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Melissa E. Newman
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EX PARTE

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September 27, 2007

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

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

Dear Ms. Dortch:

On September 27, 2007, Melissa Newman and Lynn Starr met in separate meetings with Ian Dillner, Legal Advisor to Commissioner Martin, with Scott Bergmann, Legal Advisor to Commissioner Adelstein, and with Chris Moore, Legal Advisor to Commissioner Tate, regarding the above-captioned proceedings.

The attached document was used as the basis for discussion.

This *ex parte* is being filed electronically pursuant to 47 C.F.R. §§ 1.49(f) and 1.1206(b). Please contact me at 202.429.3120 if you have any questions.

Sincerely,

/s/ Melissa E. Newman

Copy via email to:
Ian Dillner
Scott Bergmann
Chris Moore

Attachment

In the Matter of Special Access Rates For Price Cap Local Exchange Carriers

WC Docket No. 05-25, RM-10593

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Robust and meaningful competition exists in the high capacity transmission market.

- Qwest has submitted substantial and compelling evidence on the highly competitive nature of the high capacity transmission market in Qwest's territory *[1]*
  - Fiber-based competitors
  - Fixed wireless providers
  - Cable companies
- xDSL and Cable Modem provide meaningful alternatives today, and will continue to grow
- Qwest wholesale and retail customers leverage competitive alternatives when negotiating contracts with Qwest
- Other companies have also provided significant evidence on the competitive nature of the market *[2]*
- Additional competitive alternatives are feasible *[3]*
- Independent analysts confirm the competitive nature of the market *[4]*

As intended by the FCC, the Pricing Flexibility regime for special access has resulted in a more competitive market.

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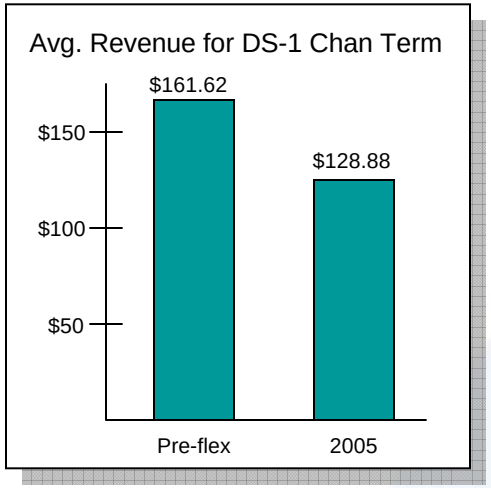
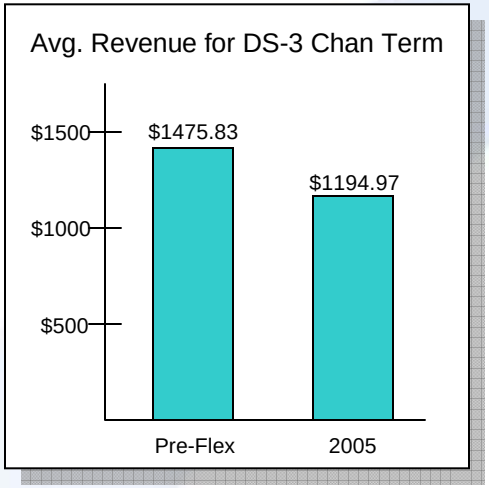
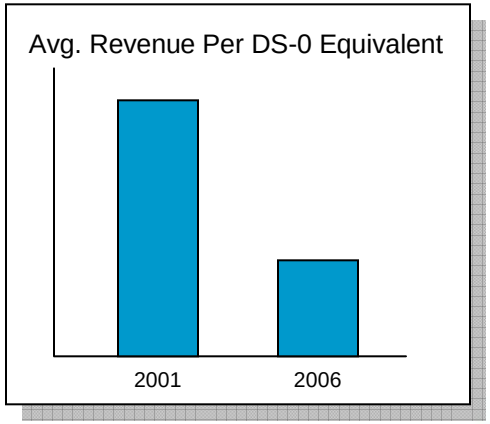
Effective prices have declined substantially since the implementation of Pricing Flexibility.

- Special access prices are falling even according to the flawed GAO report *[5]*





- Qwest's data show significant declines in the effective price for special access *[6]*



- Month-to-month rates are not reflective of the price most customers pay *[7]*
  - With Pricing Flexibility, Qwest offers customers significant discounts structured to meet the needs of individual customers

Customers are enjoying the benefits of competition in the high speed transmission market.

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Special access pricing is NOT hindering the ability of wireless carriers to grow.

- The D.C. Circuit Court concluded in USTA II that special access rates "don't impede competition." *[8]*

- Experience since then only further supports this conclusion *[9]*
  - Over the last two years, U.S. wireless operators have added nearly 20,000 cell sites, an increase of 11.3 percent
  - Since 2004, per-minute wireless prices have continued to fall, while usage has continued to increase

- The FCC should reject arguments that special pricing requirements are necessary for wireless towers *[10]*
  - ILECs enjoy no advantage over other parties in "greenfield" situations
  - No reason why wireless carriers cannot construct their own facilities to remote cell sites

- T-Mobile admits that future needs of wireless carriers are for higher capacity circuits that are concededly competitive *[11]*

Claims by wireless carriers for special pricing treatment are frivolous.

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Analysis of ARMIS-based rates of return and comparisons to TELRIC are irrelevant for special access.

- It is inappropriate to use ARMIS to evaluate special access rates of return
  - A succession of freezes in Separations factors have caused serious distortions in data generated by ARMIS reports *[12]*
  - ARMIS reporting rules were never intended to be used to develop a meaningful service-specific Rate of Return figure *[12]*
  - Parties who have the most experience with ARMIS and rate of return agree that to use ARMIS in this fashion is inappropriate *[13]*

- It is inappropriate to use TELRIC to evaluate special access prices *[14]*
  - Courts have approved TELRIC as lawful only because it is applied in specific limited circumstances
  - Courts have precluded blanket access to incumbent networks at TELRIC rates

Attempting to re-initialize special access rates in a vacuum would be arbitrary and capricious rate-making.

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The FCC's predictive judgment for special access has in fact proved accurate.

- In 1999, the FCC determined that extensive CLEC collocations, because of the substantial sunk investment they represented, provided a good measure of whether ILEC access rates needed to be subject to extensive regulation

- The FCC adopted rules permitting significant flexibility in those wire centers and MSAs where specified collocation thresholds were met

- Since 1999 and the subsequent granting of pricing flexibility when an ILEC met the thresholds, competition in the high capacity transmission market has grown and prices have declined in real terms

Having got it right in 1999, the FCC should NOT re-regulate or re-initialize special access rates.

INFORMATION SOURCES

[1] For example, fiber-based competitors (Qwest Comments, pgs. 25-27), fixed wireless providers (Qwest Comments, pgs. 29-33), cable companies (Qwest Comments, pgs. 35-39); Appendices 1-7 contain additional details; and Ex Parte Response of Qwest, August 31, 2007 in WC Docket No. 06-125, In the matter of Petition of Qwest for Forbearance Pursuant to 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services.

[2] AT&T Comments, pgs. 8-21; AT&T Reply Comments, pgs. 7-22; Verizon Reply Comments, pgs. 13-37; Verizon Reply Comments, pgs. 30-36Embarq Comments, pgs. 5-8, 14 and 26; Iowa Telecom Comments, pgs. 18-21; Small Business and Entrepreneurship Counsel Comments, pg. 2; Free State Foundation Comments, pgs. 3-5 & Appendix; Discovery Institute Reply Comments, pgs. 2-4.

[3] Qwest Comments, pgs. 33-35, 39-41.

[4] Qwest Comments, pgs. 29-30, 33-34, 35, 38-41.

[5] Government Accountability Office, FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services, GAO 07-08 (Nov. 2006) at 65 (App.2, Table 9)

[6] Qwest Comments, pg. 46.

[7] AT&T Comments, pgs. 36-37; Verizon Comments, pgs. 7-13; Qwest Comments, pg. 48.

[8] USTA II, 359 F.3d at 576

[9] Qwest Comments, pgs. 41-44.

[10] Qwest Comments, pgs. 12-13; Qwest Reply Comments, pgs. 30-31.

[11] T-Mobile Ex Parte Communications, September 4, 2007

[12] Qwest Comments, pgs. 50-53; Qwest Reply Comments, pg. 6-8.

[13] AT&T Comments, pgs. 34-36; Verizon Reply Comments, pgs. 7-8; Embarq Comments, pgs. 10-11; Iowa Telecom Comments, pgs. 12-14; US Telecom Comments, pgs. 21-23.

[14] Qwest Reply Comments, pgs. 8-13.