

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

REPLY COMMENTS OF CLEARWIRE CORPORATION

INTRODUCTION

Clearwire Corporation, on behalf of itself and its license-holding and service-providing subsidiaries (collectively “Clearwire”), hereby files these comments in response to the Federal Communications Commission’s (“Commission”) Public Notice asking parties to refresh the record in the above-referenced proceeding regarding the special access regulatory regime that should apply to price cap local exchange carriers (LECs).¹ As discussed herein, Clearwire addresses the importance of special access to the price and availability of wireless services, and to the deployment of wireless broadband networks.² Clearwire supports those commenters who emphasize the importance of competitively priced special access for backhaul and other essential network links, which providers of wireless services need as network inputs, particularly wireless

¹ See Public Notice, “Parties Asked to Refresh Record in the *Special Access Notice of Proposed Rulemaking*,” WC Docket No 05-25, FCC 07-123 (rel. July 9, 2007) (“*Public Notice*”); *Special Access Rates for Price Cap Local Exchange Carriers*, 20 FCC Red 1994, WC Docket No. 05-25, Order and Notice of Proposed Rulemaking (2005) (“*NPRM*”).

² See *Public Notice* at 4.

broadband providers. Record evidence in this proceeding shows that reasonably priced special access services are integral to the future of ubiquitous wireless broadband network deployment, and Clearwire therefore supports Commission modification of the current special access pricing flexibility rules to address the apparent lack of competition in the market for such services.

I. BACKGROUND

Clearwire constructs and operates next generation portable wireless broadband networks and services, including interconnected VoIP service,³ that provide consumers an always-on broadband connection anytime and anywhere within Clearwire's wireless network coverage area. Clearwire's current non-line-of-sight wireless broadband solution connects customers to the Internet using Commission-licensed spectrum in the 2.5 GHz frequency band (the frequency band allocated for the Educational Broadband Service ("EBS") and Broadband Radio Service ("BRS")) via radio transmissions from a Clearwire base station to a small, fixed or portable wireless modem, which easily connects a user's computer to the Internet.⁴ With its simple plug-and-play installation, Clearwire provides fast, simple, reliable, and affordable portable and increasingly mobile wireless broadband service to those U.S. (and international) markets it has launched to date. Clearwire is also on target to offer its first pre-WiMAX laptop card during the second half of 2007, which will substantially enhance the portability and mobility of Clearwire's current wireless broadband service. Moreover, Clearwire has committed to deploy networks based on the IEEE mobile Worldwide Interoperability of Microwave Access 801.16e-2005, or mobile WiMAX, standard once mobile WiMAX equipment is commercially available and meets

³ In approximately 26 of Clearwire's 43 US markets to date, Clearwire also offers its portable interconnected VoIP service over its broadband networks and expects to continue rolling out its VoIP service in conjunction with its Internet access and other premium services in additional markets.

⁴ Clearwire is deploying Motorola manufactured WiMAX-ready broadband access networks through Motorola's subsidiary, NextNet Wireless.

its requirements. Finally, Sprint Nextel and Clearwire recently announced a plan to jointly construct the first nationwide mobile broadband network using WiMAX technology, and promote the global development of WiMAX-based services. If concluded, the planned arrangement is expected to provide broad benefits to consumers by fostering the faster, broader and more efficient deployment of a nationwide wireless broadband network in urban, suburban and rural areas.

II. CONSTRAINTS ON INCUMBENT LEC SPECIAL ACCESS PRICING ARE INCREASINGLY NECESSARY AS THE DEMAND FOR WIRELESS BROADBAND SERVICES INTENSIFIES

As noted above, Clearwire supports those parties who argue that special access facilities are a critical input for the provision of wireless service, particularly wireless broadband service.⁵ Clearwire is in the process of building-out its own wireless broadband network, and for the most part currently links its wireless cell sites and base stations via a mesh network that carries the majority of Clearwire's current backhaul traffic over licensed and unlicensed microwave frequencies. While Clearwire has not yet had to substantially rely on incumbent LEC provided special access, it strongly supports those commenters' arguments that wireless broadband providers are becoming *increasingly* reliant upon special access services, by handling even greater volumes of traffic as wireless broadband networks are deployed and grow.⁶ Indeed, the growing demand for competitive data services generally amplifies the need for dedicated transmission services such as special access. Clearwire also supports the argument that consumers will ultimately pay a premium for wireless broadband services if special access

⁵ For instance, T-Mobile USA, Inc. ("T-Mobile") states that as it seeks to deploy its own broadband offerings the special access issue takes on an even more important competitive impact. *Special Access Rates for Price Cap Local Exchange Carriers*, Comments of T-Mobile, USA Inc., (fil. Aug. 8, 2007) ("T-Mobile Comments") at 2. *See also Special Access Rates for Price Cap Local Exchange Carriers*, Comments of Sprint Nextel Corporation, (fil. Aug. 8, 2007) ("Sprint Nextel Comments") at 5.

⁶ *See e.g.*, Sprint Nextel Comments at 35.

service does not become available to wireless broadband providers at competitive rates.⁷ The higher the costs of building and maintaining a competitive wireless broadband network—one that will compete head-to-head with the broadband platform provided by the principal special access facilities suppliers, AT&T and Verizon—the more consumers will be forced to pay to obtain the new and innovative wireless broadband services that are on the horizon.

Some commenters argue that there have been significant competitive deployments of special access alternatives.⁸ These commenters argue that WiMAX and other wireless broadband technologies are being used to provide competitive special access service.⁹ For instance, AT&T argues that “[b]roadband wireless can provide highly reliable, economically-priced special access services with installation in a fraction of the time it takes to install wireline services.”¹⁰ Yet, AT&T has not cited examples where such wireless broadband special access services are widely available, let alone ubiquitously available to wireless competitors deploying nationwide networks. Indeed, Clearwire is not aware of many circumstances where such a competitive solution has been implemented. Moreover, to the extent WiMAX or other wireless broadband technologies could be used to provide special access service, Clearwire asserts that entities developing such technologies are contemplating their use primarily as wireless broadband last-mile solutions for wireless broadband services, rather than the long-haul point-to-

⁷ See Sprint Nextel Comments at 33; T-Mobile Comments 8.

⁸ These commenters, not surprisingly, largely represent the very price cap LECs whose special access pricing is the subject of this proceeding. Among those is the Free State Foundation, which argues that marketplace developments continue to move in the direction of enhancing competitive alternatives. See *Special Access Rates for Price Cap Local Exchange Carriers*, Comments of the Free State Foundation (fil. Aug. 8, 2007) at 4 (“FSF Comments”). See also *Special Access Rates for Price Cap Local Exchange Carriers*, Comments of AT&T, Inc., (fil. Aug. 8, 2007) (“AT&T Comments”); *Special Access Rates for Price Cap Local Exchange Carriers*, Comments of the United States Telecom Association., (fil. Aug. 8, 2007) (“USTelecom Comments”); *Special Access Rates for Price Cap Local Exchange Carriers*, Comments of Embarq., (fil. Aug. 8, 2007) (“Embarq Comments”).

⁹ See e.g., FSF Comments at 4; USTelecom Comments at 18-21.

¹⁰ AT&T Comments”) at 15.

point dedicated transmission links for which special access is typically used. The WiMAX broadband networks Clearwire and others are currently developing, in addition to other wireless broadband technologies, still require large capacity; predominantly incumbent LEC provided access pipes to the Internet backbone for transporting increasingly larger volumes of wireless broadband traffic. For example, Sprint Nextel acknowledges that it recently reached an agreement with FiberTower Corp., a provider of wireless backhaul services, to supply backhaul in seven of Sprint Nextel's 4G/WiMAX service markets.¹¹ However, Sprint Nextel also states that in those markets, FiberTower will only be able to satisfy a portion of its 4G service needs.¹²

In spite of the above unsubstantiated claims of alternative sources of special access facilities, many wireless and other competitive providers demonstrate how they still predominantly rely on incumbent LECs for special access.¹³ Furthermore, rather than predicting an eventual reduction in this reliance, these special access-dependent competitors illustrate how their reliance has, and continues to, increase. For example, Sprint Nextel states that in 2006, for both its wireline and wireless businesses, it had to rely on incumbent LEC special access services for 96.4% of all its DS1 and DS3 customer terminating circuits.¹⁴ In addition, T-Mobile states

¹¹ See Sprint Nextel Comments at 32.

¹² See *id.* Sprint Nextel states that its most significant alternative supplier of special access accounts for only 1% of its total special access spending. *Id.* at n.7.

¹³ For example, PAETEC notes that while potential new technologies may be available as special access alternatives, those alternatives are "at best unproven and are certainly far from realization as a robust competitive alternative at this point." *Special Access Rates for Price Cap Local Exchange Carriers*, Comments of PAETEC, Communications, Inc. and US LEC Corp., (fil. Aug. 8, 2007) ("PAETEC/US LEC Comments") at 12. Sprint Nextel argues that "[a]ny claims that the special access market is effectively competitive are belied by the fact that the BOC's special access earnings are exceedingly high, and continue to increase annually." Sprint Nextel Comments at 8. See also *Special Access Rates for Price Cap Local Exchange Carriers*, Comments of XO Communications, LLC, Covad Communications Group, Inc., and Nuvox Communications (fil. Aug. 8, 2007) at 22-25; *Special Access Rates for Price Cap Local Exchange Carriers*, Comments of the Ad Hoc Telecommunications Users Committee (fil. Aug 8, 2007) at 7; *Special Access Rates for Price Cap Local Exchange Carriers*, Comments of Time Warner Telecom and One Communications (fil. Aug. 8 2007) at 14-17.

¹⁴ See Sprint Nextel Comments at 30.

that, as it demonstrated in this record in 2005, “price cap ILECs were virtually the sole source in most of their service areas for the special access services that T-Mobile needs for the critical initial link from its base stations to ILEC central offices as well as for the interoffice transport links that T-Mobile requires for backhaul.”¹⁵

Clearwire fully appreciates the concerns of providers of wireless broadband services about the lack of competition in the market for special access services. As Clearwire wireless broadband network deployment efforts increase and usage on its current network expands, the need for larger capacity and more widely available special access facilities increases.¹⁶ Wireless broadband service providers having, or contemplating, nationwide networks must be assured that the increasingly larger volumes of traffic inherent in operating fully developed, nationwide wireless broadband networks can be efficiently ported across such networks to the Internet backbone. Clearwire, therefore urges the Commission to heed the pleas of those competitive providers to impose more stringent price regulations on special access services where no demonstrated viable competitive alternative exists to incumbent LEC provided special access. If the Commission declines to address the current and increasingly serious market failure in the provision of special access, the future success and availability of alternative wireless broadband networks and other wireless services could be substantially hindered. At best, consumers of such services will suffer by being forced to indirectly pay the inflated prices of incumbent LEC provided special access services through the higher price of wireless broadband and other wireless services which rely on special access. The Commission must seize upon this opportunity to recognize the perverse adverse incentives that incumbent LEC providers of

¹⁵ T-Mobile Comments at 6.

¹⁶ Clearwire to date has largely relied on point-to-point microwave backhaul links. However, the availability of such links may not always be ubiquitous, and may not be particularly efficient in certain areas of the country. See *supra* page 4-5, discussing other wireless solutions.

special access services have, particularly the two largest providers, AT&T and Verizon; to unreasonably increase the costs of these special access inputs relied upon by alternative competitive providers, particularly wireless service providers, which directly compete with similar services offered by incumbents.

III. CONCLUSION

In view of the above, Clearwire respectfully requests that the Commission modify its regulation of the special access market, and impose more stringent pricing rules where there are no competitive alternatives for special access.

Respectfully submitted,

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