



October 20, 2009

Ex Parte

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

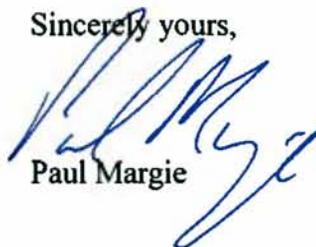
*Re: Special Access Rates for Price Cap Local Exchange Carriers
WC Docket No. 05-25*

Dear Ms. Dortch:

On October 16, 2009, Colleen Boothby for the Ad Hoc Telecommunications Users Committee, Thomas Jones of Willkie Farr & Gallagher, Susan Gately of Economics & Technology, Inc., Chris Frentrup of Sprint Nextel, and I met with Paul de Sa and Steve Rosenberg, of the Office of Strategic Planning and Policy Analysis, and Don Stockdale, Nick Alexander, and Pam Arluk of the Wireline Competition Bureau, on the topic of special access. The group discussed the attached presentation and requested that the Commission issue its data request on special access as soon as possible.

Pursuant to the Commission's rules, a copy of this notice is being filed electronically in the above-referenced docket. If you require any additional information please contact the undersigned.

Sincerely yours,



Paul Margie

cc: meeting participants

Special Access Reform

Designing a Data Request

Potential Goals of a Data Request

- Gather data to complement information already in the record to assist in evaluating the market.
 - The competition that the FCC expected, and on which its current approach depends, did not emerge.
 - The Phase II pricing flexibility trigger is not appropriate.
 - Price cap rules need updating, and prices are too high.
 - Terms and conditions are anticompetitive.
- Gather data to assist in crafting a new approach.
 - Designing a better pricing flexibility regime.
 - Setting a rational price cap.

Existing Sources of Data

- **ARMIS**
 - Cost, Demand, and Investment data, 1990-2007.
 - 2008 data not in database, but available.
 - Shows ILEC profits continue to rise—but ILECs contend the separations freeze skews numbers.
 - NRRI study attempted to adjust for this; ILECs could, but refuse to provide adjusted numbers.
 - Freeze understates profits in any case.
 - Accounting, not economic data.
- **Tariffs**
- **Price Cap Filings**
- **Extensive record in Special Access Docket WC 05-25**

Analyzing the Data: Market Definition

- Two uses of market definition:
 - To diagnose a competitive problem;
 - To craft a remedy.
- Geographic market:
 - Building (DOJ analysis); Central Office (forbearance proceedings); other?
 - ILEC practice is generally to price by state or region.
- Product market:
 - Carriers price by capacity and transmission protocol.
 - Rate structure separates loops from transport.
 - Products other than TDM DS-3 and below now removed from tariffs by *Broadband Forbearance Order*.

Analyzing the Data: The Alleged Effect of “Nearby Fiber”

- USTA wrongly argues that all you need to do is ask for data on fiber networks because that will tell you which areas are competitive.
- Nearby fiber can constrain prices only if a competitor could deploy a lateral to the building connecting it to the fiber—basic economics.
- USTA admits that competitors will deploy facilities only where demand is “appreciable.”
- What is “appreciable” demand that would lead to competitive deployment? DOJ said in 2006:

Minimum Demand	Distance
2 DS3s	0.1 mile
1 OC-12	0.25 mile
Over OC-48	1 mile

Data Collection Issues

- Potential geographic areas:
 - Nationwide
 - Top MSAs
- Potential sites:
 - Cell towers
 - Business locations
- Potential entities:
 - Purchasers - Wireless carriers/IXCs/Businesses
 - Sellers – ILECs/CLECs
- Samples or full census?
 - Cost, time, completeness of study.

Data Collection Issues

- MSAs:
 - Use Largest (by Population)?
 - It is where most of the demand is.
 - But that may distort overall view of competition.
- Wire Centers:
 - Special access demand is skewed toward some wire centers
 - Two ILECs say 20% and 17% of WCs contain 80% of special access revenue from top 50 MSAs.
 - How identify which WCs to sample?

Data Collection Issues

- Customer Types/Locations:
 - Cell Towers only?
 - In all WCs, all MSAs, all types (urban/suburban/rural) of areas.
 - Significant purchasers of special access.
 - Relatively concentrated number of purchasers.
 - All business locations?
 - Broader picture of market.
 - More diverse purchasers.
 - IXC, CLECs, Individual businesses.

Confidentiality

- This data is highly sensitive proprietary information.
- We want the most complete and quickest response possible, so adequate confidentiality is essential.
- The FCC should collect raw data from providers and purchasers of special access, create an aggregate report using this data, and rely only on that report for a decision.
- The raw data on, for example, which company is providing special access service to a particular zip code or building is irrelevant, only aggregate amount of competition is important.
- This approach is common at the FCC and complies with the APA.
- See letters of June 3 and July 31 for the details.

NoChokePoints Data Request

- Solicits data from diverse industry members.
 - ILECs, CLECs, IXCs, wireless carriers.
- Data to facilitate analysis of state of competition.
 - Earnings and cost data from ILECs.
 - Facilities location data.
 - “Potential” facilities location data.
 - Pricing data.
 - Data on terms and conditions.

NoChokePoints Data Request: In Particular

- Section II: Data for profit/cost analysis and TFP analysis.
 - Focus on ARMIS data; invite ILECs to offer corrections to data to address separations freeze.
- Section III: Data on facilities.
 - Cell site information from wireless carriers.
 - Facilities data from sellers/self-providers.
 - Build/Buy data from non-ILEC sellers.

NoChokePoints Data Request: In Particular

- Section IV: Data on collocations.
 - To assess appropriateness of current pricing flexibility triggers.
 - Number of collocation arrangements in Central Offices connected to non-ILEC transmission facilities.
 - Number of transmission facilities connecting those collocations to customer locations.
- Section V: Demand and price data.
 - NRRI demand data.
 - Price change data, focusing on changes not due to price caps or merger conditions.

NoChokePoints Data Request: In Particular

- Section VI: Terms and conditions.
 - This data will allow assessment of size of market available to competitive/self provision.
 - Data on terms and conditions, including:
 - Percent of revenue subject to volume commitments.
 - Circuits subject to volume commitments.
 - Circuits subject to early termination penalties.
 - Length of term commitments.
 - Descriptions of volume commitment obligations and penalties.

ILEC Data Request

- Seeks data only from competitive carriers and purchasers of competitive special access.
 - Would let ILECs know exactly where competitors can serve.
 - Provides no context of ILEC facilities.
 - Burdens CLECs.
- Seeks data only on facilities.
 - No data on pricing.
 - No data on cost or profits.
 - No information on terms and conditions and effect on the market.

ILEC Data Request

- Seeks data from wireless carriers on self-provisioned backhaul to cell sites.
 - Use of ILEC facilities for context is unreported.
 - No report on capacity needed at cell site.
- Seeks data from all retail purchasers of special access.
 - No reporting of use of ILEC facilities for context.
 - Very burdensome.
 - Includes data on offers within the last year, without confirmation that service could actually be provided.
- Seeks data on use by competitors of DS1/DS3 services to provide Ethernet
 - Ignores that this is an inefficient way to provide Ethernet.