Before the
Federal Communications Commission
Washington , D.C. 20554

In the Matter of	)	
	)	
Special Access Rates for	)	WC Docket No. 05-25
Price Cap Local Exchange Carriers	)	RM-10593
	)	
	)	

REPLY COMMENTS OF HANCE HANEY
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The Commission should resist any temptation to re-regulate special access services provided by incumbent local exchange carriers even if some competitive local exchange carriers and wireless providers who buy these services are struggling in the marketplace. Re-regulating special access would benefit a particular class of competitors and is not necessary to ensure competition.

In view of the competitive inroads that are being made by cable operators and fixed wireless providers, the Commission should declare victory and set a timetable for the complete elimination of all remaining special access price-controls.

I. RE-REGULATING SPECIAL ACCESS WILL NOT PROMOTE COMPETITION

Proponents for re-regulating special access argue that there are few competitive alternatives besides incumbent LECs[1] and that prices are too high.[2] To remedy this situation, parties such as Sprint Nextel, AdHoc and COMPTEL want the Commission to align special

[1] *See, e.g., Comments of Sprint Nextel Corp.* at 32-33 (Sprint Nextel argues that it is "almost totally dependent" on incumbent LECs for the DS1 channel terminations serving its cell sites and for the backhaul facilities needed to serve its existing CDMA, EVDO and iDEN customers).
[2] *See, e.g., Comments of AdHoc Telecommunications Users Committee* at 5 (incumbent LECs are earning historically unprecedented returns of 52% to 132%").

access prices with the underlying costs incurred by incumbent LECs.[3] Although these measures could save these customers some money in the short-term, the Commission must inquire whether re-regulation would promote competition. The available evidence suggests that it won't.

The rates incumbent LECs charge for special access aren't the primary headache facing CLECs, just the easiest for lobbyists to fix. As COMPTEL acknowledges, CLECs "do not have the scale and scope to compete with the Bells for the major purchasers of special access."[4] AdHoc makes a similar point when it observes that the "rummage sale prices" at which the divestiture assets from the AT&T/BellSouth merger were sold may indicate that the assets conferred little competitive benefit to the CLECs.[5] Since the CLECs can offer high-revenue customers only limited facilities and a limited array of services, COMPTEL confirms that its members "have to offer extremely steep discounts" relative to the prices charged by incumbent LECs.[6]

The Commission could guarantee CLECs the right to profitably undercut the prices incumbent LEC charge end users, but re-regulating special access even temporarily in the hope that CLECs will eventually regain access to capital markets will diminish the incentives for cable and fixed-wireless providers to invest in facility-based competition now. What's more, there is no guarantee CLECs will support deregulation in the future. So there is a very real danger that a CLEC rescue may never lead to sustainable competition on the merits – just more regulation.

II. SPECIAL ACCESS COMPETITION IS ALREADY INCREASING

Cable operators and fixed wireless providers are currently investing in new facilities that will compete with the special access services provided by incumbent LECs. For example, Sprint

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[3] *Comments of Sprint* Nextel at 40-41; *Comments of AdHoc Telecommunications Users* Committee at 24-25; *Comments of* COMPTEL at 3.
[4] *Comments of COMPTEL* at 10.
[5] *Comments of the AdHoc Telecommunications Users Committee* at 18.
[6] *Comments of COMPTEL* at 11.

Nextel is partnering with Clearwire[7] to build a nationwide WiMAX network[8] partly in order to reduce the backhaul costs it pays to route calls from cell towers to switching centers[9] (Sprint claims in this proceeding that special access constitutes, on average, approximately 33 percent of the monthly cost of operating a cell site).[10] Sprint has also inked a deal with FiberTower to provide backhaul for its 4G/WiMAX service in several markets.[11] It should also be noted that Sprint told AT&T negotiators that it has "many other options" to meet its backhaul needs.[12]

Cablevision and Time Warner are making "major pushes" to offer packages of phone, TV and high-speed Internet service to small and midsize businesses, according to the *Wall Street Journal*, and Comcast has said that offering services to small and midsize businesses will be its top new priority of 2007 and 2008.[13]

GAO notes that a competitor need only sign up a couple customers to justify the cost of extending their own facilities to a building:

> [R]epresentative from one firm estimated that they would need three to four DS-1s of demand, while representatives from two other firms estimated demand of greater than 2 DS-3s was required. However, one incumbent firm and one cable company noted that the necessary revenue to extend a nearby network into a building is relatively low.[14]

If the Commission arbitrarily reduces what incumbent LECs can charge for special access, that would also reduce the revenue investors could expect to earn from these new facilities which, in turn, may affect their willingness to follow through with these investments.

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7 "Clearwire, Sprint Reach Agreement on Roaming," by Amol Sharma, *Wall Street Journal* (Jul. 20, 2007) *available at* http://online.wsj.com/article/SB118484259787571542.html.

8 *See:* "Sprint's Boundless Ambitions," by Roger O. Crockett, *Business Week* (Aug. 8, 2006) *available at* http://businessweek.com/technology/content/aug2006/tc20060808_244294.htm. *See also:* "Sprint Explores Options for WiMAX," by Amol Sharma and Dana Cimilluca *Wall Street Journal* (Jun. 14, 2007) *available at* http://online.wsj.com/article/SB118177984718034661.html.

9 "Sprint's Secret to Cost Cutting: WiMAX," by Olga Kharif, *Business Week* (Dec. 21, 2006) *available at* http://www.businessweek.com/technology/content/dec2006/tc20061227_904530.htm.

10 *Comments of Sprint Nextel* at 33.

11 *Id.,* at 32.

12 *Comments of AT&T Inc.* at 17 and *Supplemental Declaration of Parley C. Casto* at ¶46.

13 "Cable Firms Woo Business In Fight For Telecom Turf," by Peter Grant, *Wall Street Journal* (Jan. 17, 2007) *available at* http://online.wsj.com/article/SB116900897094478668.html.

14 "FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services," GAO-07-80 (Nov. 2006) at 26 *available at* http://www.gao.gov/new.items/d0780.pdf.

The risk that Sprint Nextel, for example, might cancel its plans to build a WiMAX network if the Commission reduces its backhaul costs via regulation of incumbent LECs is a risk the Commission should avoid.

III. SPECIAL ACCESS RATES ARE ALREADY DECLINING

GAO also reports that contract prices (the prices customers actually pay, as opposed to the published sticker prices) have actually declined:

> [O]ur analysis shows that most contracts provide discounts that, coupled with CALLS Order decreases in phase I areas, can eliminate any increases in the list prices and result in an overall decrease in price when compared with prices that existed prior to pricing flexibility ....
>
> Average revenue for channel terminations and dedicated transport for DS-1 and DS-3 has generally decreased over time, although the decline in average revenue for channel terminations is larger in phase I areas compared with phase II areas.[15]

If the rates end users are now paying don't seem to have declined as fast as the costs incurred by incumbent LECs have fallen, that's actually a good thing. Competitors won't enter a market unless it is profitable. As the Commission has observed, "unreasonably high rates" will induce competitive entry which will "drive rates down."[16] The investment decisions of Sprint Nextel and others bears this out. These investments in new facilities are the direct result of the Commission's current focus on deregulation.

The Commission should set a timetable for the elimination of remaining special access regulation now in order to further incentivize investment. Complete deregulation of special access won't be any less difficult politically in the future. There will never be a point where all parties agree that deregulation is appropriate. Whenever any market is deregulated someone always complains loudly that the timing isn't right. As Randy May points out, the Commission has already acknowledged that it is impossible for regulators to "time the grant of pricing

[15] *Id.*, at 14.
[16] *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 98-63, 98-157, *Fifth Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd at 14297-98, para. 144 (1999).

flexibility relief to coincide precisely with the introduction of interstate special access alternatives for every end user."

CONCLUSION

It has always been tempting for regulators to ensure that everyone profits and no one fails; and although some competitive local exchange carriers and wireless providers who purchase special access from incumbent LECs are facing enormous pressure to cut costs, re-regulating special access would actually harm competition by inhibiting investment in new facilities. The Commission should act decisively to promote further facilities investment by setting a timetable for the complete elimination of all remaining special access price-controls.

Respectfully submitted,

/s/

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