Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Special Access Rates for Price Cap	)	
Local Exchange Carriers	)	**WC Docket No. 05-25**
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Comments of the Competitive Enterprise Institute
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Special Access Pricing and Consumer Welfare

The Commission seeks to ensure its rules promote the "just and reasonable" pricing of special access lines. Traditionally, the Commission has equated "just and reasonable" prices with those that providers of special access lines would conceivably be able to charge in a highly competitive market. The Commission has traditionally considered prices capable of generating significant and sustained accounting profits to be unreasonable or unjust. However, the ongoing evolution of the special access market merits a reexamination by the Commission of its approach to price regulation. Specifically, in light of the significant and growing investment in middle-mile alternatives to conventional special access lines dominated by ILECs, the Commission should exercise restraint in regulating special access pricing.

In particular, the emergence of wireless backhaul – a substitute for traditional special access lines – presents sizeable challenges to the Commission's conventional approach toward special access regulation.[1] While the cost of deploying traditional, underground special access lines is often prohibitive to would-be entrants, wireless backhaul solutions are economically feasible in markets where traditional special access lines are infeasible. Indeed, numerous major wireless providers are increasingly adopting wireless backhaul solutions rather than special access lines.[2] Furthermore, cable-based special access has emerged in many markets as a formidable competitor to ILEC special access lines.

At best, restricting special access prices for the sake of promoting choice and competition may marginally benefit short-term consumer welfare, but will sacrifice future marketplace phenomena that are essential to long-run wealth creation. In instances where incumbents are enjoying excess profits thanks to their special access lines, such profits are signaling mechanisms that induce entry into special access market.[3] This process is precisely what is occurring today. The market for alternatives to traditional special access lines is exploding, and the dominance of special access services by ILECs is waning.

Streamlining Microwave Licensing

As noted above, the wireless backhaul industry represents a crucial and rapidly growing segment of the special access market. Firms that wish to deploy wireless backhaul cannot do so without first obtaining a microwave license from the Commission. This process is

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[1] Georgios T. Pitsiladis, Athanasios D. Panagopoulos, and Phillip Constantinou. "Multi-Hop Wireless Backhaul Networks above 10 GHz: Connectivity and Critical Density Evaluation," October 2009. Journal of Infrared, Millimeter and Terahertz Waves http://www.springerlink.com/content/9771535371064333/

[2] George S. Ford, PhD and Lawrence J. Spiwak, Esq. "The Need for Better Analysis of High Capacity Services," The Phoenix Center for Advanced Legal and Economic Public Policy Studies, June 2009. Page 13. http://phoenix-center.org/pcpp/PCPP35Final.pdf

[3] See e.g. Herbert Giersch, "The Age of Schumpeter," The American Economic Review, Vol. 74, No. 2, Papers and Proceedings of the Ninety-Sixth Annual Meeting of the American Economic Association (May, 1984), pp. 103-109

often time-consuming, arduous, and expensive, particularly in congested areas.[4] While the Commission has taken important steps toward streamlining microwave licensing in recent years, huge swaths of spectrum in the 10 - 30GHz frequency range remain exclusively allocated to the federal government.[5] Thus, the Commission's own flawed spectrum allocation deserves part of the blame for any deficiencies that plague today's special access market.

It is beyond dispute that wireless backhaul will play a key role in the future of special access. As such, the Commission should carefully analyze the dynamics of this crucial segment of the special access market before considering making modifications to special access pricing regulations. To the extent that special access pricing may be unjust or unreasonable in certain areas, regulatory barriers to microwave backhaul deployment are contributing factors. While the Commission is taking a close look at how it manages spectrum in separate proceedings, to properly assess special access pricing rules the Commission would be remiss to omit an analysis of wireless backhaul.

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[4] http://www.commlawblog.com/2009/07/articles/wireless-telephony/microwave-systems-may-move-data-sooner-and-slower/

[5] See e.g. 14.4 GHz to 15.35 GHz; 15.63GHz to 17.2GHz; NTIA Frequency Allocation Chart. http://www.ntia.doc.gov/osmhome/allochrt.pdf