

SPECIAL ACCESS

Current Pricing Flexibility Rules and Other Regulatory Rulings Have All But Eliminated Transparency in the Special Access Market.

- DS-1 and DS-3 special access services are subject to overlapping and confusing commitments, rates, credits, and discounts.
 - Customers purchasing special access see “base” price cap rates (with different price by term), “base” pricing flexibility rates (with different price by term), contract tariff rates, overarching credit plans, portability plans, and other discounts and credits.
 - These all provide different rates, discounts, and credits for varying commitments, but they require a tremendous amount of knowledge and effort to negotiate and manage.
 - Also, some of these plans -- including some that provide the largest discounts -- are being grandfathered and precluded from renewals.
 - The expiration of the AT&T-BellSouth merger conditions next year will also enable increases in special access pricing in the next few years.
 - There is therefore risk that “effective” rates could rise in the near term.
- There is even less visibility/transparency into OC-n level services.
 - Price cap LECs are virtually unfettered by regulation with respect to such services -- even though they are often the only provider on a given route or to a given premise.
 - Fiber will play a critical role in the National Broadband Plan, but monopoly services that rely upon fiber are largely outside of the Commission’s regulatory purview.

TelePacific’s Experience Demonstrates the Current Issues in the Special Access Market.

- From 2005 to 2008, TelePacific entered into commitments to purchase special access, rather than UNE-T1 services and above, to assure availability, quality, and certainty.
- The variety of methods for determining the effective rate TelePacific pays shows the complexity of analyzing (and buying within) the interstate special access market.
 - *ILEC A*
 - 3 separate Pricing Flexibility contract tariffs imposing certain volume commitments and other commitments (*e.g.*, access service ratios, conversion of UNEs to special access) in exchange for discounted rates
 - 2 generally available tariff credit plans for term and volume commitments
 - 2 contracts for deregulated optical-level services
 - 2 wholesale long distance agreements imposing volume commitments in exchange for additional credits on special access services
 - *ILEC B*
 - 1 Pricing Flexibility contract tariff imposing certain volume commitments and other commitments (*e.g.*, requiring UNE conversions, growth factors)
 - 1 generally available tariff credit plan for term and volume commitments
 - 2 contracts for deregulated optical-level services
 - 1 wholesale long distance agreement imposing volume commitments in exchange for additional credits on special access services
 - *ILEC C*
 - 1 Pricing Flexibility contract tariff imposing certain volume commitments and other commitments (*e.g.*, precluding UNE purchases, growth factors)
 - 1 generally available tariff credit plan for term and volume commitment

Any Analytical Framework Could be Undermined if Conditions Cannot be Assessed Properly and/or the Market Changes.

- The rate structures within the special access market are so complex that it can be hard to determine the effective rates of such services.
- The fact that many of the most effective discount and credit plans are grandfathered and/or expiring -- together with expiration of the AT&T-BellSouth merger conditions -- means that conditions are likely to change significantly in the near term. Thus, the market being analyzed today may not be the market that will be in place in a few years.
- The Commission should proceed quickly with its analytical framework, but should also take steps to ensure that market conditions do not deteriorate while that analysis is being performed. At the very least, while this proceeding is open:
 - No further grants of pricing flexibility should be issued.
 - Rates for special access services should be frozen, regardless of expiration of contract tariffs and/or attempts by LECs to withdraw/grandfather discount and credit plans.
 - Consider using Form 477 data to revisit on an interim basis whether competition exists in the market for channel terminations.