

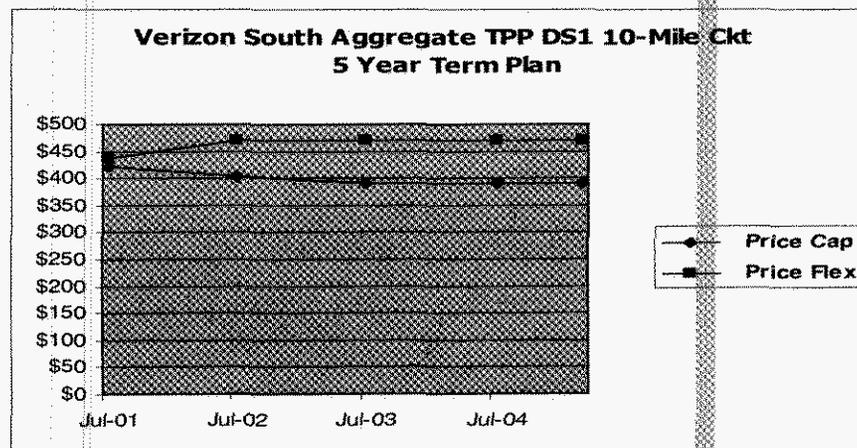
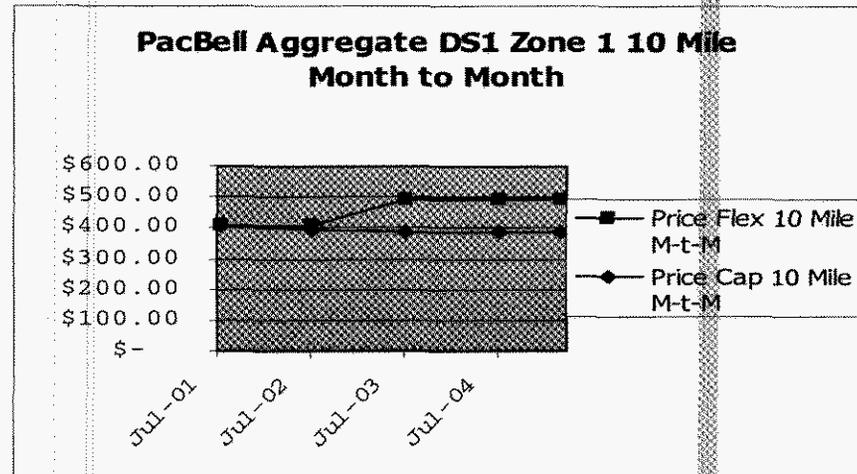
## Improving the Commercial Negotiation Process for Special Access Services

Presented by: Global Crossing Limited  
To: Federal Communications Commission  
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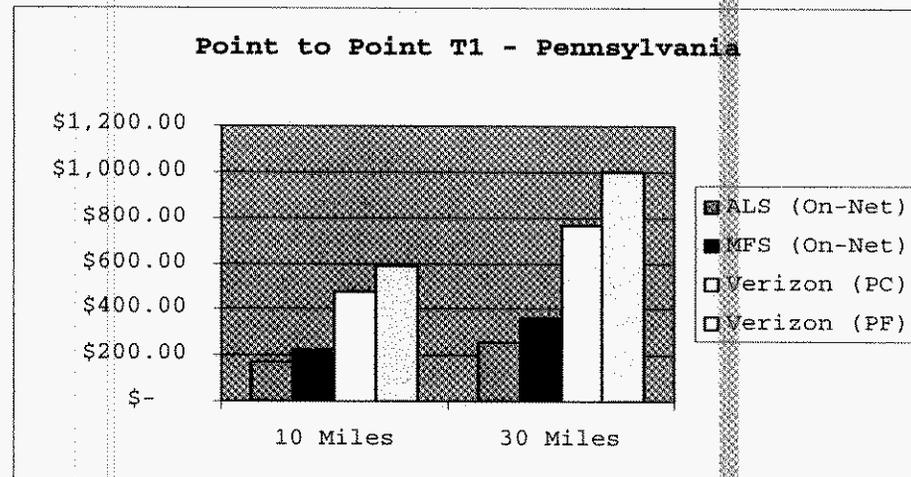
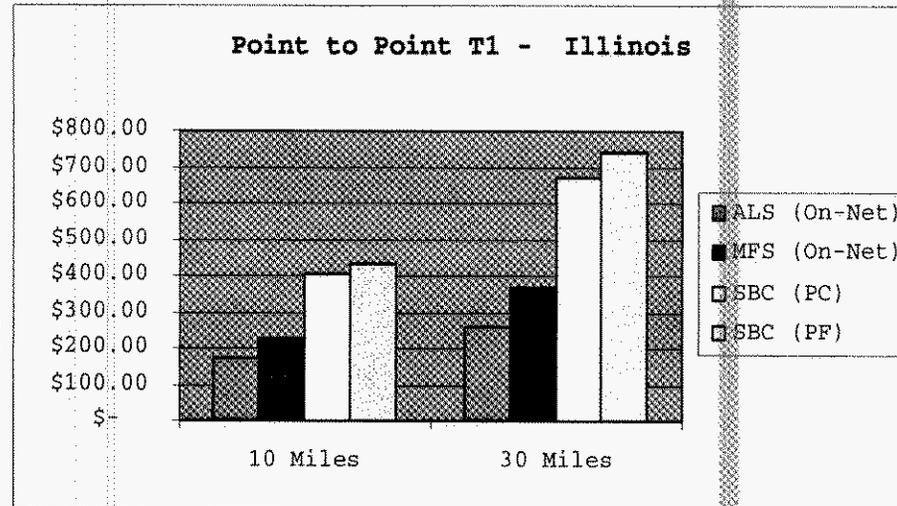
## The Special Access Market Is Characterized by Limited Competition

- SBC and Verizon receive over 90% of Global Crossing's in-region special access spend
- Virtually every special access user has reported similar dependencies in the merger dockets and in WC Docket 05-25
- Prices for special access services have remained constant or increased under Phase II pricing flexibility



# AT&T and MCI Are the Largest Special Access Competitors

- AT&T and MCI purchased the largest CLECs (TCG and MFS, respectively)
- AT&T and MCI have the highest traffic volumes and largest customer base to support continued facilities-deployment
- AT&T and MCI have greater access to capital
- AT&T and MCI compete on price



## **“Final Offer” Arbitration Will Facilitate Reasonable Agreements in Light of SBC and Verizon’s Increased Market Power**

**→ Under “Final Offer,” or “Baseball Style,” Arbitration, each side submits its best and final offer, and the arbitrator may select only from the offers submitted.**

- Forces parties to make reasonable offers
- Replicates competitive market forces
- Avoids burdening the Commission with responsibility for ratemaking and regulatory oversight

**→ The Commission adopted this mechanism in its order consenting to News Corp.’s acquisition of an interest in Hughes Electronics, and the mechanism established there is the model for this proposal.**

- The Commission was concerned that the combination of News Corp.’s regional sports network programming with DirecTV’s video distribution platform would enable News Corp. to extract higher prices or other concessions from competing multichannel video programming distributors.
- The arbitration remedy allows competing MVPDs to demand commercial arbitration when they are unable to negotiate a “fair” price for programming.
- The Commission explained that “[f]inal offer arbitration has the attractive ‘ability to induce two sides to reach their own agreement, lest they risk the possibility that a relatively extreme offer of the other side may be selected by the arbitrator.’”

## Proposed Arbitration Process

### → Commercial Arbitration Remedy:

- Carriers seeking special access services from SBC or Verizon (or their subsidiaries, including AT&T and MCI) could request commercial arbitration of price or non-price terms.
- Negotiations would continue during a “cooling off” period.
- The Requesting Carrier will submit a formal demand for arbitration, together with its “final offer,” to AAA.
- SBC/Verizon then will submit their “final offer.”
- The AAA will then provide copies of each party’s offer to the other party.
- The final offers will be in the form of a contract for access services for a minimum period of 1 year and a maximum period of 3 years, with automatic renewals.

# Proposed Arbitration Process

## → Rules of Arbitration:

- The arbitration will be conducted (i) by a single arbitrator selected by the AAA; (ii) under expedited procedures; and (iii) in New York for Verizon and Los Angeles for SBC.
- The arbitrator must choose the “final offer” of the party which most closely approximates the prevailing commercially reasonable rates, terms and/or conditions in the industry with respect to the access services at issue, and which is most consistent with existing federal telecommunications policy.
- To determine commercial reasonableness, the arbitrator may consider, *e.g.*:
  - Current contracts between the Requesting Carrier and SBC/Verizon or other access providers in the SBC/Verizon region;
  - Current contracts between other access customers and SBC/Verizon or other access providers in the SBC/Verizon region;
  - Evidence of the relative value of the SBC/Verizon services compared to others' services;
  - Changes in the value of non-SBC/Verizon access agreements;
  - Changes in the value or costs of the provision of access services;
  - Evidence of rates, terms and/or conditions for comparable services; and
  - Evidence of rates, terms and/or conditions for retail services.

# Proposed Arbitration Process

## → Other Procedural Issues:

- If the arbitrator finds that one party's conduct has been unreasonable, the arbitrator may assess all or a portion of the other party's costs and expenses (including attorney fees) against the offending party.
- Following the arbitrator's decision, the terms of the new access agreement, including payment terms, if any, will become retroactive to the expiration date of the previous agreement.
- Each party pays its own fees and costs, and the parties split the arbitrator's fees and costs equally.
- The result of the arbitration shall be binding on the parties, and judgment on the arbitrator's award may be entered in any court having jurisdiction.
- The arbitrator's decision is reviewable by the Commission.