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September 24, 2009

EX PARTE PRESENTATION

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket. 05-25

Dear Ms. Dortch:

This is to inform you that on September 24, 2009, Robert Mayer, Patrick Brogan and the undersigned, of USTelecom met with FCC Commissioner Clyburn's Legal Advisor Carol Simpson in connection with the proceedings above. In the meeting we discussed the attached presentation and USTelecom's report on High-Capacity Services, previously filed in this docket.

Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this electronic notice is being filed in the above-referenced dockets. Please call me if you have any questions.

Sincerely,

Glenn T. Reynolds
Vice President, Policy

Attachment
cc: Carol Simpson

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We are Broadband.

Summary of Report

High-Capacity Services: Abundant, Affordable, and Evolving

Patrick Brogan
Vice President for Industry Analysis, USTelecom

Evan Leo
Partner, Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C.

Report Issued – July 2009
Summary Presentation Updated – August 2009

Introduction and Overview of USTelecom Report

- Why this report?
  - U.S. Government has made ubiquitous broadband deployment a national priority
  - Proponents of new special access price cuts piggy-backing on broadband policy interest
  - FCC needs up-to-date factual record on competition, investment, and innovation
- Goals
  - Provide a snapshot of industry facts
  - Carefully document sources
  - Illustrate market dynamics
- Limitations
  - Publicly available and third party data are extensive…
    - Showing growing demand, competition, investment and innovation while prices continue to fall
  - …but not sufficient…
    - Most competitors have not supplied critical data on location of competitive facilities
  - Therefore, it is essential for the FCC to undertake comprehensive data collection from *all* sources of competitive supply, including self-supply

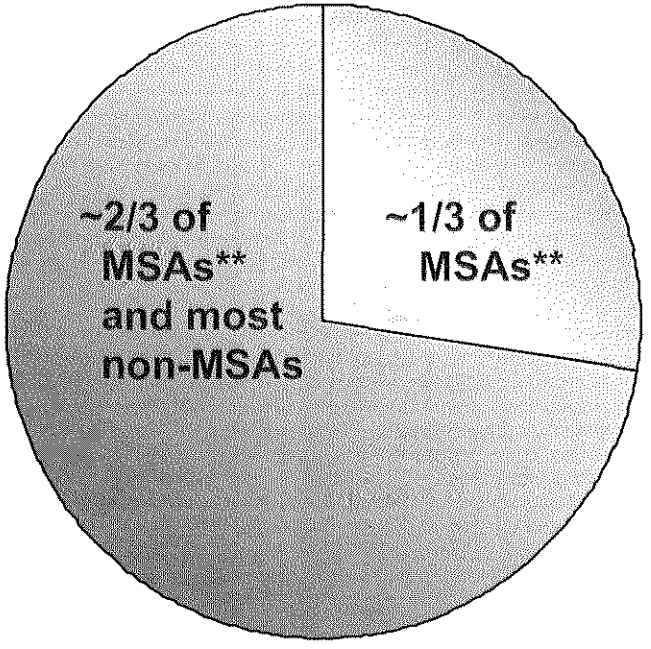
Special Access Regulation: All Prices Must Be "Just and Reasonable"

Title II of the Communications Act

"Just and Reasonable"

Cannot Raise Rates

Rates constrained by strict price controls: price caps or rate of return regulation



Full Flexibility*

Phase 2 Pricing Flexibility permits raising or lowering rates subject to "just and reasonable" mandate

* Phased pricing flexibility for channel terminations based on company-specific competitive triggers, so pricing flexibility may not extend to all incumbent local exchange carriers in a given MSA. **Source is U.S. Government Accountability Office (GAO).

High-Capacity Services Are Well-Suited to Competitive Supply

- Demand is large and growing rapidly – a multi-billion dollar competitive opportunity
  - New corporate data services (e.g., Carrier Ethernet, IP-VPN) are projected to grow 11% annually* and are replacing traditional services (e.g., special access, Frame Relay, ATM)
  - Mobile cell sites are projected to grow from 242,000** to over 300,000 and average cell site capacity is expected to grow from 5-10 Mbps to 50-100 Mbps by 2012***
  - Bandwidth demand for wireless will more than double annually for the foreseeable future
  - Consumer fixed line Internet traffic will more than quintuple from 2008 to 2013****
- Demand tends to be highly concentrated
  - Approximately half of ILEC special access revenue comes from the top 25 metro areas
  - 80% of large ILEC special access revenue comes from 20% or less of wire centers
- Sophisticated buyers purchase services through competitive bidding process
  - Carriers, large enterprises, integrators, and consultants have significant expertise
- Even in areas where competitors have not yet deployed facilities, prices are constrained by cross market competition
  - Customers frequently demand discounts across all geographic areas
  - High capacity services are contestable

*Sources: * Yankee Group Research; ** CTIA; *** Yankee Group; **** Cisco Visual Networking Index*

Intermodal Competition Has Changed the Game

Intermodal providers such as cable and fixed wireless are now significant competitors for high-capacity services

- Wide-scale intermodal competition is significant on several levels
  - Significant competitive market opportunity is inconsistent with claims of "market failure"
  - Static market share analyses are even less reliable
  - This is particularly true given the success of intermodal competition in the mass market
- Competition from cable and fixed wireless providers is abundant and growing, not "just around the corner"
  - NCTA has acknowledged that "cable operators provide high-capacity services that compete with special access services offered by incumbent local exchange carriers…" *See NCTA, June 30th ex parte letter from Steve Morris and Neal Goldberg to Marlene Dortch*
  - Fixed wireless technology is an additional alternative to wireline high capacity services, including ILECs' special access services; more than a dozen fixed wireless providers offer service in areas throughout the country
  - Intermodal competitors are sufficiently advanced to discipline incumbents' market behavior
- In spite of challenging economic environment, companies have been investing and expanding service (report includes examples of investment since 2008)

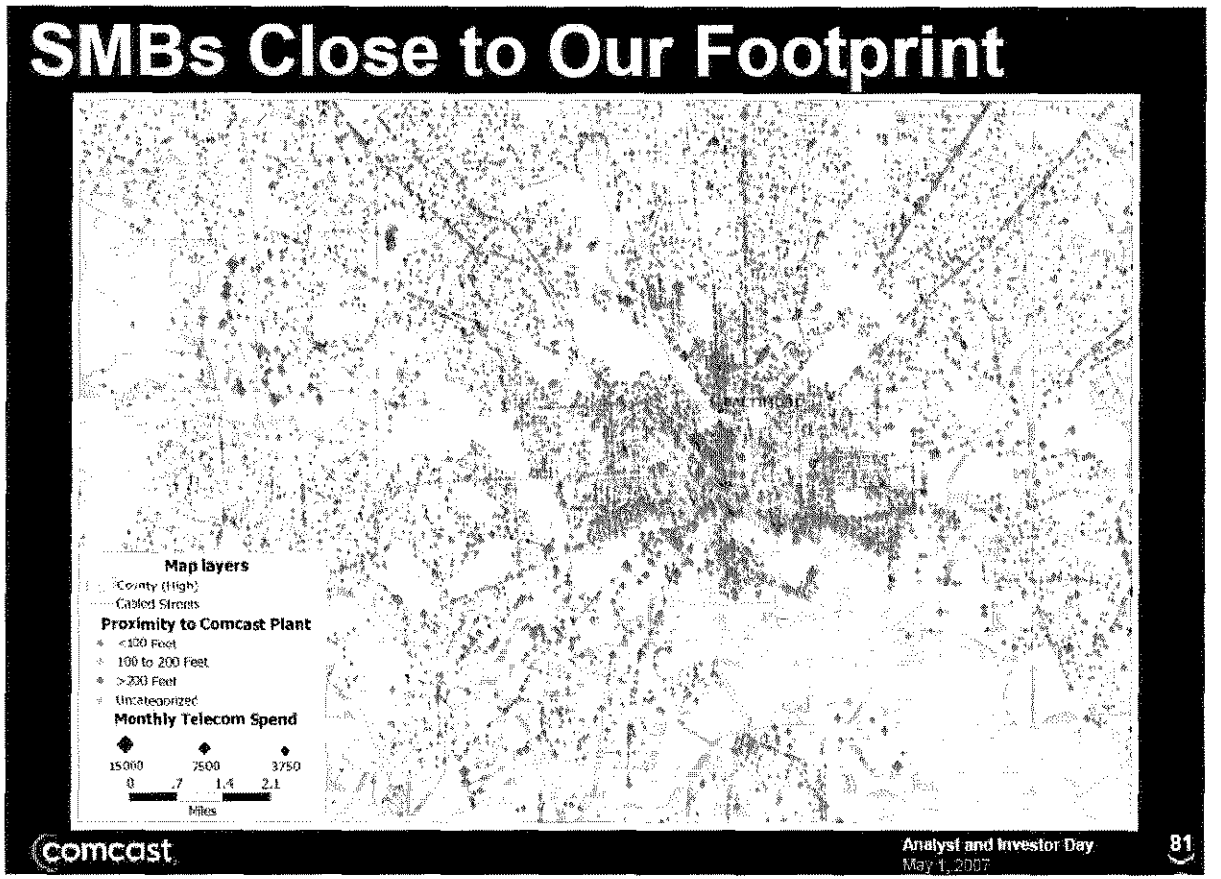
Cable Competition Leverages Near-Ubiquitous Plant

Cable companies are increasingly using their near-ubiquitous networks to provide business customers a range of services that compete with special access

- The top 5 U.S. cable operators:
  - Are investing several billion dollars to expand business services
  - Pass the majority of U.S. businesses, and are targeting penetration of 20%-25% of the small and medium business market in the next few years
  - Already report annual revenue of ~$3 billion, with projected growth of at least 15%-20% per year
- Individual cable operator examples:
  - Cablevision stated that it has "more fiber in the New York/New Jersey/Connecticut area than any phone company and that it *has fiber service to twice as many buildings in its New York footprint as Verizon"*
  - Cox is approaching $1 billion in annual business revenues and estimated that it now controls as much as 25% of the small and medium enterprise (SME) market in its footprint
  - Comcast sees five million SMEs within its footprint representing a $12-$15 billion opportunity and is targeting 20%-25% share
- Cable deployment of DOCSIS 3.0 will greatly enhance cable bandwidth offerings
  - Provides up to 100 Mbps downstream and 30 Mbps upstream
  - It is currently being deployed and will be available throughout most of the U.S. by 2013

Cable Examples Illustrate Proximity of Networks to Customers

Comcast Investor Presentation Shows Near-Ubiquity of Plant



Cable Statements Regarding Proximity to Business Customers

Cablevision
"…600,000 businesses inside our footprint…"

Comcast
"…5 million small- and medium- sized business that we think are in our footprint…"

Time Warner Cable
"…2 million business customers that fall within a quarter mile of each side of our plant…"

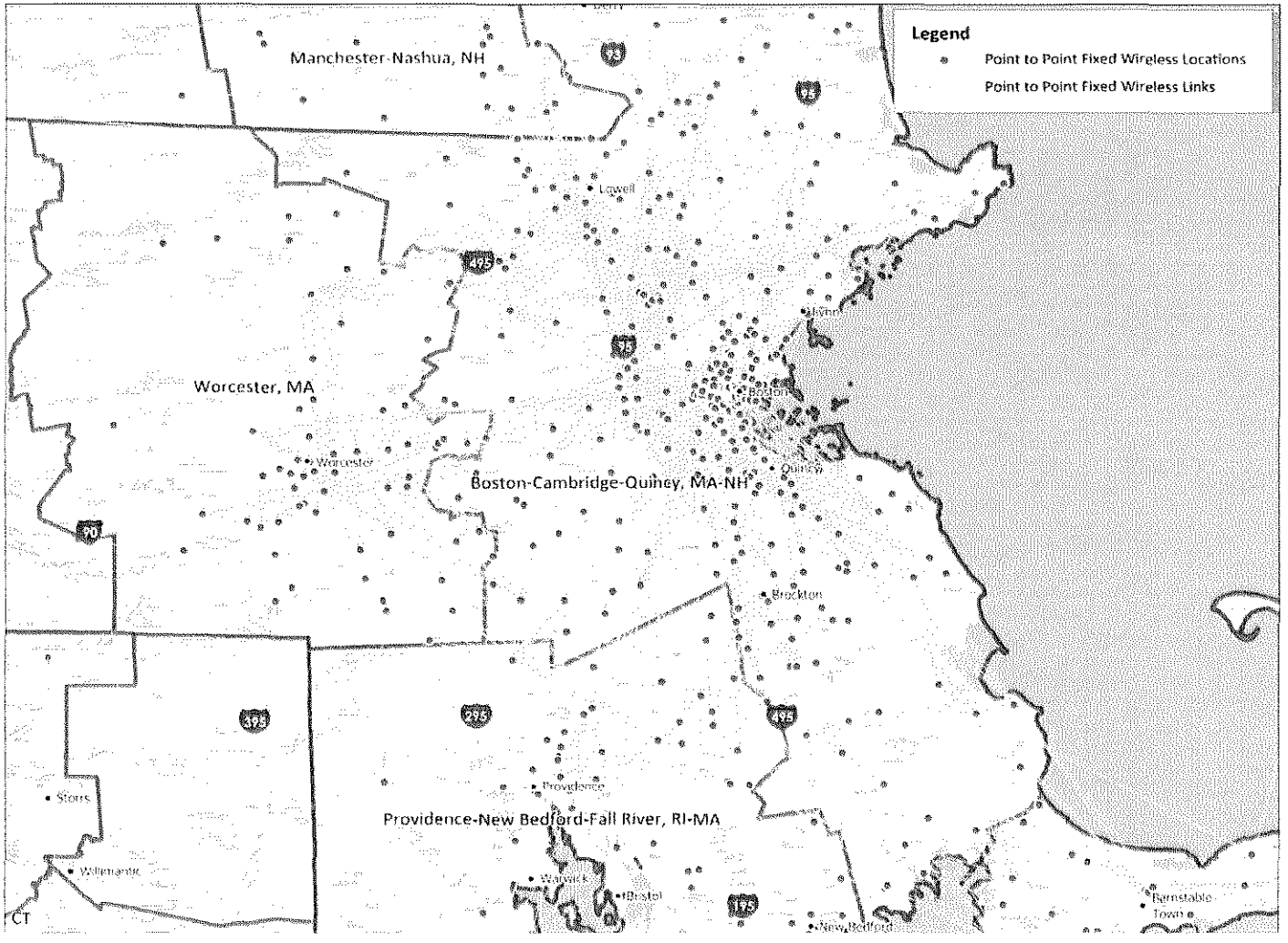
Charter
"…$5.5 billion of business Telecom spend within 600 feet of our network…"

Fixed Wireless Is a Rapidly Growing Alternative to ILEC Special Access

More than a dozen fixed wireless providers offer business, carrier, and wholesale services, ranging from DS-1 to Gigabit Ethernet to optical speeds, in areas throughout the country, including most of the top 50 MSAs

- Fixed wireless providers have acquired spectrum across the United States
  - FiberTower holds spectrum that covers 99% of the United States
  - Nextlink's fixed wireless spectrum covers "95% of the population in 81 of the top markets"
  - Clearwire "has 100 MHz or more of optimal 4G spectrum in most markets across the U.S."
- Fixed wireless providers assert they can deploy quickly and efficiently
  - FiberTower: "[y]ou can literally cover a hundred miles and you're talking less than $100,000 in equipment rather than millions to put in fiber."
  - Lemko: introduced fixed wireless technology that it claims reduces operational expenses "by 65%" and has a "breakeven end user density [of] one user per two square miles."
- Fixed wireless providers are rapidly adding new customers and locations
  - FiberTower provides service in the top 77 metro areas as well as many "suburban and rural markets"; as of 1Q2009, FiberTower increased the number of installed sites by 19% and the number of customer billing locations by 39% over the previous year
  - Clearwire states it is on track to "extend [its] wireless 4G network to potentially cover as many as 120 million people…across 80 cities…by the end of 2010."

Map Shows Breadth of Fixed Wireless Links in the Boston MSA



Source: Nicholas Vantzelfde of Communications Media Advisors.

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Competitive Fiber Providers Continue to Expand Their Footprints

Over the past two decades, competing providers have invested heavily to deploy fiber networks to virtually all areas where demand is concentrated, and are capable of providing service to every type of customer and at every level of capacity

- Data show that demand for high-capacity services is heavily concentrated geographically, and therefore readily targeted by competitive fiber providers
  - For example, for large ILECs, about 80 percent of special access revenue is concentrated in 20 percent or less of their wire centers
- From an investment standpoint, competing carriers focus on the "reach" of their network and not on the number of buildings to which they are actually connected
  - Level 3 told investors in May 2009 that there are "[o]ver 100,000 enterprise buildings within 500 feet of [Level 3's] US network"
  - tw telecom in May 2009 estimated that of the approximately 1.9 million "target" businesses in the cities it serves, nearly one million are within one mile of tw telecom's fiber

Competitive Fiber Providers Continue to Expand Their Footprints (Cont.)

- There is an average of 6 known competitive fiber providers in the top 50 MSAs with a range of between 1 and 14 alternative providers per MSA
  - These competitive providers have deployed over a hundred thousand local route miles of fiber that already connect to tens of thousands of office buildings where high-capacity customers reside
- Competitors are willing and able to extend their networks as demand warrants and they have been investing in urban, suburban, and rural areas, despite the worsening economy. Selected examples follow:
  - Level 3 (May 2009) announced the expansion of operations in upstate New York
  - AboveNet (Jan. 2009) deployed a fiber network in Austin, Texas
  - FiberLight (Sept. 2008) began building a fiber network] from Chantilly to Culpeper, Virginia
  - tw telecom (Dec. 2008) "[has] been connecting an average of about 1,000 enterprise buildings to our network each year and we will continue to add … in 2009"
  - Zayo Bandwidth (2008) added over 600 buildings via fiber laterals to its network

Competition for Wireless Backhaul Is Particularly Robust

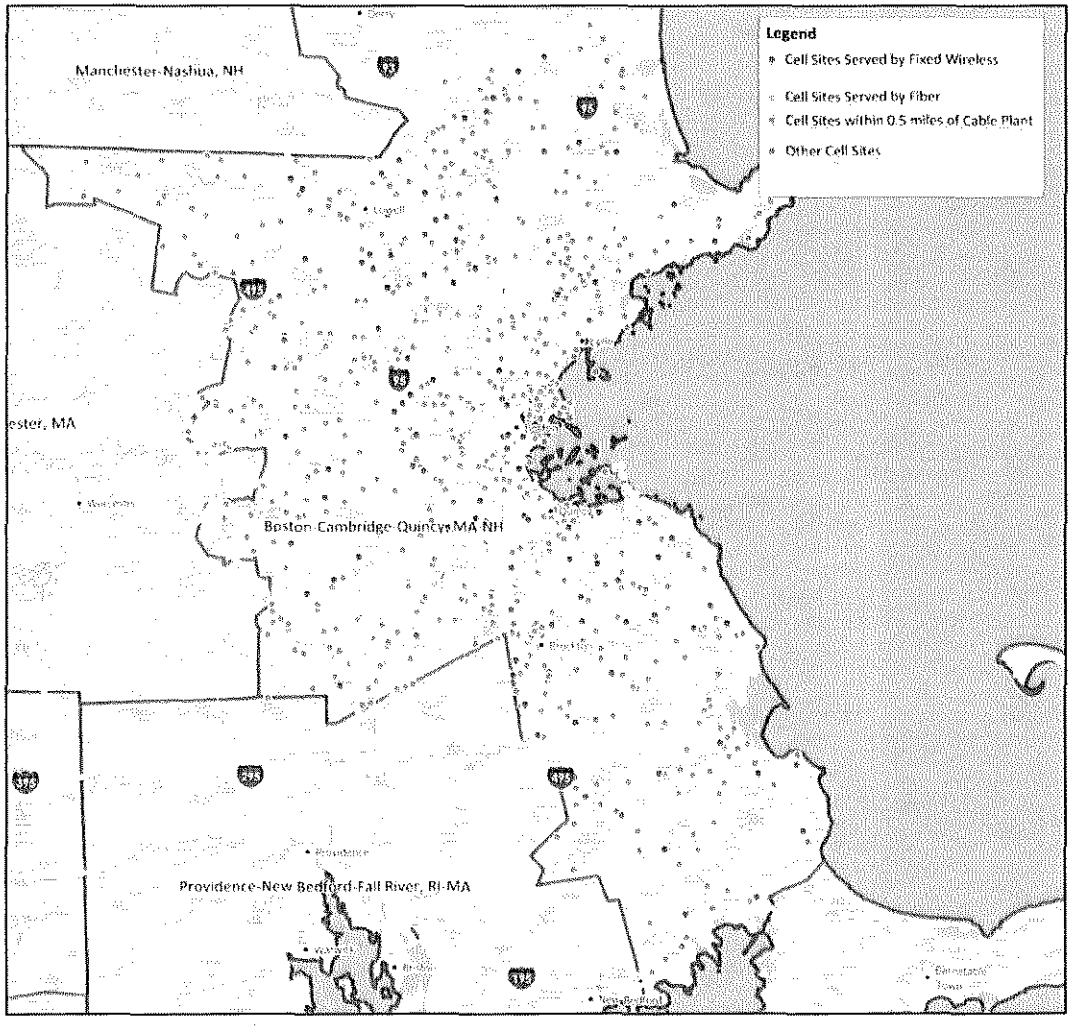
The dramatic growth in wireless voice and data connections and usage has outstripped the capacity of traditional time division multiplexing or copper facilities

- Wireless carriers will need to upgrade to newer backhaul technologies (not legacy DS1 and DS3s) to keep pace with demand for mobile broadband and high-bandwidth data applications
- This exploding demand for mobile broadband means, all backhaul providers (ILECs, fixed wireless, and cable) will be competing to build out higher capacity backhaul facilities; this is a multibillion dollar opportunity for all providers
  - Raymond James analysts estimated the size of the U.S. backhaul services market to be ~$3 billion annually in 2008, and that it could reach $8 - $10 billion in the next 2 - 4 years
  - Yankee Group projects bandwidth demand for wireless broadband is projected to grow at a compounded annual rate of 130 percent from 2008 through 2012

Competition for Wireless Backhaul Is Particularly Robust (Cont.)

- Fixed wireless via third-party or self-supply is a growing option for U.S. backhaul
  - In Europe, fixed wireless dominates backhaul. It was less prevalent in the U.S. for earlier generation mobile networks in part because carriers chose "relatively abundant and inexpensive T-1 lines" (citing former Sprint CTO). With rising 3G/4G demand, fixed wireless backhaul is more viable here than previously and is being deployed extensively.
  - Clearwire has over 18,000 cell sites under development for its broadband network and plans to rely on "almost exclusively microwave backhaul"
  - FiberTower, through its partnerships and master lease agreements, has the ability to access over 100,000 towers nationwide—almost half of the total 242,000 U.S. cell sites
- Competitive fiber and cable providers are also actively targeting wireless carriers

Map Shows Most Cell Sites Near Cable, Fiber, and Fixed Wireless Plant



When each of the various alternatives is taken into account, the overwhelming majority of cell sites can readily be served using competing facilities. For example, in the Boston MSA:

- 87% of cell sites are within a half of a mile of cable plant
- 83% are within a half of a mile of fiber
- 18% are served by point-to-point wireless backhaul circuits

Source: Nicholas Vantzelfde of Communications Media Advisors.

Conclusions

- The report confirms extensive and growing competition for high-capacity services
  - There is rapid entry from intermodal competitors, e.g., cable and fixed wireless
  - Competitive fiber networks have deployed in virtually all areas with concentrated demand
  - Prices have been steadily declining
  - Providers are continually offering innovative services, terms, and conditions in response to competitive pressures
  - Competition is extensive in retail markets using high-capacity inputs
- Data demonstrate that the high capacity services market is working and new special access price controls are unnecessary
  - High-capacity services are characterized by growing competition, declining prices, continued investment, and ongoing innovation
  - Calls for special access rate reductions are based on false rhetoric claiming lack of competition and excessive prices
- Nonetheless, the FCC should undertake a comprehensive data collection process that captures all providers of high capacity services, actual and potential
  - Publicly available data are necessarily incomplete because many carriers have not made public information regarding the extent of facilities, services, and customers
  - We are confident the actual extent of competition is greater than the report demonstrates