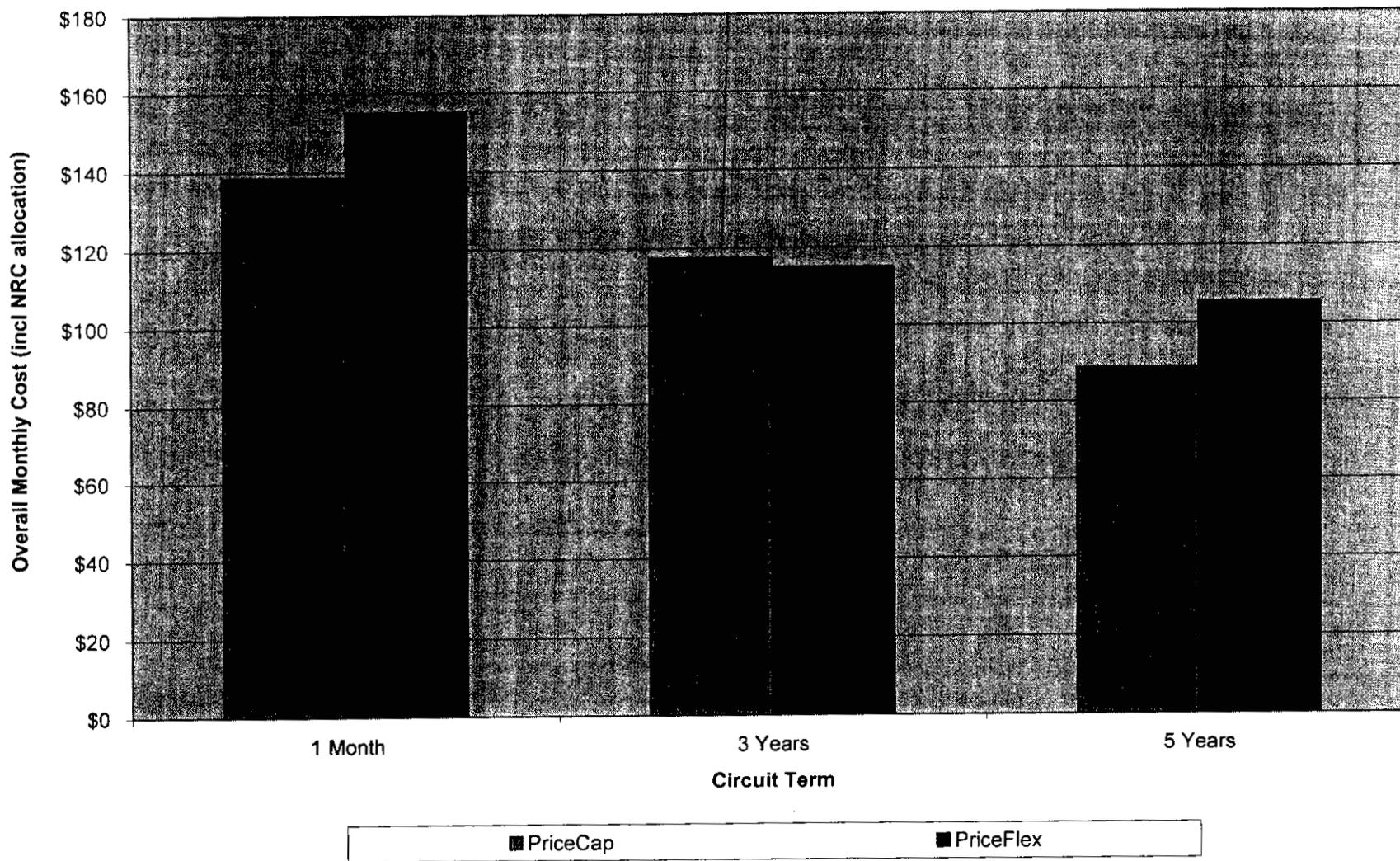
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SWBT FCC 73**



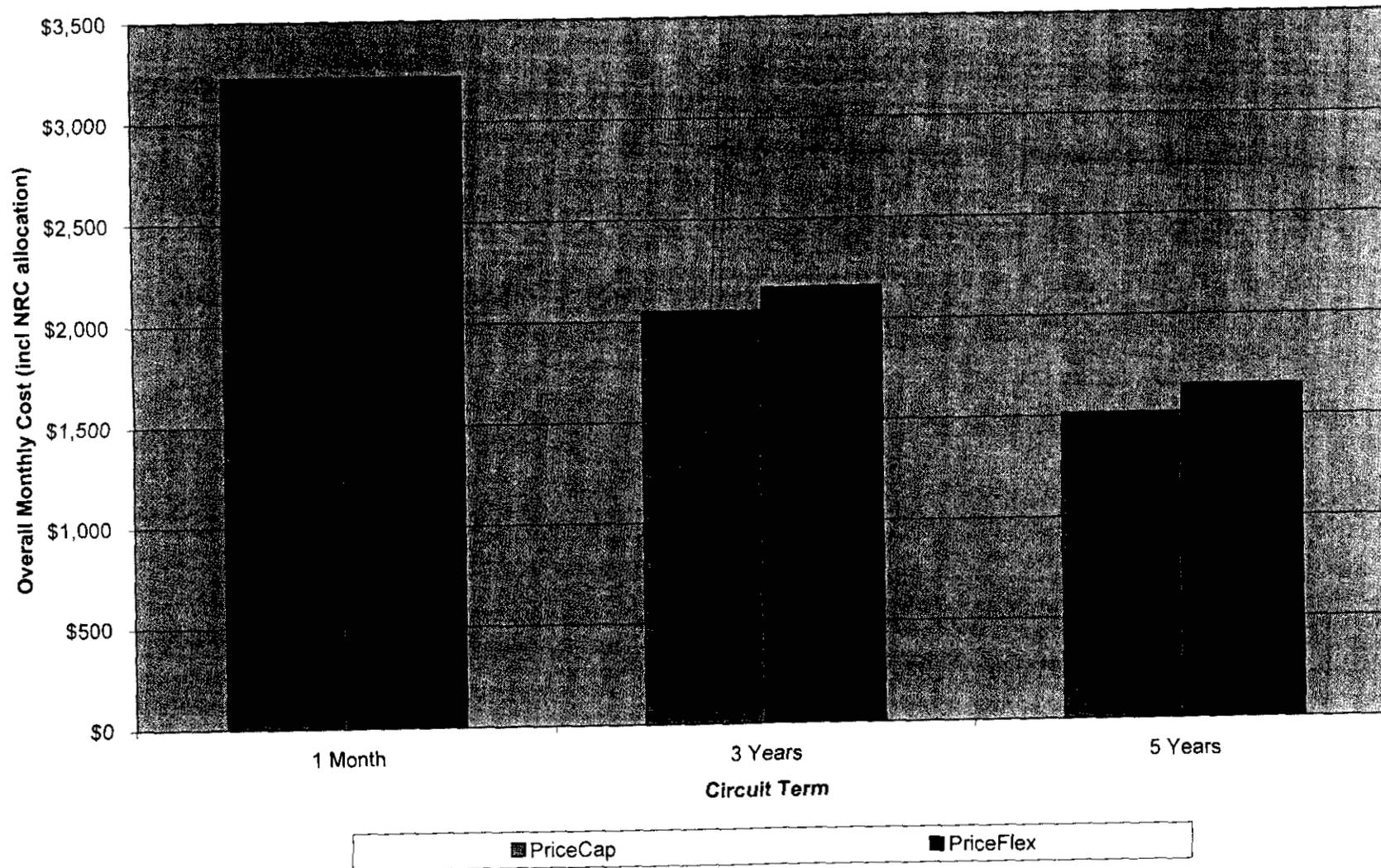
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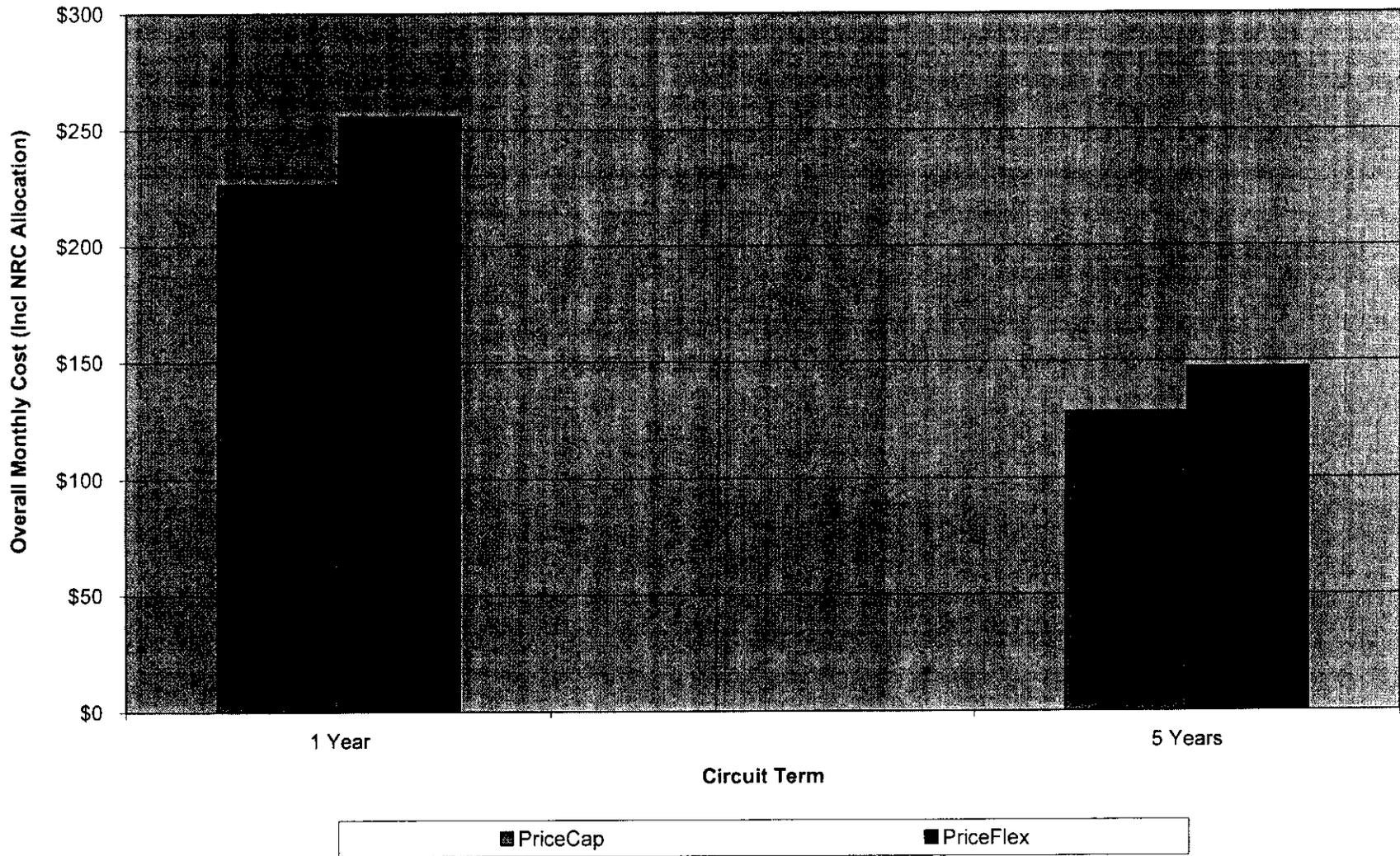
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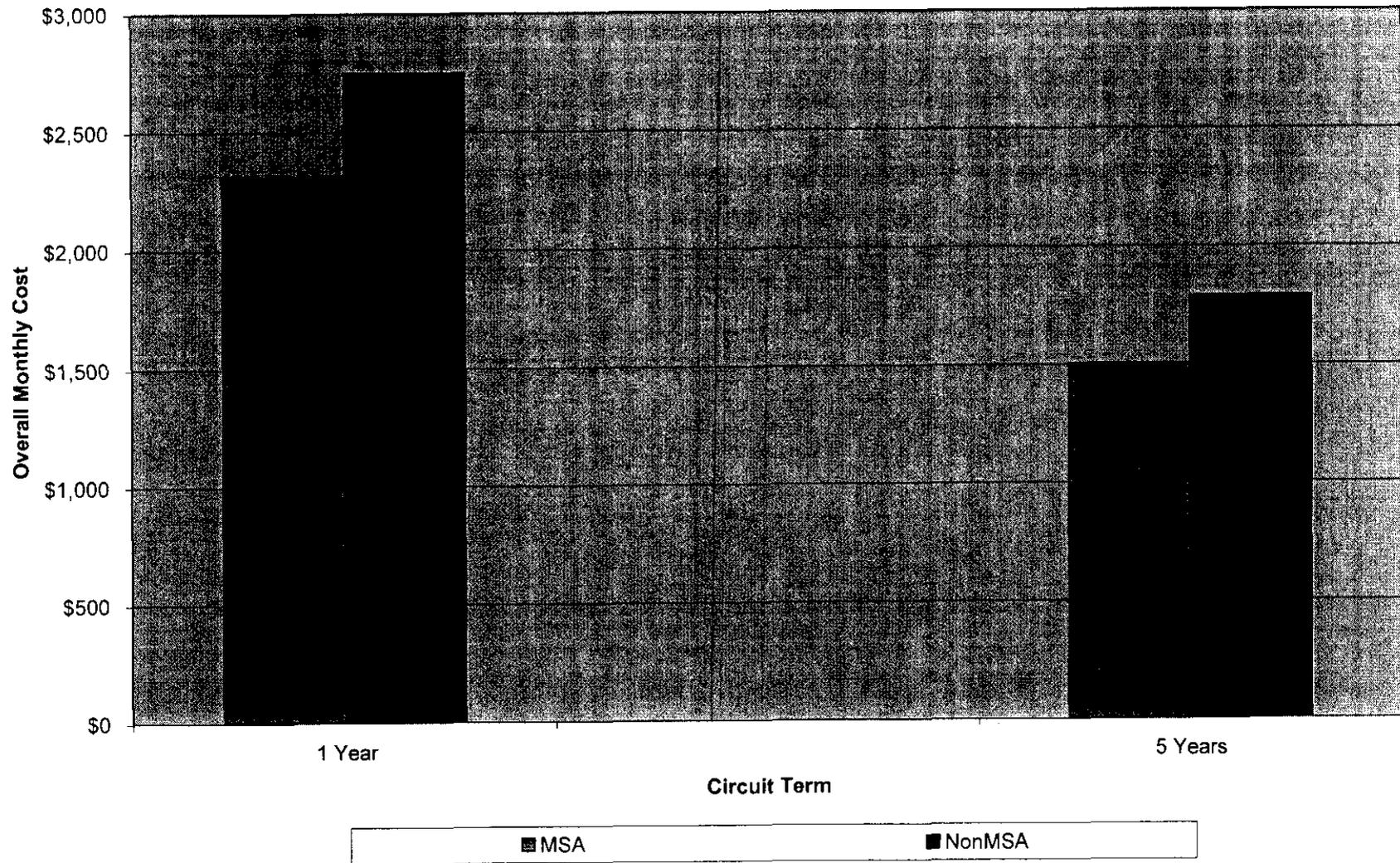
**PriceFlex v. PriceCap Comparison of DS3 Charges - TX Zone 1 - Interoffice5Miles  
SWBT FCC 73**



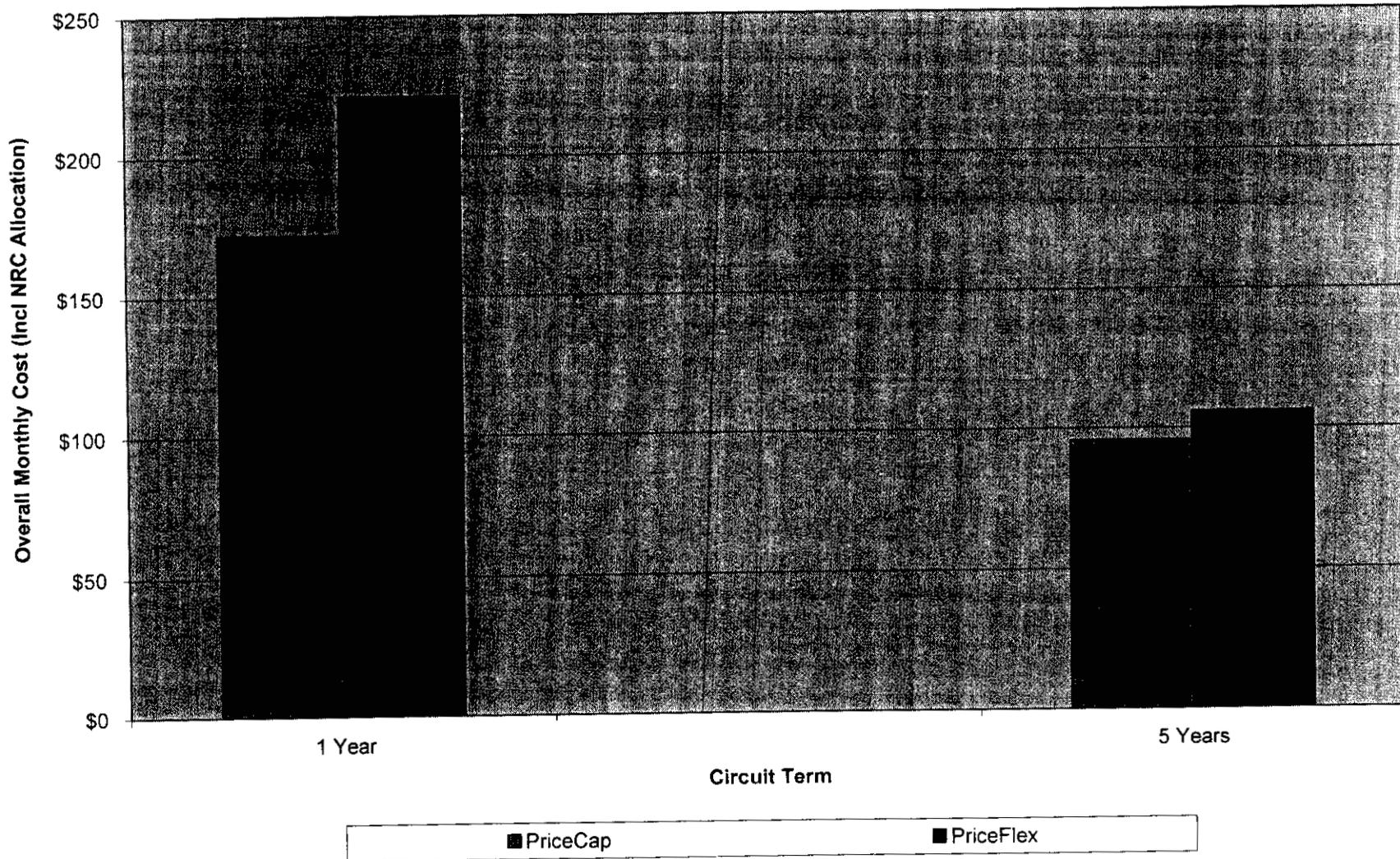
**PriceFlex v. PriceCap Comparison of DS1 Charges - Zone 1 - Channel Termination  
Verizon (South) FCC 1**



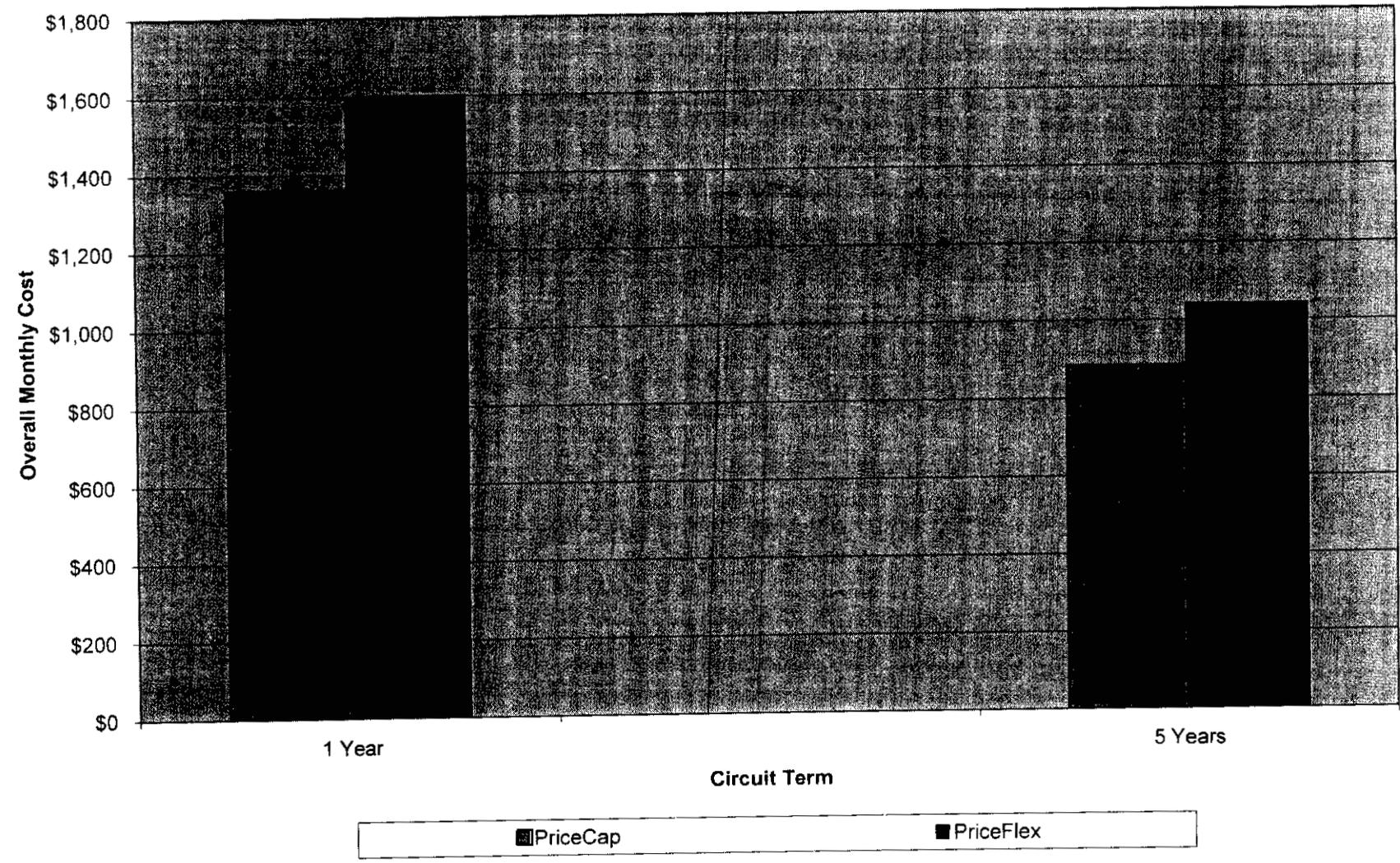
**MSA v. NonMSA Comparison of DS3 Charges - Zone 1 - Channel Termination  
Verizon (South) FCC 1**



PriceFlex v. PriceCap Comparison of DS1 Charges - Zone 1 - Interoffice5Miles  
Verizon (South) FCC 1



### PriceFlex v. PriceCap Comparison of DS3 Charges - Zone 1 - Interoffice5Miles Verizon (South) FCC 1



# **EXHIBIT 7**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of

Special Access Rates for  
Price Cap Local Exchange Carriers

**WC Docket No. 05-25**

Reply Declaration

of

**LEE L. SELWYN**

on behalf of

WiTel Corp.

July 29, 2005

## EXECUTIVE SUMMARY

Initial comments filed by SBC, Verizon and BellSouth all attempt to obfuscate their persistent – and growing – monopoly power – and especially their dominance in the market for special access services – with flawed “evidence” and “analysis” that purports to demonstrate that CLECs are easily able to self-deploy special access loop and transport and that current levels of competition are sufficient to constrain prices for special access services. This tired evidence, which has been previously presented by the same RBOCs to this Commission in the *Triennial Review Remand proceeding (TRR proceeding)*, has been soundly discredited, and nothing in any of the current “updates” being offered by the RBOC Declarants overcomes those fatal defects and factual errors that have rendered this “evidence” and “analysis” useless since the first time it had appeared. In fact, it appears that the current “analyses” are just a continued attempt to muddy the waters and make it more difficult to see the inescapable *facts* that CLECs face substantial hurdles in self-deployment of their own special access facilities, that the RBOCs face extremely limited competition for the provisioning of special access loops and transport (and will face even less competition if the pending SBC/AT&T and Verizon/MCI mergers are permitted to go forward), that the RBOCs’ prices for special access services, post-pricing flexibility, have *increased* or been left at pre-pricing flexibility levels that remain higher than prices that have been subject to a mandatory price caps reduction, and that as a result the RBOCs are able to earn astronomical, supra-competitive returns on special access services.

The RBOCs’ primary evidence comes in the form of updates to the self-styled *UNE Fact Report*. These updates contain gross misrepresentations based up undocumented and unreliable data with respect to existing deployment of CLEC high capacity networks and, from that distorted perspective, make unsupported contentions about the feasibility of additional CLEC deployment. The flaws of the *UNE Fact Report* have been debunked before, and the current updates do nothing to address the underlying mischaracterizations contained therein. The “facts” presented to support the RBOCs’ claims do not take into account the critical capacity distinctions that frequently determine whether it is economically feasible for CLECs to deploy facilities at specific customer locations or along specific transport routes. Despite broad claims with respect to competition for high-capacity facilities and services, the updates to the *UNE Fact Report* contain no data at all on the specific availability of competing CLEC facilities for either high capacity transport or high capacity loops at the DS-n capacity levels without access to which the FCC has determined CLECs are impaired. The RBOCs rely on aggregations of claimed CLEC network capacity, obscuring critical data relating to locations and routes actually being served, and services and capacities actually being furnished. When examined in detail, the “evidence” of CLEC competitive networks cited in the updates to the *UNE Fact Report* include route miles of fiber in London, ILEC-owned fiber, gas pipelines, and long haul fiber used to provide interexchange services, among numerous other errors. Moreover, much of the “evidence” of competitive fiber networks provided in the

*Reply Declaration of Lee L. Selwyn – Executive Summary*

updates to the *UNE Fact Report* is a hodgepodge of quotes, misused CLEC data, and generalizations that teach nothing about the actual state of competition for high capacity services.

With respect to competition for high-capacity facilities and services, the updates to the *UNE Fact Report* contain no data at all on the availability of competing CLEC facilities for either high capacity transport (special access interoffice facilities) or high capacity loops (special access local channels). Instead, the updates choose to present “data” (discussed below) on “CLEC Networks” followed by unsupported *assertions* that the existence of CLEC networks satisfies a competing carrier’s need for both high-capacity transport and high capacity loops. These hollow claims have been rebuffed numerous times by the sworn testimony of various CLEC executives.

To bolster their arguments that special access represents a viable alternative to UNEs, the RBOCs contend that special access prices have decreased since the onset of pricing flexibility. This assertion is patently false. In fact, special access prices have increased (and the price/cost gap has widened) under pricing flexibility, confirming the persistence of the RBOC monopoly with respect to these essential services and facilities. The RBOCs’ flawed analyses rely upon contrived and misleading calculations that (1) substitute “average revenue” for actual prices, (2) improperly take credit for mandatory special access rate decreases (in areas where the RBOCs have not obtained pricing flexibility) made pursuant to the Commission’s price cap rules, and (3) ignore entirely the fact that during the period covered by the analysis there has been a significant shift in demand toward higher capacity OC-n services, which have a lower price per voice grade equivalent channel than DS-n services. Through these various manipulations, the RBOCs’ “evidence” totally obscures the fact that the least competitive DS-n services have been subject to the largest overall rate increases. In making their inflated claims about special access competition, the RBOCs also fail to acknowledge that the only way CLECs have stayed viable in many cases has been by taking advantage of RBOC “optional pricing plan” volume and term contracts for special access services – arrangements that may offer immediate financial benefits, but which operate to lock the RBOCs’ CLEC rivals into long-term contractual arrangements that impose often severe financial penalties upon the CLEC either for deploying its own competing facilities or, where available, ordering UNEs to serve the affected locations.

New RBOC analyses that purports to measure capacity-specific pricing trends for DS-1 and DS-3 services suffer from the very same infirmities as the overall “average revenue” method. In actuality, this analysis contains no pricing data whatsoever. Service specific revenue has been substituted for actual prices, and changes in demand and movement to “optional pricing plan” contracts have been entirely ignored. It is impossible to glean any information as to actual pricing trends from this analysis. This new analysis begs the all-important question as to why the RBOCs *still* choose to use special access revenue as a proxy for actual prices when such pricing data is available in the RBOC tariffs. The answer is all too clear: actual prices for special access services subject to pricing flexibility have gone up or been artificially supported at supra-competitive levels, and the only way to view the situation any differently is to ignore and obscure the facts.

REPLY DECLARATION OF LEE L. SELWYN

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of

Special Access Rates for  
Price Cap Local Exchange Carriers

**WC Docket No. 05-25**

REPLY DECLARATION OF LEE L. SELWYN

INTRODUCTION

1       1. My name is Lee L. Selwyn; I am President of Economics and Technology, Inc. (“ETI”),  
2 Two Center Plaza, Suite 400, Boston, Massachusetts 02108. ETI is a research and consulting  
3 firm specializing in telecommunications and public utility regulation and public policy. I have  
4 participated in numerous proceedings before the Federal Communications Commission (“FCC”  
5 or “Commission”) dating back to 1967, and have appeared as an expert witness in hundreds of  
6 state proceedings before more than forty state public utility commissions. I have submitted  
7 declarations in several recent dockets of direct relevance to the present rulemaking, specifically,  
8 in RM No. 10593, the *AT&T Petition for Rulemaking to Reform Regulation of Incumbent Local*  
9 *Exchange Carrier Rates for Interstate Special Access Services* (January 23, 2003, on behalf of

1 AT&T Corp.), and in WC Docket No. 04-313, the *Triennial Review Remand* proceeding  
2 (October 4 and October 19, 2004, on behalf of AT&T Corp.). I was also a co-author of  
3 *Competition in Access Markets: Reality or Illusion – A Proposal for Regulating Uncertain*  
4 *Markets*, a report prepared for the Ad Hoc Telecommunications Users Committee and submitted  
5 as an *ex parte* filing by the Ad Hoc Committee in RM No. 10593, in this rulemaking, and in WC  
6 Docket Nos. 05-65 and 05-75, the SBC/AT&T and Verizon/MCI merger proceedings,  
7 respectively. My complete Statement of Qualifications is annexed hereto as Attachment 1 and is  
8 made a part hereof.

9

10 2. I have been asked by WilTel to respond to two separate contentions being advanced by  
11 RBOCs in this proceeding. First, RBOC claims that competition for special access service is  
12 presently sufficient to obviate the need for any changes to the Commission's pricing flexibility  
13 rules; and second, claims that special access prices have *decreased* as a result of the  
14 Commission's pricing flexibility rules. In this declaration, I demonstrate that these various  
15 claims are without merit and are, in fact, precisely opposite to "on the ground" reality.

1 THE RBOCs' COMPETITIVE EVIDENCE IS FLAWED

2

3 **The RBOCs continue to rely upon discredited "evidence" that they had previously**  
4 **advanced in the Commission's *Triennial Review Remand* proceeding.**

5

6 3. Faced with the daunting task of attempting to demonstrate a vibrant competitive  
7 landscape for special access services where none exists, the RBOCs have trotted out the same  
8 flawed evidence that they relied so heavily upon in the *Triennial Review Remand* proceeding:<sup>1</sup>  
9 specifically, the so-called *UNE Fact Report* ("*Fact Report*") authored by RBOC attorneys Peter  
10 Huber and Evan Leo.<sup>2</sup> In the *Triennial Review Remand* proceeding, the RBOCs had posited the  
11 argument that UNEs were unnecessary because CLECs were already competing throughout the  
12 RBOC territories (as purportedly demonstrated by the *Fact Report*) and that to the extent that  
13 CLECs were impaired in their ability to self-provision services in a particular location, *special*  
14 *access* services were available in place of UNEs.

15

---

1. *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-989; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147 (*TRR Proceeding*).

2. *UNE Fact Report 2004*, Peter W. Huber and Evan T. Leo, Prepared for and Submitted by BellSouth, SBC, Qwest and Verizon, October 4, 2004 ("*UNE Fact Report*"). Unless otherwise noted, all citations refer to Section III of this report.

1           4. The Commission soundly rejected the RBOCs' contention that the availability of special  
2 access provided a reasonable alternative to UNEs.<sup>3</sup> In the instant rulemaking proceeding, a  
3 similar argument is being put forth by the RBOCs, only this time the argument seems to be that  
4 regulation of special access prices is unnecessary because competition for special access services  
5 is rampant (as purportedly demonstrated once again by the *UNE Fact Report*),<sup>4</sup> and that even in  
6 those places where it is not, UNEs are still available to discipline special access prices.

7  
8           5. The continued reliance upon the *UNE Fact Report* at this point in time is particularly  
9 noteworthy because, at the time that it was written (in late 2004), both AT&T and MCI were  
10 included (as they should have been) as RBOC competitors. Clearly that status is no longer valid.  
11 AT&T is seeking to be swallowed up into SBC, and MCI is seeking to be absorbed into Verizon.  
12 Certainly it is no longer appropriate to count AT&T "last mile" and transport assets within the  
13 13-state SBC footprint as competing facilities, and for the same reason it is no longer appropriate

---

3. *Triennial Review Remand ("TRR") Proceeding, Order On Remand*, 20 FCC Rcd 2533 (2004) ("TRRO").

4. *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Comments of Verizon, filed June 13, 2005, ("*Verizon Initial Comments*") at 24-35; *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Comments of BellSouth, filed June 13, 2005, ("*BellSouth Initial Comments*") at 13-23; *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Comments of SBC Communications, filed June 13, 2005, ("*SBC Initial Comments*") at 9-20. Declaration of Howard Furchtgott-Roth and Jerry Hausman on Behalf of BellSouth, WC Docket No. 05-25, June 13, 2005 ("*Furchtgott-Roth/Hausman WC 05-25, (BellSouth)*") at 13-17 and 31; Declaration of Quintin Lew on Behalf of Verizon, WC Docket No. 05-25, June 13, 2005 ("*Lew Declaration, (Verizon)*") at Parts I and II and Appendix Tables; Declaration of Eric Bruno on Behalf of BellSouth, WC Docket No. 05-25, June 13, 2005 ("*Bruno WC 05-25, (Verizon)*").

1 to include MCI as a competitor to Verizon within any of the Verizon operating areas. The  
2 withdrawal of both AT&T and MCI as RBOC “competitors” is underscored by both firms’  
3 submissions (or in the case of MCI, lack of submissions) in the instant rulemaking. AT&T was  
4 the *moving party* behind the Commission’s current review of special access pricing and pricing  
5 flexibility, yet in the instant rulemaking had confined itself to a perfunctory *eight-page* comment  
6 with no supporting evidentiary declarations. MCI took a pass altogether. Indeed, if post-merger  
7 SBC and post-merger Verizon do intend to compete out-of-region as they so vociferously claim,  
8 they would presumably have the same interest in securing cost-based special access rates as any  
9 of the other non-RBOC parties submitting comments and evidence in this docket. The  
10 continuing opposition on the part of both SBC and Verizon to special access pricing reform –  
11 and the “gun jumping” silence of pre-merger AT&T and MCI – speak volumes as to their true  
12 post-merger out-of-region competitive intentions.

13

14 6. Despite the known infirmities in the *UNE Fact Report*, which I will describe in more  
15 detail later, BellSouth, SBC and Verizon continue to rely upon it and similar unfocussed and ill-  
16 conceived studies of their own that mimic it.

17

18 7. BellSouth pins its evidence of “robust” and “substantial” special access competition upon  
19 a market share analysis developed by Declarant Stephanie Boyles of RHK.<sup>5</sup> The RHK study  
20 apparently begins with a review of several other consultants’ “studies” or analyses of overall US

---

5. *BellSouth Initial Comments*, at 13, at 23 -37; Declaration of Stephanie Boyles on behalf of BellSouth, WC Docket No. 05-25, June 13, 2005 (“*Boyles WC 05-25 decl., (BellSouth)*”).

1 “enterprise” private line demand, combined with some other unspecified data on businesses  
2 located in the BellSouth footprint, and from that comes up with an “estimate of total enterprise  
3 demand for data circuits in BellSouth’s footprint.”<sup>6</sup> I say “apparently” because Ms. Boyles does  
4 not provide any source data, any information on the methodology that RHK had used, if any, to  
5 translate the nationwide studies (simply identified as “Vertical Systems” and “Frost and  
6 Sullivan” “estimates”) into BellSouth-specific data or to validate the robustness of the data. The  
7 remaining steps in the “market share” analysis involved nothing more than subtracting  
8 BellSouth’s services from the “estimated” total demand. The Boyles study purportedly  
9 measures market share using three separate metrics, viz.: “product units sold,” “capacity,” and  
10 “revenues.”<sup>7</sup> In truth, all three of these metrics are created from the very same undocumented  
11 and unsupported studies identified above. While BellSouth waxes eloquently for fifteen pages in  
12 its *Comment* as to the import of the *results* of Ms. Boyles’ study, she herself describes and  
13 documents the entire thing in seven paragraphs and a handful of Powerpoint slides. The

---

6. It is not clear whether the RHK market share numbers include all BellSouth special access services, for example, services provisioned to *wireless* carriers, or whether some classes of circuits are excluded. The demand and pricing evidence provided in Attachments 3 and 5 of BellSouth’s filing specifically, and inexplicably, exclude wireless services – numbers included in the short powerpoint presentation included as Appendix A to the Boyle Declaration suggest that the RHK analysis may as well. Review of Attachment 5 in conjunction with the special access revenues reported by BellSouth in ARMIS for 2004 reveals that the “wireline” special access revenues make up only about half of BellSouth’s special access revenues. (ARMIS 2004 Special access revenues = \$2.4-Billion: Total “wireline” special access revenues documented on Attachment 5 = \$104-million per month, annualized this is \$1.25-Billion, or just over half of total reported special access revenues.) If and to the extent that half the special access market is excluded from the RHK study, the results are meaningless.

7. BellSouth Initial Comments, at 24.

1 Commission is supposed to take these market share numbers “as is” without any supporting  
2 documentation, and with no ability to replicate or verify them. Clearly it should not do so.

3

4 8. Ms. Boyles creates a revenue-based market share estimate by taking the demand  
5 estimates developed in the “product units sold” study and multiplying them by estimated unit  
6 prices for BellSouth special access services, BellSouth UNEs, and alternative access service  
7 provider services.<sup>8</sup> Once again, no documentation is provided to explain how the unit prices  
8 were developed (although Ms. Boyles does identify some data sources). She documents that the  
9 average special access and UNE prices that she had used were provided by BellSouth, and that  
10 the “average” DS-1 price is \$240.<sup>9</sup> Yet in its pricing evidence included in Attachment 3 in this  
11 very filing, BellSouth develops a reported “average” revenue per DS-1 circuit of \$313.85 for  
12 2004. No explanation is offered by either Ms. Boyles or by BellSouth as to which number is  
13 correct (if indeed either number is correct), or why they are different.

14

15 9. Even taking the Boyles market share numbers on their face, however, BellSouth’s vision  
16 of a “robustly competitive” market is clearly not supported. The RHK study documents that  
17 BellSouth’s market share for circuits is 89% (combined special access and UNE demand) for  
18 DS-1 local channels. But a review of Ms. Boyles’ *results* included in Appendix A to her  
19 declaration reveals that DS-1 tail circuits represent 97.7% of the total special access tail circuits

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8. Boyles decl., at paras. 6-8.

9. *Id.*, at para. 7.

1 reported to Ms. Boyles by BellSouth. The BellSouth data used by Ms. Boyles shows BellSouth  
2 as providing a total of 234,465 DS-1 “tail” circuits (as UNEs or Special Access). Ms. Boyles’  
3 estimate of the entire OCn market for tail circuits is less than 2,000 (1,615).

4

5 10. Harold Furchtgott-Roth and Jerry Hausman, in a joint Declaration for BellSouth, base  
6 their finding of competitive conditions in the special access market upon the *UNE Fact Report*<sup>10</sup>  
7 and upon very similar research conducted by reviewing recent marketing materials on carrier  
8 websites. The Furchtgott-Roth/Hausman table included all providers that indicated both that  
9 they had “facilities” in a metro area, and that they offered special access. No effort appears to  
10 have been made to ascertain whether the “special access” services being offered were being  
11 provided over the carriers’ *own* facilities, or whether the special access services in question were  
12 resold ILEC special access services. In any event, as I discuss in more detail below, this kind of  
13 casual website-based research produces little useful information. More to the point, even if the  
14 Furchtgott-Roth/Hausman research is correct as to the number of alternative access providers  
15 offering some form of special access services over their own facilities in some part of a particular  
16 metro area (a scenario that is unlikely to be true), it provides no information as to the level of  
17 competition available for the most widely-used special access services – those operating at  
18 speeds *below OCn levels*.

19

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10. Furchtgott-Roth and Hausman Declaration, at 14-16 and 31.

1           11. Rather than citing the *UNE Fact Report* by name, Verizon replicates much of the data  
2 from that report under the guise of “new” analyses by its Declarants Quentin Lew and Eric  
3 Bruno,<sup>11</sup> based upon which it purports to find the existence of “extensive facilities-based  
4 competition wherever significant special access demand exists.” Lew’s declaration is almost  
5 entirely premised upon data originally presented in the Triennial Review Remand proceeding,  
6 and presents an update to several *Fact Report* tables in the appendices to his declaration. Lew’s  
7 Appendix A contains details of a Verizon-specific analysis of CLEC fiber deployment that had  
8 originally appeared in a Verizon *ex parte* filed in CC Docket No. 01-338 on July 2, 2004, which I  
9 had extensively rebutted in a Declaration I prepared on behalf of AT&T in that same proceeding,  
10 filed on October 4, 2004.<sup>12</sup> Lew’s Appendix B is a rework of Table 1 of the original *UNE Fact*  
11 *Report*, suffering from many of the infirmities that made the original work completely useless.  
12 Appendix C of the Lew Declaration (entitled “Wholesale Suppliers of Special Access Services”)  
13 is a rework and compilation of data contained in the original *Fact Report*, Appendix III Tables 2,  
14 3, 7, 14, 15, and 16. Eric Bruno’s Declaration, while it contains some newly presented “data,”  
15 represents nothing more than the same old overblown compilation of telecom website and  
16 advertising materials – in this case roping in materials for everybody from equipment

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11. Verizon initial comments, at 22.

12. *Competing Providers Are Successfully Providing High-Capacity Services to Customers Without Using Unbundled Elements*, Ex Parte Submission of Verizon Communications in CC Docket Nos. 01-338, 96-98, 98-147, filed July 2, 2004 (“*Verizon July 2, 2004 ex parte*”); *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Declaration of Lee L. Selwyn on behalf of AT&T Corp., October 4, 2004 (“*Selwyn TRR Declaration*”), at para. 36.