COMPTEL
The Communications Association of Choice

August 10, 2007

Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

EX PARTE NOTICE

RE: WC Docket No. 05-25; RM-10593; and WC Docket No. 06-125

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, COMPTEL hereby gives notice that, on August 9, 2007, the following parties met with Scott Deutchman, Legal Advisor to Commissioner Copps, to discuss the history leading up to above- referenced special access proceeding: Colleen Boothby of Levine Blaszak Block and Boothby on behalf of the Ad Hoc Telecommunications Users Committee; John Heitmann of Kelley Drye Collier Shannon on behalf of XO Communications and NuVox Communications; Lisa Youngers of XO Communications; Amy Wolverton of T-Mobile; Anna Gomez of Sprint Nextel; Angela Simpson of Covad Communications; Devendra Kumar of Goldberg, Godles, Wiener & Wright on behalf of Mobile Satellite Ventures Subsidiary LLC; Russ Merbeth of Eschelon Telecom; Mark Del Bianco on behalf of PAETEC Communications; Eric Branfman of Bingham McCutchen on behalf of a number of COMPTEL members; and Jonathan Lee and the undersigned of COMPTEL.

Attached is the presentation that was made during the meeting. Parties also mentioned that some of the issues addressed in the discussion also merit consideration in the Commission's deliberation of the petitions of AT&T, BellSouth and Qwest for Forbearance from Title II and Computer Inquiry Regulations with Respect to Broadband Services.

Sincerely,
/s/ Karen Reidy

cc: Scott Deutchman

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I. Fundamental changes have occurred in the special access marketplace

- *Then*, it was a collection of end-to-end services (e.g., private lines, telegraph lines, Muzak, "hi-cap," WATS access lines)
- *Now*, it's a crucial input for other products and services
  - For dramatically different private networks (*e.g.*, national corporate networks, secure data networks, the Internet)
  - For customers who are also competitors (IXCs, CLECs, wireless carriers, ISPs)
- *Now*, it's a powerful competitive weapon
  - In the '80's and '90's, BOCs were indifferent to their access customers
  - After 2000, BOCs compete with their access customers

II. Major milestones in special access regulation

1. *Access*: A default category in the Part 69 access rules for everything other than (switched) POTS, regulated under rate of return. (1984-1999)

2. *Price caps*: "Incentive regulation" permits higher returns and protects consumers from exploitation by rewarding efficiency (1991-2000)
   - The end of legacy rate of return regulation
   - Revised twice to increase the reward for operating more efficiently

3. *Regulatory Flexibility*: The Commission "bets on the come" (1999-date)
   - The Commission predicts that competition is inevitable once an MSA has a certain level of co-location

	Trigger	Relief
Phase I	• Co-location in 15% of wire centers or in wire centers covering 30% of BOC revenues in the MSA • At least one independent transport provider serving co-locater in each wire center • Channel terminations get special rule: 50/65%	• Services stay under price caps • But BOCs can negotiate contract tariffs, volume and term discounts, that co-exist outside of caps
Phase II	• Co-location in 50% of wire centers or in wire centers covering 65% of BOC revenues in the MSA • At least one independent transport provider serving co-locater in each wire center • Channel terminations get special rule: 65/85%	• No more price caps • Rates and rate structures are unregulated

4. *CALLS* (2000-2005)
   - A negotiated settlement for an accumulation of USF, access, and price caps disputes and court cases

- Does not apply to de-regulated Phase II rates
- Imposes new, more generous formula on price caps rates (including Phase 1 rates) for four years, which compensates for the impact of other parts of the package
- Then kills the crucial "productivity factor" – the infamous "X" factor
    - No more downward adjustments to reflect efficiency gains ("X" = inflation as of July, 2004)
    - But caps (and rates) can go up ("exogenous adjustments")
- A five-year plan that assumed competition would emerge before the plan expired
- Given a choice between price caps as revised by CALLS or a chance to justify higher rates with a forward-looking cost study, carriers picked CALLS

5. *Mounting evidence*:
    - Prices and profit levels increase steadily
    - Special access customers complain to the Commission
        - Performance Standards Rulemaking (CC Dkt No. 01-321)
        - Broadband Regulation Rulemaking (CC Dkt No. 01-337)
        - Broadband Wireline Internet Access Rulemaking (CC Dkt No. 02-33)
        - AT&T Petition for Rulemaking (RM No. 10593)
        - BOC Separate Affiliate Rulemaking (CC Dkt No. 02-112)
    - Even the Commission concludes that the competitive triggers aren't a useful guage of competition
        - Triennial Review Order ("this test provides little, if any, indication that [a] competitor has been able to widely, if at all, self-deploy alternative loop facilities" outside of a few, highly-concentrated wire centers)

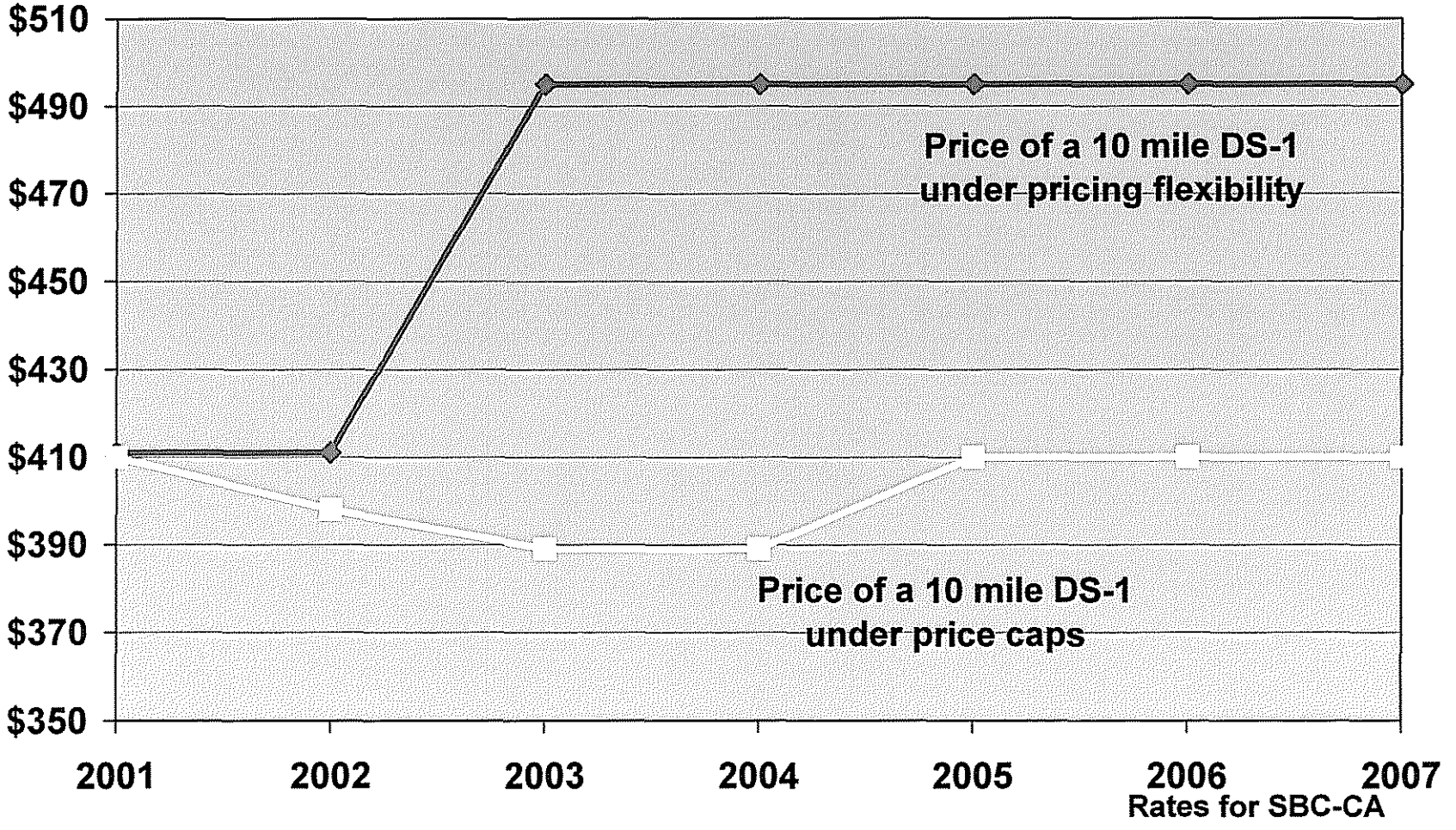
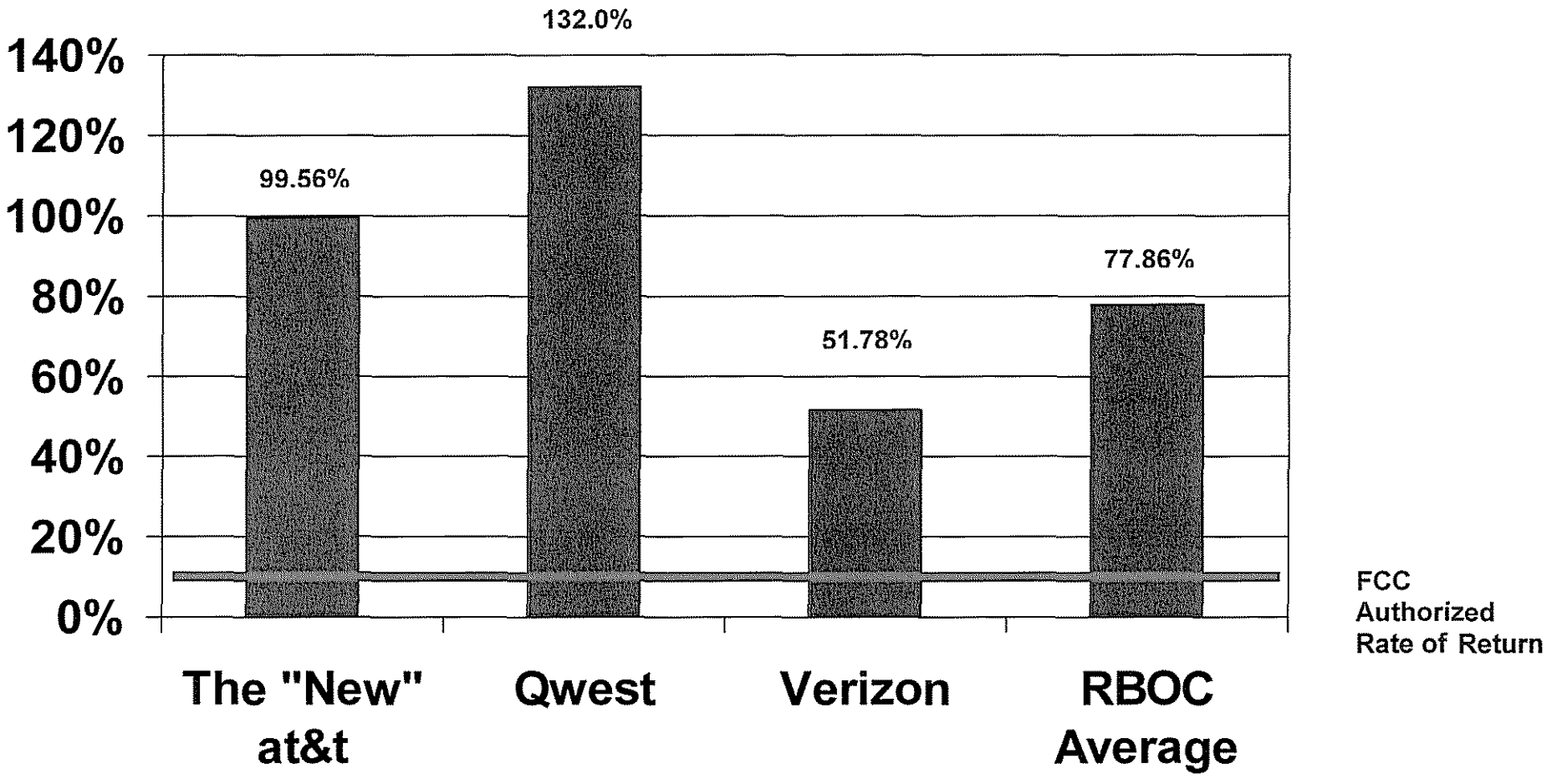
6. *AT&T mandamus*
    - AT&T, AT&T Wireless, Comptel, ITAA, eTUG file with the D.C. Circuit a petition for writ of mandamus directing the FCC to act on the AT&T rulemaking petition (2003)
    - Referred to merits panel; Ad Hoc intervenes in support
    - Agencies who base their rules on predictions must reconsider them when their predictions prove to be wrong

7. *Special access reform rulemaking*: Initiated while mandamus was pending and cited by the Commission to justify dismissal of the petition as moot (2005)
    - "increased importance of special access services relative to other access services" and expiration of CALLS requires replacement regime
    - "BOCs have earned special access rates of return substantially in excess of the prescribed 11.25 rate of return"
    - Tentative conclusions
        - Continue to regulate special access under price caps
        - Apply pricing flexibility where markets are competitive

- Commission anticipates adopting an order prior to July 1, 2005 that will establish an interim plan to ensure special access rates remain just and reasonable while the Commission considers the record in this proceeding.
- Issues for comment
    - Do "actual marketplace developments support the predictive judgments that underlie the special access pricing flexibility rules"?
    - Is it necessary to reinitialize rates to ensure they are just and reasonable?
    - What approach should the Commission use to reinitialize rates?
    - Have the pricing flexibility rules produced substantial and sustained price increases in Phase II MSAs?

8. *FCC repeatedly punts to this rulemaking*
    - Merger orders
    - Broadband rulemakings

The BOCs use pricing flexibility to raise prices in "competitive" areas



BOC Rates of Return on special access, 2006