

**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 No. 10593
)	

REPLY COMMENTS OF BT AMERICAS INC.

BT AMERICAS INC.
1001 Connecticut Avenue, N.W.
Suite 720
Washington, D.C. 20036

Aryeh Friedman
Senior Regulatory Counsel

Dated: August 15, 2007

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND SUMMARY	1
ARGUMENT	3
I. THE COMMENTS DEMONSTRATE THAT SPECIAL ACCESS REMAINS A BOTTLENECK FACILITY	3
A. The Comments Show There is No Intra-Modal Competition.....	4
B. The Comments Similarly Demonstrate That There is No Inter-Modal Competition for Special Access Either.....	5
C. There Has Been No Material Under-Reporting of Competitive Facilities by the CLECs	7
II. SPECIAL ACCESS PRICING, RATES OF RETURN, AND TERMS DEMONSTRATE MARKET FAILURE	9
A. Market Failure is Evident from BOC Special Access Prices, Revenues and Terms and Conditions	9
B. International Benchmarks Confirm Market Failure in the U.S. Due to Premature De-Regulation	10
CONCLUSION.....	12

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

REPLY COMMENTS OF BT AMERICAS INC.

Pursuant to the Commission's Public Notice to *Refresh Record In The Special Access Notice Of Proposed Rulemaking*,¹ BT Americas Inc. ("BT") submits these Reply Comments on behalf of itself and other BT entities. The Comments filed in this, as in preceding rounds of this proceeding, convincingly demonstrate persistent, indeed worsening, market failure and the urgent need for effective review of the state of the market and proportionate measures to deal with these identified failures.

INTRODUCTION AND SUMMARY

The Comments demonstrate the urgent need by the Commission to intervene in the special access market. The BOCs, in firm control of this bottleneck facility, have acquired the competitors most likely to pose a threat to them and have adopted market-wide "lock in" plans that preclude others from posing any significant threat and harming customers.

¹ WC Docket No. 05-25, RM-10593 (released July 9, 2007) ("Notice").

Since these proceeding began five years ago the BOCs have claimed that cable, wireless and other intra-modal competitors would pose an imminent threat to their monopoly stranglehold over the special access bottleneck. In fact the record shows that *none* of these claimed inter-modal competitors have challenged the BOCs' dominance in special access during those five years, nor are they likely challengers today.

Unchallenged, the record shows that the BOCs have raised their special access prices significantly, earned increasingly excessive rates of returns, and imposed onerous terms and conditions on purchasers in an effort to foreclose the emergence of viable competition.

The BOCs' claim that any form of re-regulation will stifle investment and introduce all the pricing anomalies associated with rate-of-return regulation. But that argument ignores more nuanced regulatory tools available to the Commission to respond to the clear market failure evident from record. Re-initializing rates to Long Run Incremental Cost ("LRIC") with annual adjustments in accordance with a price cap adjustment mechanism is a proportional response to the market failure identified. So is requiring provision of service on an "equivalence of input basis" both on price and non-price terms through functional, rather than structural, separation, which retains the vertical efficiencies of integration even as it removes the incentives for discrimination yet retains the incentives for market-driven innovation. Finally, another alternative remedy, less likely to deliver the full benefits of competition of the above remedies but that would, none the less, lead to significant improvement in the current dominated market, would be a baseball arbitration remedy that lets market-based benchmarks determine the

price, and lets the parties mutually agree to other terms and conditions within parameters set by the Commission.

ARGUMENT

I. THE COMMENTS DEMONSTRATE THAT SPECIAL ACCESS REMAINS A BOTTLENECK FACILITY

It is evident from the Comments that special access, particularly at the DS1 and DS3 levels² purchased primarily by large business (“enterprise”) customers and competing carriers,³ is a bottleneck facility controlled by the “full line” BOC suppliers.⁴ The Comments further show that special access purchasers buy over 90% of their DS1

² See Comments of Sprint Nextel Corporation, WC Docket No. 05-25 & RM No. 10593 (August 8, 2007) (“Sprint Nextel’s Comments”) at 11-12 (“The relevant product markets for special access include: a) channel terminations between a BOC’s end office and a customer’s location ...; (b) channel mileage between two BOC offices; and c) entrance facilities between a BOC’s wire center and a competitive carrier’s point of presence”) reflecting the market definition used in the *Pricing Flexibility Order, Access Charge Reform, Fifth Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 14221 (1999), *aff’d WorldCom v. FCC*, 238 F3d 449 (DC Cir 2001) ¶ 85. Sprint Nextel also notes that “[t]he product market ... must also reflect the capacity differences between special access circuits” *id.*, reflecting the reality that a business in need of a single DS1 circuit would not purchase a larger one. *Cf.* Comment of Qwest Communications International, Inc. WC Docket No. 05-25 & RM No. 10593 (August 8, 2007) (“Qwest’s Comments”) at 59. Proposals to otherwise expand the market definition, *e.g.* Comments of Verizon, WC Docket No. 05-25 & RM No. 10593 (August 8, 2007) (“Verizon’s Comments”) at 40, have no support in the record.

³ See also Comments of PAETEC Communications, Inc. and US LEC Corp., WC Docket No. 05-25 & RM No. 10593 (August 8, 2007) (PAETEC *et al* Comments) at 8 (“As the Commission has repeatedly recognized, BOC competitors for whom special access is a key input include ‘competitive LECs in providing services to their retail enterprise customers, wireless and competitive LECs in connecting their networks to other carriers, long distance carriers seeking to connect customers to their long-distance networks, and entities seeking to connect with Internet backbones,’” *citing to* Memorandum Opinion and Order, *In the Matter of SBC Communications Inc. and AT&T Corporation Applications for Approval of Transfer of Control*, FCC WC Docket No. 05-65 (rel. Nov. 17, 2005) (“SBC/AT&T Merger Order”) at ¶ 24; Memorandum Opinion and Order, *In the Matter of Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, FCC WC Docket No. 05-75 (rel. Nov. 17, 2005) (“Verizon/MCI Merger Order”) at ¶ 24; and Memorandum Opinion and Order, *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74 (March 26, 2007) (“AT&T/BellSouth Merger Order”) at ¶ 27.

⁴ As explained in Comments of BT Americas, Inc., WC Docket No. 05-25 & RM No. 10593 (August 8, 2007) (“BT’s Comments”) at 5, “full-line” suppliers are the BOCs within their own region, able to respond to the in-region portion of customer bids, in both metropolitan and non-metropolitan areas, with special access facilities provided from a single supplier, itself. “Narrow-line” suppliers encompass all the other retail special access providers who must purchase at wholesale the vast majority, or all, of their special access needs.

and DS3 special access requirements from the incumbent BOCs⁵ *because they have no alternative*. They have no alternative both because (i) even the largest CLECs do not have the ubiquitous presence needed to economically provision special access services to most of the locations required by enterprise customers;⁶ and (ii) even where there is an alternative lower priced provider for specific sites, regional “lock-in” with the BOCs prevent the purchasers from using that competitor.⁷

A. The Comments Show There is No Intra-Modal Competition

The Comments demonstrate that there is no meaningful intra-modal competition from competitive carriers.⁸ There is certainly no such competition from the CLECs. The CLECs with the greatest potential for succeeding, AT&T and MCI,⁹ were acquired by the BOCs. The other national or regional competitive carriers were, or are, being driven out

⁵ See, e.g., Sprint Nextel’s Comments at iii (“in 2006 Sprint Nextel purchased 98% of its DS1 and DS3 circuits in Chicago from AT&T; 97% of its DS1 and DS3 circuits in Boston from Verizon; and 99% of its DS1 and DS3 circuits in San Francisco from AT&T”). See also Comments of ATX Communications, Inc., Bridgecom International, Inc., Broadview Networks, Inc., Cavalier Telephone, LLC, DeltaCom, Inc., Integra Telecom, Inc., Lightyear, Inc., McLeodUSA Telecommunications Services, Inc., Penn Telecom, Inc., RCN Telecom Services, Inc., Savvis, Inc., U.S. TelePacific Corp. d./b/a TelePacific Communications Comments (“ATX *et al* Comments”) at 25 and attached Declarations, e.g., Declaration of Don Eben, ¶ 5 (“McLeod is able to obtain DS1 and DS3 level access from competitors to no more than 5% of customer locations”) and Declaration of Steven H. Brownsworth, ¶ 4 (“Deltacom is able to obtain DS1 and DS3 level access from competitors to no more than 10% of customer locations”); Comments of Time Warner Telecom and One Communications (“TWTC *et al* Comments”) at 10-14.

⁶ See, e.g., Sprint Nextel’s Comments at iii (“Responses to Sprint Nextel’s most recent alternative vendor questionnaire in January, 2007, which was sent to 77 potential alternative vendors, shows that only 16 such vendors had fiber facilities reaching only approximately 1% of over 52,000 Sprint Nextel cell sites nationwide covered by the questionnaire”). This confirms BT’s experience, BT’s Comments at 17 (“even the largest CLECs often do not bid at all, or do not submit viable bids, for many of the sites in a BT RFP because they do not have their own facilities there and obtaining those facilities from a BOC would be cost-prohibitive”).

⁷ See, e.g., Sprint Nextel’s Comments at 24-29; PAETEC *et al* Comments at 14-15. This, in turn, prevents CLECs from expanding their businesses because customers cannot guarantee them the business necessary to generate a positive ROI.

⁸ See ATX *et al* Comments at 2-3.

⁹ As noted by in the PAETEC *et al* Comments at 4, “No non-BOC competitor had an interoffice network nearly as large as either AT&T or MCI, and those companies also had the two largest numbers of high capacity loops (*i.e.*, existing building connections to their network) among non-BOCs”

of the market, unable to achieve minimum scale as a result of the BOCs “lock-in” long term “discount” bundled plans and other onerous conditions.¹⁰

There is also no meaningful intra-modal competition from the better financed BOCs. As shown in BT’s Comments, AT&T Inc.’s filings in the BellSouth merger in 2006 demonstrate that eight years after SBC had adopted an “aggressive” strategy to enter eleven key BellSouth Metropolitan Statistical Areas (“MSAs”), and almost 20 other out-of-region, markets as a facilities-based competitor, and *even after it had acquired AT&T Corp’s national “fiber rich, POP rich” facilities* the previous year, AT&T was a meaningless special access competitor in the BellSouth region.¹¹

B. The Comments Similarly Demonstrate That There is No Inter-Modal Competition for Special Access Either

The Comments also demonstrate that there is no meaningful intermodal competition for special access services demanded by enterprise customers.¹² BOC claims

¹⁰ *Id.* at 14-15 (“The BOCs are free to, and routinely do, require that purchasers submit to onerous contractual provisions that would never be agreed to in a competitive market, such as tying arrangements, agreements to move special access purchases from competitors’ networks, and requirements to increase spend annually with the incumbent (either in absolute terms or as a percentage of total spend”).

¹¹ Indeed, to the extent the predictive judgment in 1999 of emerging competition in the *Pricing Flexibility Order* was based on the assertions made by SBC and Bell Atlantic in 1998 (supported by sworn declarations) that they would aggressively enter out-of-region as facilities-based local special access competitors, Application of SBC Communs. & Ameritech Corp. for Transfer of Control to SBC Communications, CC No. 98-141 (July 24, 1998) at 17 (SBC’s National Local Strategy announced in 1998 that it would enter into 30 out-of-region markets) and *Applications of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184 (Dec. 30, 1998) (Bell Atlantic’s similar announcement of its intent to enter as a facilities-based carrier out-of-region), that judgment was fatally flawed because these promises, made in the heat of merger approvals, were never effectively implemented.

¹² See ATX *et al* Comments at 3. And here claims of substitution are being made in the face of clear evidence of monopoly pricing, raising the issue of the “cellophane fallacy” *United States v. DuPont de Nemours*, 351 U.S. 377 (1956) (the Supreme Court in a monopolization case defined the market too broadly, accepting the argument that cellophane competed with flexible packaging materials such as aluminum foil, wax paper, and polyethylene even though the latter materials were in the same market only because the prevailing price was a supra-competitive price). At competitive prices, some or all of the technologies, even if viable, might be even less attractive substitutes.

to the contrary are based on gross exaggerations combined with conflating the separate residential and enterprise access markets.

The BOCs have a track record of exaggerating the significance of inter-modal competitive technologies. For example, the BOCs have been touting cable as an inter-modal competitor since 1998,¹³ although cable telephony has only emerged as a potentially significant competitive alternative for *residential customers* for local and long-distance telephone services bundled with high-speed data in the 2005-2006 time frame,¹⁴ long after the two year time frame used to evaluate competitively significant potential entry.¹⁵ And as shown in BT's Comments, meaningful cable competition for access services in the *enterprise* market is unlikely in the next two years as cable operators continue to focus on shoring up their residential services in their escalating battles with incumbent telcos.¹⁶ Nor is there any evidence of an emerging cable wholesale special access market.

¹³ Report of Richard Schmalensee and William Taylor, filed with the Application of SBC Communs. & Ameritech Corp. for Transfer of Control to SBC Communications, CC No. 98-141 (July 24, 1998) ¶¶ 61-62.

¹⁴ Kagan Research, "The Future of Cable Telephony, Second Edition, 2005. <http://research.kagan.com/keo/databooksdetailpage.aspx?DatabookID=73#HighLights> ("*Local residential telephone service is on the cusp of becoming a standard feature for major cable operators in the U.S.*" emphasis added).

¹⁵ DOJ & FTC Horizontal Merger Guidelines, Section 3.2 (Entry generally is only considered timely if "achieved within two years from initial planning to significant entry.").

¹⁶ BT's Comments at 9, n. 24, noting the report by Heavy Reading (Sterling Perrin), *Cable vs. Telcos: The Battle for the Enterprise Market* ("Cox Communications Inc. ... regarded as the most aggressive MSO in the space yet makes only 6 percent of its revenue there" and that includes all business customers, including small and medium businesses). http://www.lightreading.com/document.asp?doc_id=89210. See, http://goliath.ecnext.com/coms2/gi_0199-5228147/Cable-Operators-May-Miss-a.html (Feb. 15, 2006). The Executive Summary and Table of Contents of this Report can be found at <http://translate.google.com/translate?hl=en&sl=ja&u=http://www.dri.co.jp/auto/report/hr/hrcvst06.htm&sa=X&oi=translate&resnum=7&ct=result&prev=/search%3Fq%3DHeavy%2BReading%2B%252B%2B%2B%25E2%2580%259CCable%2Bvs.%2BTelcos:%2BThe%2BBattle%2Bfor%2Bthe%2BEnterprise%2BMarket%25E2%2580%259D%2B%26hl%3Den%26rls%3DSUNA,SUNA:2006-29,SUNA:en> (Feb. 17, 2006).

BOC claims as to the viability of wireless,¹⁷ WiFi and WiMax¹⁸ to compete with special access, in light of their bandwidth, service quality and reliability constraints should be taken with a similar grain of salt.¹⁹ As is clear from even the BOCs' description of wireless broadband, it is a residential service²⁰ where issues of reliability and security are not nearly as critical as they are for business purposes.²¹

C. There Has Been No Material Under-Reporting of Competitive Facilities by the CLECs

The BOCs contend that any analyses measuring special access competition are seriously flawed because “CLECs have thus far refused to provide any data about the true extent of their networks, facilities, service offerings, and market successes” and that if the Commission only “exercised its authority to compel the reporting of this information” it would learn that competitive networks are far more significant.²² But that is not correct.

¹⁷ And as noted in Reply Comments of BT Americas Inc. on Behalf of Itself and other BT Entities, *Implementation of Section 6002(b) Of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Dkt. No. 07-71 (May 22, 2007) at 2-5, wireless is dominated by the BOC affiliates, Verizon and AT&T Wireless Services.

¹⁸ See, e.g., Qwest's Comments at iii; Verizon's Comments at 4; AT&T's Comments at 16.

¹⁹ Verizon's positioning of Voice Over IP (“VoIP”) (which, as noted in BT's Comments is in any event not an access technology) as an independent source of competition, Verizon's Comments at 5, is particularly ironic in light of the recent judicial developments in *Verizon Services Corp. v. Vonage Holdings Corp.*, where a jury found that Vonage infringed three Verizon patents relating to VoIP. See, <http://news.moneycentral.msn.com/provider/providerarticle.aspx?feed=OBR&Date=20070308&ID=6589920>; see also, Slip Copy, 2007 WL 528749 (E.D. Va., Feb. 12, 2007) (setting forth the patent claims). Cf. *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir.), cert. denied, 534 U.S. 952 (2001) (regarding the positioning of Java applications).

²⁰ See, e.g., AT&T's Comments at 14 (“wireless networks no longer carry only voice services, but now also carry Internet, music, video and myriad other entertainment and data services.”)

²¹ See Comments of the AdHoc Telecommunications Users Committee, WC Docket No. 05-25 & RM No. 10593 (August 8, 2007) (“AdHoc's Comments”) at 7 (discussing “the severe security and reliability concerns raised by cable-based services and technologies”). The level of reliability and security demanded by residential customers for transmission of a “YouTube” program is far less than the demanding levels of reliability and security demanded by financial institutions for the transmission of data related to financial transactions, or defense firms transmitting critical plans relating to national security applications.

²² AT&T's Comments at 25; see, also, Verizon's Comments at 14 and 38.

The Department of Justice used compulsory process in the merger proceedings to obtain this data. In the summer of 2005, the Department of Justice, in the SBC/AT&T and Verizon/MCI merger served Civil Investigation Demands on BT and presumably all providers of special access demanding, for each listed MSA in both BOCs' regions, (1) "lists and network maps of sufficiently precise detail a description of your company's networks;" (2) data on each "on net" building and how they are interconnected to the provider's network (including the use of carrier hotels); and (3) data on local access circuits used, whether Type I or Type II circuits, or UNE versus special access. On the basis of the data collected "by using compulsory process" the Department of Justice concluded that the BOCs overwhelmingly dominated the "last mile connection" for special access and that the vast majority of buildings in a given metropolitan area were not served by a cable or any other provider.²³ It was only the DoJ's reliance on an artificially narrow geographic market definition and its decision to focus only on those buildings where the number of providers was reduced from two to one actual or potential competitors, that limited the number of buildings for IRU divestitures were required so that the mergers did not *further worsen* this lack of competition in the special access markets.²⁴

The GAO similarly noted the BOCs' claim of underreporting and noted (1) that the extent of CLEC competitive facilities was as likely overstated in its Report as understated (because the GAO included competitors' facilities not used to provide special

²³ Plaintiff United States' Response to Public Comments <http://www.usdoj.gov/afr/cases/f215100/215174.htm> (03/21/2006) at 18, n. 28 ("for the vast majority of buildings in a given metropolitan area the SBC or Verizon is the only firm with a last-mile connection to the building. Complaints ¶ 15").

²⁴ See Ad Hoc's Comments at 16-18.

access service to end users), and (2) that even if there was underreporting, it only changed the extent of CLEC competitive presence from 6% to 8%.

II. SPECIAL ACCESS PRICING, RATES OF RETURN, AND TERMS DEMONSTRATE MARKET FAILURE

A. Market Failure is Evident from BOC Special Access Prices, Revenues and Terms and Conditions

The Comments submitted show that the prices charged, and the rates of return realized, by the BOCs,²⁵ and the BOCs' ability to impose onerous conditions on purchasers, reflect persistent, indeed worsening, market failure in this market.

Prices: The Comments show that prices for short haul private line services have increased since 1999, sometimes as much as 25%.²⁶ They show that when special access rates are compared to UNE rates, special access rates are almost double UNE rates.²⁷ A comparison of price flex and price cap rates similarly demonstrates excessive pricing.²⁸

²⁵ See, e.g., ATX *et al* Comments at 4-14.

²⁶ Declaration of Janet S. Fischer on Behalf of Global Crossing, appended to Global Crossing's Comments, ¶ 5 and Tables 1-4; TWTC *et al* Comments at 23 (discussing Qwest's special access price increases in 2004, "TWTC's prices for special access increased by approximately 19 percent. Unsurprisingly, the increases were greatest for DS1 facilities which are the least likely to face competitive supply. For example, TWTC faces rate increases of nearly 25 percent for rates applicable to DS1 channel terminations in 'the most competitive' zone 1 as well as for rates applicable to 0-8 mile mileage DS1 transport").

²⁷ Sprint Nextel's Comments at 4 ("BOC special access prices, both those price capped and those subject to pricing flexibility, remain at supra-competitive levels – in many instances twice as high as the cost of the comparable unbundled network elements ('UNEs')") and 21-23; ATX *et al* Comments at 36-38. See also, TWTC *et al* Comments at 29 ("ILEC rates area almost universally higher than UNE rates, and are often two times higher than most competitive wholesale providers' (including TWTC's) rates in both Phase II and price cap areas, especially for circuits with any interoffice mileage").

²⁸ Even though price cap rates are themselves substantially above cost, see TWTC *et al* Comments at 24-25. The BOCs' contend that pricing flexibility rates are higher than price cap rates because "the price cap regime may well result in rates well below those that would prevail in a competitive market."²⁸ That might provide an explanation in some instances, cf. Verizon's Comments at 10 ("that, once pricing flexibility was implemented, rates would not necessarily decline in all cases, but would instead move both up and down"); but that does not explain why price flex rates are *always* higher than price cap rates except where merger conditions mandate otherwise, and then only for a limited period of time, AdHoc's Comments at 11-14.

Rate of Return: The Comments demonstrate that the BOCs' rate of return for special access ranged from 52% to 132% in 2006²⁹ a substantial increase from 2001, where the BOCs' earned market dominant rates of return ranging from 21.72%, to 54.6%.³⁰

The BOCs' challenge this data on two fronts. First they argue that rates of return cannot be accurately calculated from ARMIS data.³¹ As shown in the ETI study appended to the AdHoc Comments, the BOCs critique of ARMIS data as the basis for calculating rates of return goes "solely to the *magnitude* of the microeconomic impact estimated by the model, but do not alter the model's core finding" of "persistent excessive pricing and supracompetitive earnings that the BOCs have been able to extract from their fundamentally noncompetitive special access services."³² And the BOCs claim that they have actually experienced declining revenues is based on artificial measures³³ that "have little bearing on the price of actual special access services."³⁴

B. International Benchmarks Confirm Market Failure in the U.S. Due to Premature De-Regulation

As demonstrated in BT's Comments, international benchmarks confirm that the U.S. prices are substantially above cost. The charts attached to BT's Comments show the extent to which U.S. special access prices are materially above comparable services in the

²⁹ AdHoc's Comments at 5-6.

³⁰ *Stith Special Access Declaration* (Oct. 15, 2002) (rates calculated from 2001 ARMIS 43-01, Table 1, Cost and Revenue Table, Column S, Rows 1910 and 1915 were: VZ 21.72%, VZ (excluding NYNEX), 37.08%, Qwest 46.58%, BLS 49.26% and SBC 54.6%).

³¹ Verizon's Comments at 41-45; Qwest's Comments at 50-53; AT&T's Comments at 34-36.

³² See Appendix 1 to AdHoc's Comments. Selwyn, Gately, Golding and Weir, *Special Access Overpricing and the US Economy; How Unchecked RBOC Market Power is Costing US Jobs and Impairing US Competitiveness* ("ETI's 2007 White Paper on Special Access and Its Impact on U.S. Competitiveness") at 16 (emphasis in the original); See also, ATX *et al* Comments at 11-13.

³³ Verizon's Comments at 11; Qwest's Comments at 45 and n.143.

³⁴ See TWTC *et al* Comments at 34-35.

U.K., particularly in U.S. zones 2 and 3 (there are no zones in the UK). As noted by Global Crossing, mileage charges “remains the one area where incumbent carriers can continue to exercise their monopoly power because mileage charges cannot be competed away by collocated carriers ... competitive local exchange carriers have eliminated mileage charges for their own special access offerings ... since fiber and advanced electronics have largely rendered distance irrelevant to cost.”³⁵ And because of the proportional regulation of access in the U.K., as described more fully in BT’s Comments, there is more network innovation, including access services, in the U.K. than in the U.S. For example, Ethernet is more ubiquitous in the U.K. and higher speed broadband is available in the U.K. at lower rates than in the U.S.³⁶

Incumbents in Canada³⁷ and Europe³⁸ are similarly able to offer special access subject to regulation and still make the necessary investments and remain profitable.

³⁵ Global Crossing’s Comments at 10.

³⁶ BT’s Comments at 20-21.

³⁷ Under the Competitive Digital Network Access (CDNA) tariff in Canada the Digital Network Access portion of the circuit (the ‘last mile’ access from the end users locations to the ILEC’s closest central office; this includes DS-0, DS-1, DS-3, OC-3 and OC-12 transmission speeds) is classified as a bottleneck service with rates based on costs plus a 15% mark-up, with correspondingly substantially lower special access rates in Canada than in the U.S. See the *Competitor Digital Network Services* decision, Telecom Decision CRTC 2005-6 (3 February 2005) <http://www.crtc.gc.ca/archive/ENG/Decisions/2005/dt2005-6.htm>, <http://www.crtc.gc.ca/archive/ENG/Decisions/2005/dt2005-6-1.htm> (errata), and prior related decisions discussed therein. Some examples of what purchasers would be paying in some major Canadian cities within the downtown core:

Toronto, Bell Canada		Calgary, Telus		Vancouver, Telus	
DS1	DS3	DS1	DS3	DS1	DS3
\$50.21	\$459.49	\$ 49.66	\$ 557.94	\$ 59.44	\$ 642.20

*Note: All pricing in Canadian dollars. The pricing is from Appendix A of the *Competitor Digital Network Services* decision.

³⁸ See e.g. the BT’s Reply Comments in the prior round of these proceedings (July 12, 2005) at 4 and n. 9 describing the regulatory scheme in France.

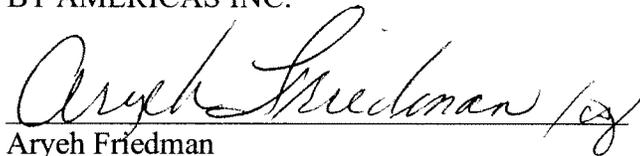
CONCLUSION

The Comments demonstrate that the deregulatory model, based on fatally flawed pricing flexibility triggers that suggest markets are competitive when they clearly are not,³⁹ has resulted in serious market failure that has “inflict[ed] severe economic inefficiencies on the market without any corresponding benefit.”⁴⁰ Proportional re-regulation, such as that proposed by BT in its Comments,⁴¹ is clearly mandated by the evidence in the record first created in 2002, updated in 2005, and updated yet again today.⁴²

Respectfully submitted,

BT AMERICAS INC.

By:



Aryeh Friedman
Senior Regulatory Counsel
BT AMERICAS INC.
1001 Connecticut Avenue, N.W.
Suite 720
Washington, D.C. 20036

Dated: August 15, 2007

³⁹ See TWTC *et al* Comments at 18-24.

⁴⁰ AT&T's Comments at 33. See ETI's 2007 White Paper on Special Access and Its Impact on U.S. Competitiveness, appended as Exhibit 1 to AdHoc's Comments, *passim*.

⁴¹ BT's Comments at 21-24.

⁴² While the BOCs threaten to challenge in court any effort to re-impose any form of regulation, *see. e.g.*, AT&T's Comments at 5-6, 32-33, 39, it is the failure to re-regulate that would pose a much greater risk of a successful legal challenge, *see* ATX *et al* Comments at 14 and n. 48. The Commission's failure to take any action in this proceeding for over five years after the record was first completed, even as it expeditiously granted merger applications between U.S. owned carriers that further raised entry barriers, *see* PAETEC *et al* Comments at 14 (“[t]he BOC/IXC mergers not only left the merged firms free to continue their practices, but actually created greater incentives and ability to do so because with each merger the BOC controlled a larger share of the special access market in its region. The AT&T/BellSouth merger, by expanding the geographic footprint of AT&T, substantially increased AT&T's leverage to force customers to give it the competitively sensitive portion of the special access services in the AT&T and BellSouth regions”) raises substantial legal issues in light of U.S. trade obligations. *See* BT's Comments at 3, n.4