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Qwest
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EX PARTE

<u>*Electronic Filing via ECFS*</u>

October 28, 2009

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*

Dear Ms. Dortch:

On October 28, 2009, Craig Brown, Robert McKenna, Carolyn Hammack and Melissa Newman, all of Qwest, and Jon Nuechterlein, representing Qwest, met with Paul De Sa, Nick Alexander, Deena Shetler, Al Lewis, Don Stockdale, Margaret Dailey, Richard Kwiatkowski and Steve Rosenberg to discuss the above-captioned proceeding.

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

Attachment

Copy via email to:
Paul De Sa
Nick Alexander
Deena Shetler
Al Lewis
Don Stockdale
Margaret Dailey
Richard Kwiatkowski
Steve Rosenberg

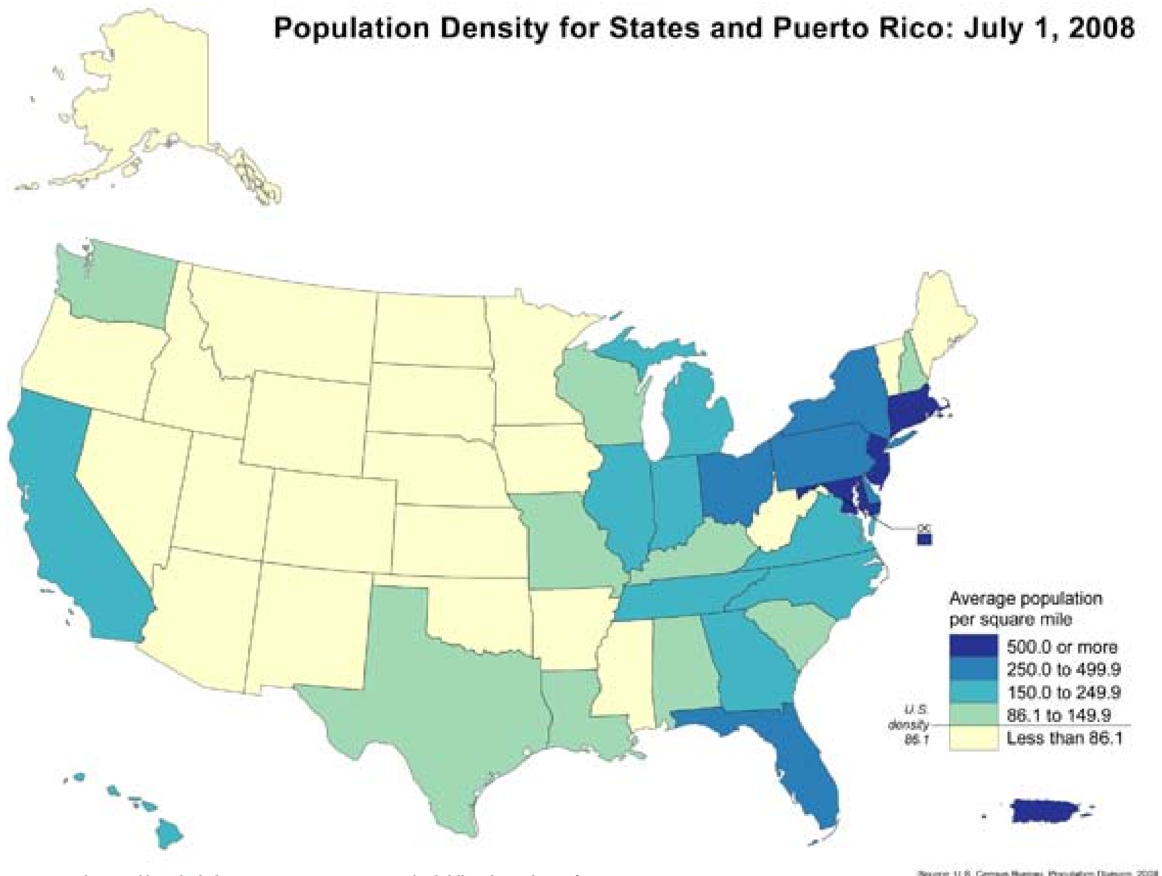
Special Access

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

Qwest

October 28, 2009

Western U.S. Population Density

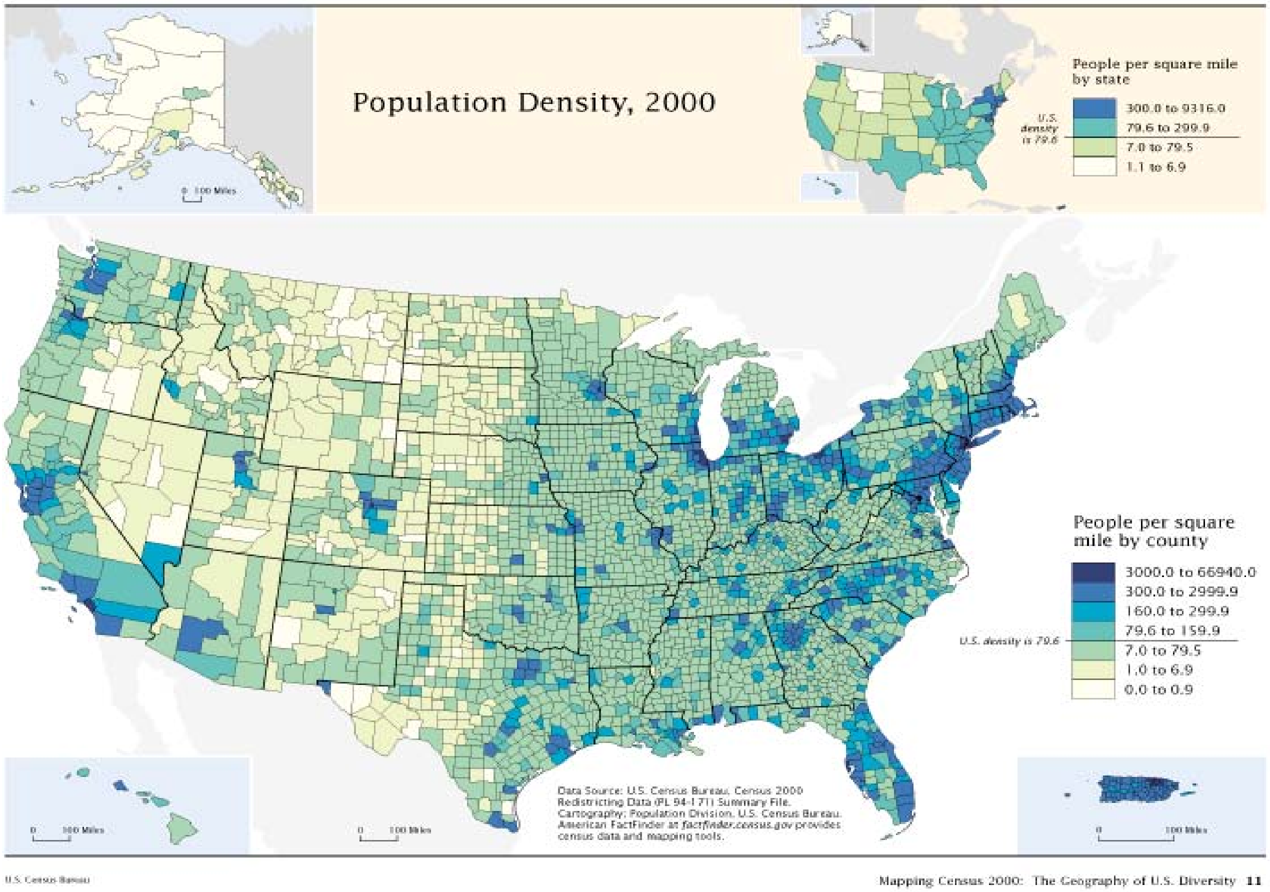


States in Qwest's Territory	Population per Square Mile
Wyoming	5.5
Montana	6.6
North Dakota	9.3
South Dakota	10.6
New Mexico	16.4
Idaho	18.4
Nebraska	23.2
Utah	33.3
Oregon	39.5
Colorado	47.7
Iowa	53.8
Arizona	57.2
Minnesota	65.6
United States	**86.1**
Washington	98.6

Source: http://quickfacts.census.gov/qfd/index.html

The majority of states served by Qwest have much lower population density than the rest of the United States. Rural homes can be great distances apart.

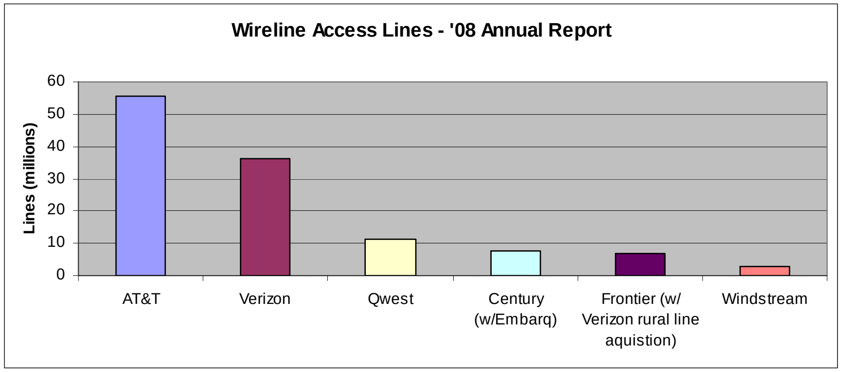
Population Density by County

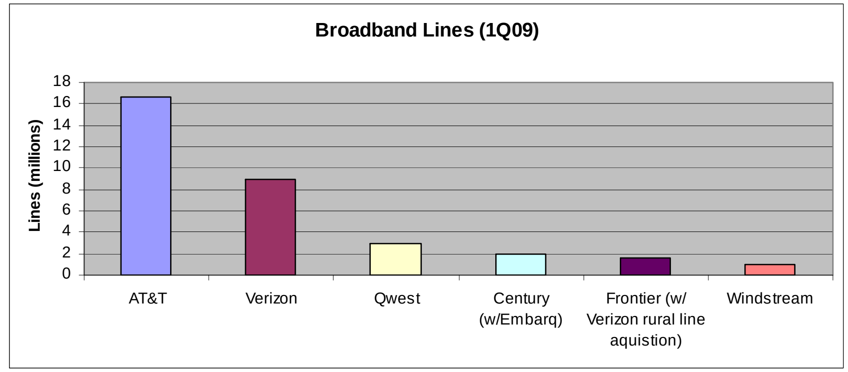


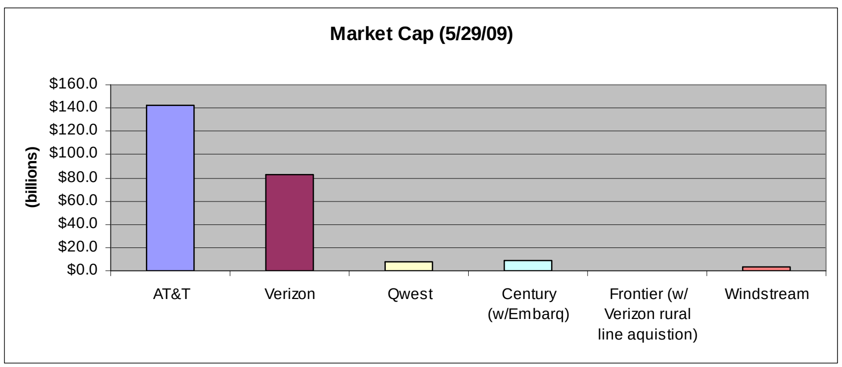
- The rural nature of Qwest territory impacts the characteristics of facilities ordered and provisioned.
- In Wyoming,
  - DS1 average circuit length is 32 miles;
  - DS3 average circuit length is 100 miles.

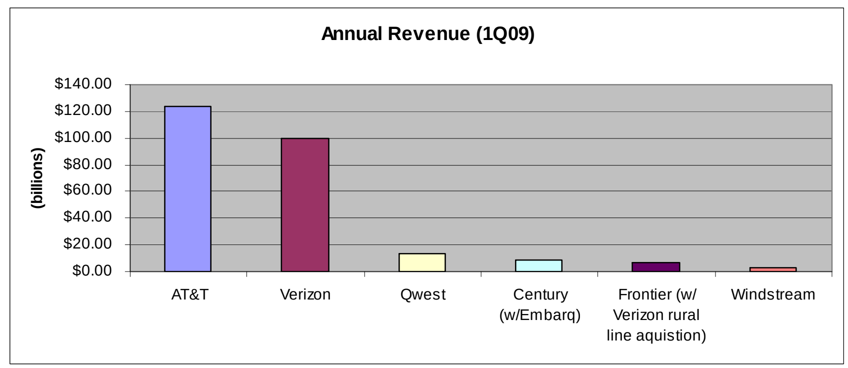
Most of our counties are below or well below the national average for population density. Many have less than 7 people per square mile. As you move outside the city limits of small towns in rural areas, the distance between homes (low linear density) increases immediately.

The Industry & Qwest as a Company









The Industry & Qwest

Qwest has made consistent, significant investments in its network

- $6.7 billion since 2005
- An additional $1.6 billion anticipated for 2009*

Providing high-capacity services is extremely capital intensive. Under the current federal regulatory regime there has been an estimated $60 billion in industry investment **each year**

The stability of this regime has allowed for continued broadband deployment

Unnecessary new price controls on special access would thwart what the nation needs most today – investment in next-generation technology and network upgrades from a diverse array of market players.

*Source: Qwest 3Q Earnings Announcement

Qwest is both a Buyer and a Seller of Special Access Services

Qwest, through its Qwest Communications Corporation arm, competes both in and outside of Qwest's 14-state territory

- QCC deals everyday with make/buy decisions associated with the facilities necessary to provide high-speed services to small, medium and large size businesses, government operations, health and educational institutions
  - QCC has seen first-hand the abundant supply of high-capacity broadband service alternatives that are available in densely populated urban areas – with a large number of carriers having built out their networks and competing in these markets
    - In spite of this highly-competitive market, Qwest as an incumbent carrier, has received only Phase 1 pricing flexibility for end user channel terminations in markets such as Denver, Minneapolis and Seattle
  - Across the country, Qwest provides most long-haul, high-capacity broadband services over a network it has invested in and built over the last decade
    - Competitors are used extensively for long-haul services in areas that are off-net to QCC's long-haul network – areas that are sparsely populated with a low incidence of business
  - For local access, QCC leases a significant amount of the facilities from competitors to provide loops to its customers – it does so because this is the most economic way for it to provide the service in areas where it does not have a facility-based presence

Competition in Qwest Territory

AT&T and Verizon both have an extensive facilities-based presence in Qwest territory

- **AT&T** offers local private line services from DS-0 through OC-192
  - AT&T also offers a full range of wholesale services to other carriers in Qwest's region
- **Verizon Business** provides end-to-end dedicated circuits supporting synchronous data transmission at speeds of sub-56Kbps to OC-192

Competition in Qwest Territory

Competition from CLECs

- ***Integra*** acquired ELI in 2006. ELI has a large presence – with its own fiber network – in the Phoenix MSA. In an interview with the *Portland Business Journal*, Integra CEO Dudley Slater outlined the benefits of the ELI acquisition:
  - "Integra, which has been leasing optic-fiber capacity from ELI's network, will enjoy some significant cost savings from owning ELI, and will gain what Slater called 'a list of blue-chip [telecom] carriers' that also lease capacity from ELI. Integra has built its own metropolitan fiber networks over the years, but 'it's dwarfed by what ELI brings us.'"

Competition in Qwest Territory

Competition from CLECs

- ***Level 3,*** nationwide, has 27,000 metro route miles, over 8,000 buildings on net in 125 metro fiber markets in addition to over 100,000 enterprise buildings within 500 ft. of its network*
- ***Level 3*** offers metro private line speeds from DS-1 to OC-192
  - Level 3 has a specific marketing group, Level 3 Business Markets Group to focus on small, medium and enterprise businesses. When it acquired Broadwing, Level 3 stated: "The acquisition of Broadwing is consistent with both the Level 3 wholesale market strategy as well as our more recent entry into the enterprise market . . . Broadwing has made great strides with the national enterprise customers as a result of their strong product portfolio and national sales teams."
- ***Level 3*** is also a key wholesale provider in Qwest territory. In marketing its wholesale services, Level 3 states:
  - The company provides a comprehensive suite of services over its broadband fiber optic network including Internet Protocol (IP) services, broadband transport and infrastructure services, collocation services, voice services and voice over IP services. These services provide building blocks that enable Level 3's customers to meet their growing demands for advanced communications solutions.
    - In August 2009 Level 3 announced they are seeking ARRA stimulus funding. According to the August 24, 2009 release: *"The applications propose $15 million in grant funding and an additional $5 million in Level 3 matching funds to create new access points or 'middle mile' connections to the Level 3 network in more than 50 rural markets in six states."*
    - On October 22, 2009 Level 3 announced the availability of Level 3 Tower Access – a new service that offers direct wireless tower connectivity to the Level 3 network. "*Tower Access provides wireless carriers with more efficient and cost-effective options for wireless backhaul in metropolitan and rural locations. The first phase of this initiative will target unserved and underserved markets*…"
      - Level 3 states: *"Primarily located in rural areas, Level 3 Tower Access* ***offers an alternative to incumbent providers****, delivering a broad portfolio of voice, data and Internet services directly from the tower site. These services provide wireless carriers with* ***more competitive options*** *to backhaul wireless traffic and scale their network capabilities as mobile bandwidth and end-user demand continue to grow*." (*Emphasis added*)

*Source: Level 3 8.11.2009 Informational Investor Presentation

Competition in Qwest Territory

Competition from CLECs

- ***PAETEC*** has offices in seven of Qwest's 14 states and provides service to business-class customers in more than 83% of the nation's top 100 metropolitan areas
  - *PAETEC* bills itself as the "premier alternative to the ILECs, based on our nationwide footprint, breadth of products, and quality of service"
- ***tw telecom's*** dedicated high-capacity services offer a range of transmission speeds from 1.5 Mbps to 10 Gbps
  - tw telecom focuses on enterprise customers and has reported that its total metro and regional fiber routes increased from 26,399 in September 2008 to approximately 27,0000 in September 2009 and that its total number of fiber-connected buildings in now 10,000, up from 9,109 in September 2008*
  - tw telecom, nationwide, is a larger Ethernet provider than Qwest – tw telecom has the third highest market share of retail Ethernet port connections in the nation**

*Source: tw telecom September 2009 Investor Presentation;

**Source: 10.13.09 tw telecom press release

Competition in Qwest Territory

Competition from CLECs

- ***XO Communications*** states that it "has seen increased opportunities in the enterprise market as customers seek alternatives to today's incumbent telecom companies in the wake of industry consolidation. Today, XO Communications serves 50% of the Fortune 500 and manages complex and sophisticated networks for some of the nation's largest enterprises."

Competition in Qwest Territory

Competition from Cable

– **Cox Business** grew its commercial services customers by 19% and revenues by 16%; the company will realize $1 billion in revenue from Cox Business in 2010

  - Cox provides service to a significant portion of the small, medium and enterprise market in Phoenix
  - Cox also provides carrier-to-carrier services and provides backbone services to wireless carriers as well

– ***Comcast*** offers wholesale services to other carriers in the Minneapolis-St. Paul MSA over its extensive coaxial and fiber network. On its website, Comcast touts the carrier benefits of its network

  - "We offer carriers a range of services that can support your voice and data transport needs with much lower costs. From traditional TDM, ATM and SONET, to Ethernet and managed wavelength configurations, Comcast has a solution to meet virtually any requirement."
  - "Comcast Commercial Services leverages the massive network of our parent company . . . Our reach is broad and deep, with capacity in dense urban, sprawling suburban and even many rural areas others can't reach."

Competition in Qwest Territory

Competition from other entities

- ***SDN Communications***, a coalition of independent telcos, reports on its website that it ties together 300 South Dakota cities with 21,000 miles of fiber connecting businesses from hospitals and schools, to banks and county government
  - SDN also provides carrier-to-carrier services including wireless backhaul
- ***American Fiber Systems*** ("AFS") has built extensive fiber networks in many cities including Minneapolis and St. Paul. AFS leases its network to enterprise customers as well as carriers, and offers many services including dark fiber, SONET ring services and Managed Wavelength (e.g., OCn)
- ***Zayo Group***, according to its press release, assumed control of a network that serves six of the seven metropolitan statistical areas (MSAs) in Minnesota representing approximately 350 communities with a 1,400-mile fiber network (more than 50 on-net buildings) running throughout the state. Zayo describes its offerings as follows:
  - "Zayo collaborates with its carrier and enterprise customers to develop bandwidth solutions that meet their specific requirements. Carrier customers include telecom, wireless, cable TV, and Internet service providers. Enterprise customers include web-centric businesses, technology companies, government, education, financial services, healthcare, large enterprise and other bandwidth dependent businesses."

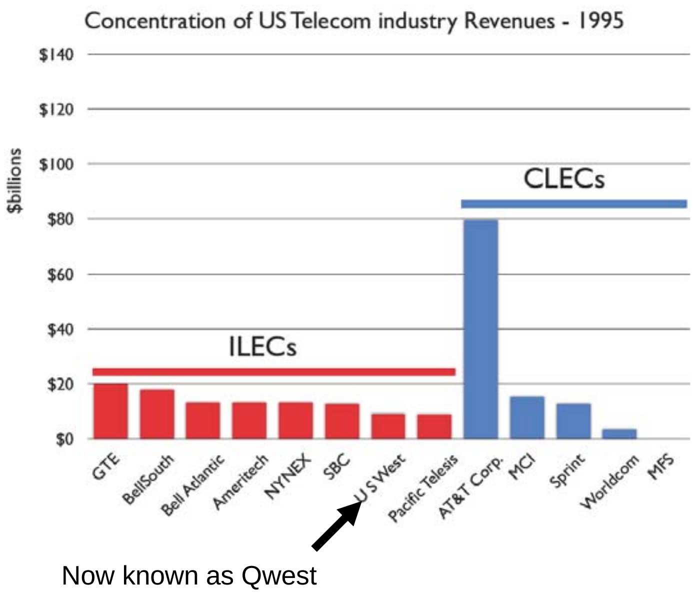
Even with the rural nature of Qwest's territory, competition and competitive choice for consumers and carriers are thriving.

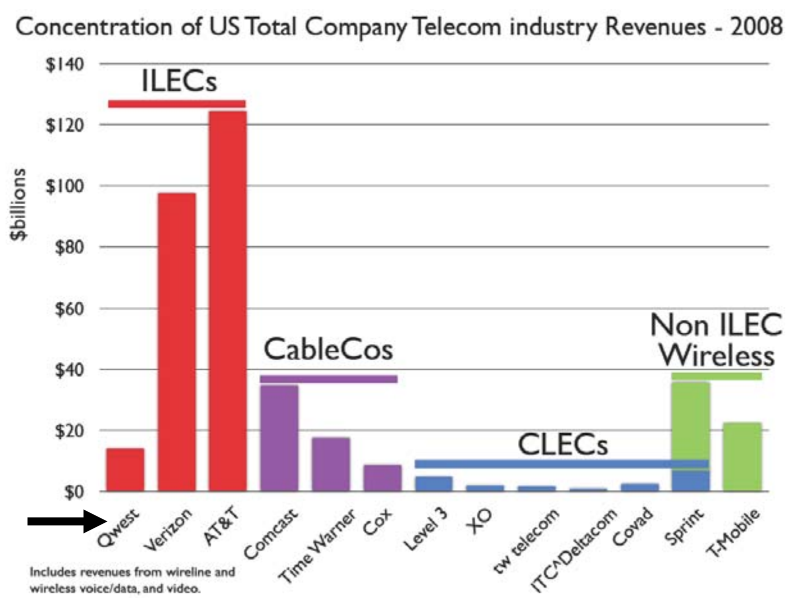
Qwest Special Access Pricing Structure

Qwest FCC No. 1 tariff contains a single pricing structure throughout Qwest's Service Territory

- Transport rates are mileage sensitive; charges for Channel Terminations are flat-rated
  - Rates are not distinguished by urban or rural
- Majority of Qwest wire centers are subject to price cap regulation
  - 63.2% of wire centers are price regulated for transport
  - 80% of wire centers are price regulated for Channel Terminations
  - Rates in Price Cap wire centers have remained stable for over seven years

Artificially lowering prices of TDM-based services may have the unintended consequence of lowering investment in, and adoption of, fiber technologies.





- Even the data referenced by entities advocating lower special access rates under the guise of reform demonstrates that Qwest is not, and cannot, be earning the supra-competitive rate of return they allege;

- The entities calling on the FCC to lower special access prices have a significantly greater concentration of US Total Company Industry Revenue than that of Qwest

Source: Lee Selwyn, ETI, NASUCA 2009 Meeting; referenced in BT 10.9.09 ExParte in Dockets WC 05-25 and GN 09-51

Qwest Special Access Pricing

Contrary to assertions of continually increasing prices in the special access market, Qwest has not increased tariffed rates in its Price Flex areas since 2004

- Qwest offers multiple discount opportunities including a regional plan that provides a discount off the tariffed rate while providing the flexibility of adding or subtracting facilities throughout Qwest's territory
- In addition, Qwest has recently introduced a new option which allows customers to migrate DS-1s currently under a Regional Commitment Plan (RCP) to a fixed term contract
  - To facilitate moves to this new plan, Qwest agrees to waive the RCP termination liability when the DS-1s are moved to a fixed term contract
  - This RCP "exit provision" enables customers to ultimately migrate DS-1s to new fiber-based technologies, e.g., SONET, Ethernet, etc.

Qwest Provides Customers with Choices and Competitive Pricing

Qwest's Competitive Pricing Plans Offer Flexibility

Qwest Regional Commitment Plan (RCP)*

- Qwest RCP has a 4-year term
- RCP provides a 22% discount on tariffed month-to-month rates in both Price Flex and Price Plan areas
- RCP is based on 90% commitment of existing circuits
  - Carriers have complete flexibility to connect/disconnect individual circuits anywhere in Qwest's 14-state region without penalty as long as they meet the 90% level
  - Provides a discount opportunity for all size carriers
- Qwest provides a rate protection option to protect carrier from tariffed price increases during the term of the agreement
- All tariffed services except Ethernet qualify toward plan
  - Qwest provides an optional plan for carriers to transition from DS1/DS3 RCP plan to Ethernet services with no penalty
- CLECs are allowed to retain their UNE services and are not penalized on their RCP plan
- RCP was developed at the request of carriers because of the flexibility it allows them in managing their circuits

*FCC No.1, Section 7

Qwest's Competitive Pricing Plans Offer Flexibility

Qwest Fixed Term Contract Plans*

- Allows carriers the benefit of discount without the commitment of volume levels
- Terms of 12, 24, 36 or 60-month plans
- The longer the term, the lower the rate
- TLA applies to each circuit
- Tariffed Discount applied in Price Flex as well as Price Cap wire centers

*FCC No.1, Section 7

Qwest's Competitive Pricing Plans Offer Flexibility

DS1 Moves from RCP to Volume/Term Pricing Plan*

- New RCP "exit" provision enables customers to migrate some or all of their copper-based DS1s to new fiber-based technologies, e.g. SONET, Ethernet, etc.
- Allows customers with entire embedded base of DS1s in RCP to migrate DS1s to fixed-term contract
- Fixed-term contracts are 12-, 24- 36- and 60-month terms
    - TLA applied if contract is terminated early
- In exchange for a term commitment by the customer, Qwest agrees to consider fiber construction where facilities do not currently exist
- To facilitate these moves, Qwest agrees to waive RCP termination liability when these DS1s are moved to a fixed-term contract

*FCC No.1 – Section 7

Qwest Uses Forbearance Received on Advanced Services to Tailor Customer Solutions

Qwest has not used the forbearance relief received in August 2008 to increase the rates for our Ethernet and Optical products

- Rather, Qwest has used the flexibility to target terms and conditions to better meet the needs of individual customers

- Qwest can do this because the services are not tariffed

- By having forbearance from the tariffing requirements, Qwest has the flexibility to respond in a more meaningful way to each customer's situation and business needs

Qwest Uses Forbearance Received on Advanced Services to Tailor Customer Solutions

- In September, Qwest announced the launch of its new fiber-based, Ethernet backhaul service designed for wireless service providers (WSPs)
  - By building on the fiber to the node (FTTN) deployment, Qwest Mobile Ethernet Backhaul extends fiber to cellular towers to help WSPs, who provide service to end users, meet the increasing demands of next-generation mobile technologies such as smart phones, laptops, netbooks and other bandwidth-demanding devices
- The new service provides incremental, scalable bandwidth to WSPs, enabling them to increase capacity to cellular towers on an as-needed basis
- Bandwidth to cellular sites is managed primarily through software, rather than equipment upgrades in the field, which helps to contain costs, simplify operations and speed provisioning times
- Qwest is currently in discussions with several WSPs to potentially provide the service to over 7,000 cell sites in Qwest's 14-state territory

The Special Access Debate

- Certain things should be uncontroverted
  - Phase I pricing flexibility, which permits ILEC price *reductions*, should be expanded for the benefit of consumers
  - Competitive alternatives to ILEC special access services have increased since 1999
  - Competition most intense where demand highest (i.e., more densely populated areas)
  - OC3 capacity and above subject to intense competition and opportunities for self-provisioning
  - Broadband deployment shifting demand to higher-capacity services
  - Special access rates have declined in real terms
  - Forced reductions in special access rates will reduce incentives and ability of Qwest, other ILECs, and competitive providers to deploy special access services

Framework for Considering Special Access Regulation

Evaluate actual and potential deployment

- Gather highly specific deployment data from all facilities-based providers
- Examine market conditions directly, rather than by proxy

Proposals to assess competition by indirect means are misguided

- No meaningful evidence of supracompetitive rates
- Any effort to determine the rates of return for specific services, or the "costs" of those services, would be economically indeterminate, highly subjective, and subject to substantial challenge
- Setting prices too low could cause significant consumer harm
    - Underdeployment of fiber needed for broadband services
    - Inefficient reliance on DS1s and DS3s

Geographic Market Considerations

- Commission should gather granular data to provide maximum flexibility
- Ultimately Commission must adopt administrable rules
- A number of factors support use of a broader market definition
  - Region-wide pricing in tariffs and pricing flexibility contracts
  - Metropolitan-area entry by competitors
  - National or regional purchasing

Product Market Considerations

- Numerous ready substitutes to ILEC special access services (e.g., cable providers, traditional CLECs, fiber providers, fixed wireless)
- Substitutability particularly seen for wireless backhaul
- Shifting demand for higher capacity services further constrains DS1 and DS3 pricing

Qwest

The Need for Facts and Data

Competitive providers of high capacity services – including some of the same companies complaining that DS1/DS3 special access prices are too high -- have repeatedly refused to provide critical information to policy makers

- The Government Accountability Office (GAO), the FCC and the National Regulatory Research Institute (NRRI) all have acknowledged the absence of information from competing suppliers of special access
  - The GAO found that the FCC, despite its multiple requests for data, "has no specific or current data on competitors' prices for dedicated access services or on the extent to which competitors have extended their networks."
- The Phoenix Center, in its June 2009 paper entitled, "*The Need for Better Analysis of High Capacity Services*" stated
  - "At the end of the day, the crux of the problem is that there simply is not sufficient data to make an informed decision about the state of competition in the markets for high capacity services and, by extension, whether additional regulation is warranted…The only fact we know today is that despite a decade-long search for market power, there simply is no credible evidence that supports any radical change in the current regulatory approach."

The lack of a comprehensive set of facts and data fatally undermines the ability of policy makers to fully evaluate special access competition.

FCC Action

Policy and pricing levers available to the FCC must be used in a prudent and thoughtful way

- In part, revenues Qwest receives from its high capacity services contribute to the capital available to the Company for development and deployment of fiber technologies

It is critical that the FCC obtain data directly from *all* providers of high capacity services to properly assess the competitive nature of this market