

IMPACT OF MIDDLE MILE AND LAST MILE ACCESS ON NATIONAL BROADBAND PLAN OBJECTIVES

Bottlenecks in the Middle Mile and the Last Mile Run the Risk of Undermining the Goal of Ubiquitous and Affordable Broadband for all Americans.

- Broadband deployment requires a series of investment trade-offs relating to speed, geographic reach, technology, and affordability.
- Balance between these tradeoffs is best achieved by steering investment toward where facilities are lacking/minimal, leveraging existing assets where available, and promoting competition in the retail market.
- Bottlenecks in the last mile and the middle mile -- and regulatory policies that perpetuate them -- threaten to undermine these objectives. These existing regulatory policies could lead to inefficient use of capital, limit competitive reach, and ultimately deny consumers the benefits of competition in the broadband market.

Middle Mile and Last Mile Access Represent a "Gating" Factor to Broadband Deployment.

- As end user bandwidth demands increase, the middle mile must keep pace.
- A recent Visant Strategies study estimates that capacity demands will push backhaul costs up by 7% annually over the next 5 years. The Commission has also noted that middle mile facilities can be "prohibitively expensive." See *Rural Broadband Report* at ¶ 114.
- TelePacific incurred substantial costs installing a few "off ramps" in a recent middle mile extension. In many cases -- and not just in rural locations -- a business case cannot justify such expenditures. Moreover, the permits for this build were extensive and time-consuming.
- Access is an even greater concern in the last mile. Regulatory changes over the past decade have undermined or even precluded access to last mile facilities, whether fiber or copper.
- In a recent review, TelePacific determined that the vast majority of its existing customers could be served *only* through incumbent-owned last mile facilities.

These Legacy Regulatory Policies -- and their Limiting Impact on Competition -- are Hurting Broadband Deployment and Adoption.

- The most recent Pew Internet Study found that:
 - Prices for broadband access were up nearly \$5 for residential users; and
 - Prices were lowest where 4 or more providers competed for customers.
- To fight back the potential for further price increases, to promote the delivery of the benefits of competition to end users, and to ensure more efficient investment of capital, the Commission should:
 - Release *any* LEC middle mile facilities from regulation only where competition truly exists on a given route.
 - Revisit and revise the legacy decisions that have cut off access to both fiber and copper in the local loop, including a moratorium on copper retirement.

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.

Intercarrier Compensation

- ***Intercarrier compensation should permit LECs to recover their costs of call termination.***
 - Section 254(k) prohibits use of call termination revenue to cross-subsidize broadband deployment.
 - A cost-based intercarrier compensation system should eliminate the cross-subsidy concern as carriers would be compensated only for the average costs they incur in terminating traffic.
 - Multiple rates for the same termination function that vary based on type of technology (CMRS, wireline, VoIP) or call type (local or long distance) are not cost-based and create billing, measurement, and tracking problems.

- ***A single rate for intercarrier compensation is only the “right” solution if the rate is cost-based and all providers interconnecting to the PSTN are obligated to pay it going forward.***
 - A necessary first step is to ensure that all carriers pay the state TELRIC rate for the termination of Section 251(b)(5) traffic.
 - Carriers need a transition period to incorporate the new rate in their business plans.
 - All carriers incur costs to terminate traffic. If the termination rate is set below cost and the remaining cost recovery is moved to universal service, CLECs will not be able to participate and the result will not be competitively neutral.

- ***Self-help and vague regulations result in significant under-payment of intercarrier compensation and costly disputes that undermine operations and business certainty.***
 - TelePacific has invested substantial amounts of time and money to ensure proper billing.
 - TelePacific collects approximately 76% of the intercarrier compensation it bills.
 - Non-payment falls into two general categories: self-help and vague regulations.
 - Examples: outright refusal to pay, customer arbitrarily reducing tariffed rate to pay what it believes is reasonable, providers refusing to pay access even when calls are delivered over Feature Group D trunks, CMRS carriers refusing to enter into traffic exchange agreements at the same time they claim interMTA calls are subject to Section 251(b)(5) compensation.
 - The FCC must take proactive measures to prevent under- and non-payment of intercarrier compensation.

Universal Service Contributions

- ***Contributions must be transparent, predictable, and competitively neutral.***

- ***Current regulations are vague and enforced on an ad hoc basis.***

- ***Any USF contributions on broadband Internet access must be competitively neutral.***
 - AT&T claims only facilities-based providers avoid USF; non-facilities based providers pay.
 - USAC claims that only shared infrastructure broadband (DSL and cable) avoids USF; dedicated wireline Internet access is subject to USF contribution.
 - Positions are inconsistent with years of FCC precedent that ESPs combining the facilities of another carrier with Internet access provide a “contaminated” information service.
 - AT&T’s position, if true, puts CLECs that purchase loop facilities at a competitive disadvantage—customer buying broadband Internet access from TelePacific would have to pay 12.3% more because of USF charges, even where TelePacific uses only the last mile facility from the ILEC and provides its own switch and transport.