ATTACHMENT A

Reply Declaration of Michael D. Topper

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Special Access Rates for Price Cap Local Exchange Carriers	WC Docket No. 05-25, RM 10593

Reply Declaration of Michael D. Topper On Behalf of Verizon and Verizon Wireless

February 24, 2010

I. Introduction

A. Scope of Testimony

1. I have been asked by Verizon and Verizon Wireless to assess, from the perspective of economics, various proposed changes to the Commission's analytical framework that were submitted in January 2010 in response to the Commission's November 2009 Public Notice. My qualifications were provided in my initial Declaration.[1]

B. Summary of Conclusions

2. The Commission's assessment of various proposals to form the analytical framework for special access services should reflect the following economic principles:

- The Commission's analytical framework should account for competition from all viable competitors to ILEC special access services, regardless of underlying technology, and should consider the impact of changes in demand and technology on the competitive position of different providers of high-capacity services. Competing services need not be perfect substitutes to exert pricing discipline, and the Commission's analysis should account for the pricing discipline that this range of competitive intramodal and intermodal alternatives imposes on the pricing of ILEC special access services.
- A highly granular definition of geographic market boundaries at the building or city block level will understate the degree of competition in a given area and thus yield an economically incorrect result. The appropriate geographic unit of analysis should account for potential competition as well as actual competitive entry.

[1] Declaration of Michael D. Topper on Behalf of Verizon and Verizon Wireless, WC Docket No. 05-25, RM 10593, January 19, 2010 ("Topper Declaration").

- The Commission's analytical framework should be forward-looking. The rapidly growing demand for backhaul for mobile wireless carriers and transmission of enterprise traffic has created market opportunities for cable companies, fixed wireless providers, and competitive fiber providers to compete with incumbent LECs to provide high-capacity services.

- Evidence of successful and continuing entry constitutes direct evidence that market-based mechanisms for price discipline are functioning and will constrain attempts to charge supracompetitive prices. Claims that the supply response of high-capacity service providers is limited and impeded by barriers to entry are not supported by current marketplace evidence.

- The variety of terms and conditions offered in some ILEC special access discount plans and contract tariffs benefits suppliers and buyers alike, reflects an attempt by incumbent providers to differentiate their service offerings in response to customer demand and competitive pressure, and can enhance economic efficiency by reducing the costs of customer churn. Claims that discount plans are creating anticompetitive barriers to entry are belied by actual facilities-based competitive entry by a variety of fiber-based CLECs, cable companies and fixed wireless providers.

- The decline in special access prices in price-flex areas, coupled with the increased quantity of special access and other high-capacity services, provides direct evidence that the competitive market setting is benefitting customers. Comparisons of special access prices to UNE prices, retail high speed Internet prices, or international prices are not an economically valid means of assessing the competitiveness of high-capacity services. Accounting data from the ARMIS system cannot meaningfully be used to assess whether special access prices are "excessive."

- Finally, as it assesses various proposals for additional regulation of special access services, the Commission should be mindful that price regulation imposes significant costs, especially in marketplace settings, such as high-capacity services, with multiple competitors, rapidly changing technology and dramatic

growth in demand. Thus, even if the Commission were to find that competition in the provision of high-capacity services is less than perfect, it does not follow that price regulation of special access services should be expanded.

3. The remainder of this paper provides support for these conclusions.

II. The Commission's analytical framework should account for competition from all viable competitors to ILEC special access services, regardless of underlying technology.

4. As described in my initial Declaration, ILEC-provided DS-1 and DS-3 special access services are but one of several alternatives available to buyers of high-capacity services.[2] The Commission's analytical framework for assessing regulation of special access services should therefore account for the economic characteristics of the high-capacity services industry as a whole. In particular, the Commission should examine the full range of alternatives available to purchasers of high-capacity services, and examine the pricing discipline imposed by the availability of these alternatives. Implicit in this approach is the well-established economic principle that in differentiated product markets, products need not be perfect substitutes in order to compete with one another and provide pricing discipline.

5. Some commenters argue that intermodal alternatives provided by fixed wireless and cable companies should be excluded from the Commission's analysis because they exhibit inferior quality and because "substantial and persistent price differences ... demonstrate that [they] occupy separate product markets."[3] This line of argument is

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[2] Topper Declaration, ¶¶ 26-37.

[3] Declaration of Bridger Mitchell on Behalf of Sprint Nextel, WC Docket 05-25, RM-10593, January 19, 2010, ¶68 ("Mitchell Declaration"). See also Comments of tw Telecom, WC Docket 05-25, RM-10593, January 19, 2010, pp. 11-12 ("tw Telecom Comments"); and Comments of Sprint Nextel Corporation, WC Docket 05-25, RM-10593, January 19, 2010, pp. 19-20 ("Sprint Comments")

inaccurate on the facts. The record provides clear evidence that cable and fixed wireless service providers have entered the marketplace and that sales are growing; customers are increasingly buying their services.[4] More important, the argument relies on flawed economic reasoning. The fact that an intermodal service may not meet the needs of *some* special access users does not imply that *no* substitution exists between special access and intermodal high-capacity services.

6. The relevant question is not whether the service characteristics, reliability, and price of intermodal services are the same as special access services, but whether buyers view high-capacity services offered by intermodal providers as viable alternatives to special access services and whether these competing high-capacity services provide pricing discipline on ILEC special access services. The only way to address these questions is to collect data on all providers of high-capacity services, including intermodal competitors, as part of the Commission's competitive analysis. Further, differences in rates for special access and high-capacity services offered by intermodal competitors do not establish that products are in separate relevant markets, as some commenters suggest. Indeed, many markets for differentiated products – automobiles and computers, for example -- include goods whose prices are widely dispersed. Price differences reveal only that customers are willing to pay a premium for certain features

[4] See, generally, Patrick Brogan and Evan Leo, "High-Capacity Services: Abundant, Affordable, and Evolving," USTelecom Report, July 16, 2009, pp. 10, 22 ("USTelecom Report"). See also Clearwire Form 10-K, period ending December 31, 2008, p. 15: "[W]e intend to rely almost exclusively on microwave backhaul. ... [W]e believe that microwave backhaul significantly reduces our backhaul expenses ... while at the same time maintaining the same or better reliability than wireline backhaul networks." See also FiberTower Form 10-K, period ending December 31, 2008, p. 7: "Our customers include several national and regional wireless carriers [including] AT&T Mobility (formerly Cingular Wireless). Leap, Metro PCS, Sprint Nextel, T-Mobile and Verizon Wireless. Our customer agreements are generally on three or five year terms .... We have firm commitments on nearly 7,600 customer locations."

that differentiate ILEC special access, but they reveal nothing about substitution between the intermodal and ILEC services in response to price changes (i.e., cross-elasticity of demand) and the extent to which the presence of high-capacity services provided by cable and fixed wireless providers disciplines ILEC special access rates. The recent marketplace successes of cable and fixed wireless providers suggest that these intermodal competitors are providing pricing discipline; hence the Commission should include these providers in its analytical framework for assessing the competitiveness of the high-capacity services marketplace.

III. The appropriate geographic unit of analysis should account for potential competition as well as actual competitive entry.

7. The Commission's choice of a relevant geographic market – i.e., the geographic unit within which it conducts its analysis of competition – should account for the competition among alternative providers to serve customers, as I noted in my initial Declaration.[5] The choice of geographic scale should reflect the reach or "footprint" of all competing provider networks deployed within a given area. This includes "actual" competitors whose network reaches a given area, and "potential" competitors who could extend their network to serve a particular group of customers. The presence of competing fiber, fixed wireless, or cable providers anywhere within an area of concentrated demand can serve as a source of potential competition that disciplines incumbent pricing conduct throughout the area, even if competitors have not constructed last-mile facilities to a particular building.

[5] Topper Declaration, ¶¶ 54-61.

8. Many commenters to this proceeding fail to grasp this point, and argue in support of a highly granular building-by-building analysis that includes only those providers who are physically present in a particular building. Sprint, for example, claims that the relevant geographic market for channel termination service is the building in which the customer is located.[6] Sprint concedes that such an approach is administratively impractical, but the proposed remedy -- sampling to reduce the analytical burden, and grouping buildings into tiers for administrative purposes – does not address the larger economic flaws in its reasoning. Analysis at a building-level scale will improperly exclude actual and potential competitors from the relevant geographic market, understate the degree of competition, and thus yield an economically inaccurate conclusion. If the geographic market is defined at the building level, a competing provider who has no presence within a particular building would be excluded from that putative market despite the fact that the building is within reach of the provider's network. It may be the case, for example, that a service provider submits a bid to serve a customer in a particular building and loses to a competitor. A subsequent building-level survey would conclude, incorrectly, that the losing bidder is not present in that market.

9. Similarly, Sprint and other commenters claim that competitive analysis should be conducted on a route-by-route basis.[7] Again, this narrow approach to market definition fails to account for competition among alternative providers to serve customers. On the demand side, purchasers may have some flexibility in how they route their traffic, in which case they are not limited to a specific point-to-point route. For example, a mobile

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[6] Sprint Comments, p. 9. See also Mitchell Declaration, ¶¶ 35-37; Comments of the Nochokepoints Coalition, WC Docket 05-25, RM-10593, January 19, 2010, pp. 7-9. ("NCP Comments")

[7] Sprint Comments, p. 9, Mitchell Declaration, ¶ 36, NCP Comments, p. 6.

wireless provider will use the least-cost alternative for backhaul from its cell sites, which may include alternatives that use different point-to-point routings. On the supply side, the presence of competing fiber, fixed wireless, or cable providers within a geographic area can serve as a source of potential competition that disciplines incumbent LEC pricing conduct on a particular point-to-point route, even if competitors have not constructed facilities on the identical point-to-point route used by the incumbent.

10. Geographic concentration of demand magnifies the importance of potential competition. A large fraction of demand for special access services is concentrated in a relatively small number of wire centers. For example, one ILEC reports that 80 percent of special access demand comes from just 17 percent of its wire centers.[8] This degree of concentration makes it easier for competing providers to target ILEC customers. Competitors deploy facilities in an area of concentrated demand with the intention of serving the area, and absent specific evidence to the contrary should be considered a potential competitor for any building in the geographic area that exhibits sufficient demand, even if it does not have facilities deployed in all such buildings.

11. A narrow, building-level definition of the relevant geographic market also yields a distorted view of competition because it confuses buildings and customers. The two are not synonymous. Many purchasers of special access and other high-capacity services are large, sophisticated buyers that operate on a regional or national scale and purchase services for multiple locations in different geographic areas. For example, Verizon has noted that approximately 80 percent of its special access revenue comes from wholesale customers (e.g., mobile wireless providers and interexchange carriers) that operate large

[8] See USTelecom Report, p. 24.

networks and purchase special access services for many locations.[9] Commenters in this proceeding fail to address the implications of this feature of demand for high-capacity services. Competitive pressure and the bargaining power of large customers disciplines pricing across different geographic regions; service to a customer's building in one geographic area will face pricing pressure because a competing provider has deployed facilities in a second customer location in another geographic area. The structure of certain ILEC discount plans reflects this competitive pressure. ILECs have introduced generally available discount plans and contract tariffs (i.e., individually negotiated service contracts) under which buyers receive discounts across broad geographic areas, regardless of the number of competitors present in a specific building or wire center.

IV. The Commission's analytical framework should account for significant increases in business demand for Ethernet services and demand for backhaul for mobile wireless networks.

12. The Commission's analytical framework should also adopt a forward-looking approach that explicitly accounts for current and expected future market conditions, including significant increases in enterprise demand and demand for backhaul for mobile wireless networks.[10] These increases in demand improve the business case for fiber-based CLECs, cable companies and fixed wireless providers to offer competing high-capacity services.[11] Commenters calling for increased regulation are surprisingly silent on these recent market conditions. A forward-looking approach that accounts for these

[9] See Comments of Verizon, Attachment D, Declaration of Quintin Lew, In the Matter of Special Access Rates for Price Cap Local Exchange Carriers, WC Docket 05-25 and RM-10593, filed June 13, 2005 ("Lew Declaration"). ¶ 78: "Many special access customers are interexchange carriers or commercial mobile radio service providers which operate across broad geographic areas with multiple locations, and these sophisticated customers require vendors to offer attractive rates everywhere in order to win their business anywhere. In fact, these types of wholesale customers account for approximately 80 percent of Verizon's special access revenues."

[10] Topper Declaration, ¶¶ 40, 42-43.

[11] Topper Declaration, ¶¶ 44-45.

dynamics is consistent with accepted principles of competition economics applied by antitrust authorities. By comparison, a static snapshot of historical or current conditions is a poor indicator of longer-run competitive conditions and, as such, a poor basis for the development of sound regulatory policy. For example, an analysis based on suppliers with a network currently connected to a building will reflect past purchase decisions, but not the ability of suppliers to use entry and expansion to compete to serve customers in that building.

V. Entry and competitor expansion discipline the pricing conduct of incumbent firms.

13. The record in this proceeding provides substantial evidence of successful entry by a variety of high-capacity service providers, as I noted in my initial Declaration.[12] Verizon, for example, has provided evidence that as of 2007, it faced an average of nine known competitive providers and no less than two competitive providers in the top twenty-five MSAs it serves (ranked in terms of special access revenue).[13] Verizon has also reported that even five years ago, one or more competing fiber providers had collocated in two thirds of wire centers that collectively account for 80% of the special access demand that Verizon serves.[14] Verizon and other ILECs also face additional competition from providers that are not collocated in a wire center. The 2009 USTelecom report further documents entry and continued investment by competing fiber-based and intermodal high-capacity service providers.[15]

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[12] Topper Declaration, ¶¶ 46-53.

[13] See Comments of Verizon, In the Matter of Special Access Rates for Price Cap Local Exchange Carriers, WC Docket 05-25 and RM-10593, filed August 8, 2007, p. 15.

[14] Lew Declaration, ¶ 10.

[15] USTelecom Report.

14. Despite this evidence, some commenters in this proceeding argue that barriers to entry have impeded the development of competition and that the Commission's pricing flexibility triggers overstate the degree of entry and competition.[16] However, these claims are not supported by marketplace data on actual and potential competitors. In assessing these claims, the Commission should focus on the competitive entry of fiber-based, cable and fixed wireless providers, and business plans for continued future entry. Indeed, recent competitive activity suggests that the current collocation-based triggers for pricing flexibility likely understate the degree of competition in the provision of high-capacity services. First, cable and fixed wireless providers do not need to rely on collocation in an ILEC wire center. Second, fiber-based CLECs can either bypass ILEC facilities or can serve more than one wire center area with collocation in a particular wire center.

VI. Volume and term discounts have a number of procompetitive and efficiency justifications.

15. As I noted in my initial Declaration, volume and term discounts and other provisions contained in some ILEC special access discount plans and contract tariffs have a number of procompetitive and efficiency justifications and are a common feature of many competitive industries.[17] ILECs and competing providers offer a variety of generally available and customer-specific discount and pricing flexibility plans. Buyers, many of whom are large and sophisticated purchasers, voluntarily subscribe to these plans and benefit from substantially reduced prices. Service providers benefit from reduced vacancy risk and uncertainty, reduced customer churn, and reduced operating

[16] See Sprint Comments, pp. 21-24; Mitchell Declaration, ¶¶ 91-94; and NCP Comments, pp. 12-14.
[17] Topper Declaration, ¶¶ 62-70.

costs. The existence of such discount terms and the variety of different plans offered are also a signal of effective competition: ILECs and other competing firms offer these terms to differentiate their service offerings and offer attractive prices in response to customer demand and competitive pressure.

16. Some commenters in this proceeding allege that volume- and term-based discounts lock customers into ILEC-supplied service, penalize buyers that purchase from competing providers, and raise barriers to entry.[18] Claims of potential barriers to entry and foreclosure are difficult to square with the marketplace facts of actual competitive entry. The record in this proceeding contains clear evidence of continued entry and investment by competing, non-incumbent facilities-based service providers.

17. As described in the declaration of Dennis Carlton and Hal Sider in this proceeding,[19] the economics literature recognizes that discounting practices are typically procompetitive, and that discounting only harms the competitive process when two conditions are met. First, discounting by the dominant firm must drive competing firms from the marketplace or deter them from entry in the first place. Second, the dominant firm must be able to recoup its lost profits from "low" prices during the exclusionary period by raising prices to some customers after competition is foreclosed. These are very specific conditions, neither of which is met in the high-capacity services marketplace, where a variety of competitors have entered the market and built out facilities-based networks.

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[18] See, for example, Sprint Comments, pp. 38-42; Mitchell Declaration ¶¶ 114-134; NCP Comments, pp. 27-32.

[19] Declaration of Dennis W. Carlton and Hal S. Sider in Support of AT&T Inc., WC Docket No. 05-25, RM 10593, January 19, 2010, ¶¶ 96-98. ("Carlton and Sider Declaration")

18. Further, because term commitments come up for renewal and demand for high-capacity services has grown and will continue to grow at a significant pace, a substantial fraction of future demand is uncommitted, which blunts the purported lock-in and foreclosure effects of volume and term discounts.

VII. Declining special access prices are benefitting buyers of high-capacity services.

19. The evidence in the record suggests that special access prices have been steadily declining since pricing flexibility was introduced and that the quantity ("output") of special access and other high-capacity services has increased significantly over time.[20] Nonetheless, a number of parties to this proceeding erroneously rely on: i) comparisons of special access rates in phase II price flex areas to rates in price-cap and phase I price-flex areas, ii) comparisons of special access prices to the prices of other services, or iii) accounting profits to conclude that prices for ILEC special access services are supracompetitive.

20. Some commenters claim that special access rates are higher in Phase II price-flex areas than in price-cap and Phase I price-flex areas and are therefore supracompetitive.[21] As a matter of economics, comparisons of rates in price-flex and price-cap regions are not informative and cannot support a conclusion that price-flex prices are supracompetitive, unless one first assumes that price-cap rates are at or above the price level that would emerge in a competitive market setting.[22] The Commission itself has affirmed that price-cap rates are not a reliable proxy for rates that would emerge under

[20] Topper Declaration, ¶¶ 71-74.

[21] See, for example, NCP Comments, pp. 18-21.

[22] For purposes of this argument, price-cap and Phase I price flexibility regions are no different because prices in Phase I areas can only move down, i.e., below the price level in price-eap regions.

competition; price-cap rates could be above or below the level of competitive rates.[23] The Commission should therefore reject any argument that price increases in price-flex areas imply supracompetitive prices.

21. Moreover, much of the evidence cited in support of this conceptually flawed comparison relies on faulty data analysis. The NRRI and GAO reports, for example, present analyses based on nominal prices; their results therefore confound general increases in the price level with an increase in the relative price of special access services.[24] The Uri and Zimmerman paper cited by some commenters compares list prices in price-flex and price-cap regions, which are of little economic interest; most customers purchase special access service under discount plans.[25] Finally, commenters mischaracterize the evidence in the record. For example, many commenters cite the NRRI report as support for the proposition that special access rates have increased. However, methodological flaws aside, the NRRI report reaches no conclusion and states that "in sum, the data do not support any clear conclusions about price trends."[26]

22. Sprint and other commenters claim that special access prices exceed forward-looking costs as measured by the price of high-capacity UNE rates based on TELRIC

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[23] *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 98-63, 98-157, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221 (1999) ("Pricing Flexibility Order"), ¶155: "We recognize that the regulatory relief we grant upon a Phase II showing may enable incumbent LECs to increase access rates for some customers. We conclude that this relief nonetheless is warranted upon a Phase II showing ... because our rules may have required incumbent LECs to price access services below cost in certain areas."

[24] Peter Bluhm and Robert Loube (2009), "Competitive Issues in Special Access Markets," National Regulatory Institute, Revised ed. ("NRRI Report"); U.S. Government Accountability Office (GAO), *"FCC Needs To Improve Its Ability To Monitor and Determine the Extent of Competition in Dedicated Access Services"*, GAO-07-80, November, 2006, ("GAO Report"), p. 28.

[25] Noel Uri and Paul Zimmerman (2004), "Market Power and Deregulation of Special Access Service by the Federal Communications Commission," *Information & Communications Technology Law*, Vol. 13, No. 2, pp. 138-139.

[26] NRRI Report, p. 67.

pricing.[27] This argument is flawed both conceptually and in its choice of TELRIC as an appropriate benchmark. First, as a conceptual matter, prices necessarily depend not only on costs but also on demand in an industry in which a large proportion of costs are fixed, hence prices based on *any* cost-based model will not be an accurate proxy for competitive rates.[28] TELRIC-based UNE prices are a particularly unreliable benchmark, as TELRIC rates understate the true economic costs of special access service. TELRIC-based prices assume an idealized network, rather than the existing networks that ILECs actually operate; no firm can operate in an industry characterized by rapid technological change if its prices must reflect the lowest cost attainable given an idealized, theoretically perfect network.[29] TELRIC-based prices also treat network facilities as fixed (recoverable) costs rather than sunk (non-recoverable) costs, so that prices provide competitors with a free option to use an incumbent's network.[30] Further, the Commission itself has recognized that TELRIC prices set by state regulators are inconsistent and unreliable, noting that "for any given carrier there may be significant differences in rates from state to state, and even from proceeding to proceeding within a state. We are concerned that such variable results may not reflect genuine cost differences but instead may be the product of the complexity of the issues, the very general nature of our rules, and uncertainty about how

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[27] Sprint Comments, pp. 26-27; Mitchell Declaration ¶¶ 96-102; NCP Comments, pp. 20-22; tw Telecom Comments, p. 22.

[28] See Jerry Hausman (2003), "Regulated Costs and Prices in Telecommunications," in Gary Madden (ed.), *International Handbook of Telecommunications*, Ch. 10.

[29] See Howard A. Shelanski (2007), "Adjusting Regulation to Competition: Toward a New Model for U.S. Telecommunications Policy," *Yale Journal on Regulation*, Vol. 24, No. 1, p. 79.

[30] See Hausman (2003), p. 201.

to apply those rules."[31] Finally, the use of TELRIC prices leads inevitably to the intractable allocation problems that arise in measuring accounting rates of return.

23. Sprint and other commenters also claim that prices for retail high speed Internet services such as FiOS, U-verse, DSL, and cable modem service provide another benchmark for assessing whether special access prices are supracompetitive.[32] The price of retail high-speed Internet service is not a valid benchmark for the price of special access services. Despite the fact that the two technologies may offer similar bandwidths, they exhibit significant differences in service characteristics and costs of provision. Retail Internet service is a best-efforts service and may include shared facilities, while special access offers guaranteed bandwidth over a dedicated facility. Further, retail Internet service does not offer the reliability, service, or support provided by ILEC-supplied special access. Given these differences in service characteristics, costs for retail Internet services and special access services are simply not comparable. Moreover, market prices depend on demand conditions as well as cost conditions. Given the differences in service characteristics between special access services and retail Internet services, there is no reason to expect their prices will be the same in a competitive market. It follows that retail high-speed Internet prices cannot be used as a benchmark for assessing whether incumbent LECs are charging special access rates that are "unreasonably high."

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[31] Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers, NPRM, 18 F.C.C.R. at 18,949 (Sept. 15, 2003).

[32] See, for example, Sprint Comments, pp. 27-28; Mitchell Declaration, ¶¶ 111-112; NCP Comments, pp. 23-24.

24. Some commenters claim that prices in other countries for services similar to special access are far lower.[33] However, international comparisons are notoriously difficult, and must account for many marketplace differences, including differences in the regulatory environment, demand and supply conditions and exchange rates. The parties suggesting that the Commission rely on international price comparisons have not provided any methodology for establishing that international prices are a valid and reliable benchmark for special access prices in the U.S.

25. Finally, some commenters propose that ARMIS accounting data can be used to demonstrate that ILECs are charging supracompetitive prices.[34] As I described in my initial Declaration, economists have long recognized that accounting costs and profits yield unreliable, biased estimates of economic profits.[35] The general difficulties of using accounting data to infer supracompetitive prices is further compounded in the case of special access services, which are jointly produced with other telecommunications products that share network resources. To arrive at estimated profit margins and rates of return, shared costs must be allocated among different product and service lines, but all such allocations are necessarily arbitrary, have no relationship to marginal costs, and therefore have no relationship to the appropriate benchmark for prices, namely economic profitability.

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[33] Sprint Comments, pp. 28-29.

[34] Susan Gately, Helen Golding, Lee Selwyn and Colin Weir, "Longstanding Regulatory Tools Confirm BOC Market Power: A Defense of ARMIS," Prepared for the Ad Hoc Telecommunications Commission Users Committee, January 2010.

[35] Topper Declaration, ¶¶ 71-74. See, also Carlton and Sider Declaration, ¶¶ 74-82.

26. As I noted in my previous Declaration, the FCC's ARMIS data are no exception to these problems, notwithstanding attempts by some to "correct" the data.[36] The Commission itself has recognized these problems in the past, and should continue to reject any analysis that relies on adjusted ARMIS data to draw conclusions that special access rates are excessive.

VIII. The Commission should consider the potential costs of any changes to the existing regulatory regime.

27. Finally, as the Commission assesses various comments suggesting that additional regulation of special access services is warranted, it should be mindful that price regulation imposes significant costs, especially in marketplace settings with multiple competitors, rapidly changing technology and dramatic growth in demand.[37] As I explained in my initial Declaration, the costs of price regulation and an uncertain and unpredictable regulatory environment include reduced incentives for innovation and investment by incumbents and new competitors, and reduced dynamic efficiency.[38] Thus, even if the Commission were to find that competition in the provision of high-capacity services is less than perfect, it does not follow that price regulation of special access services should be expanded.

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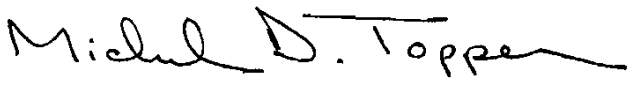
[36] Topper Declaration, ¶¶ 77-83.

[37] Topper Declaration, ¶¶ 16-20.

[38] Topper Declaration, ¶¶ 18-19. See also, Carlton and Sider Declaration, ¶¶ 65-72; Shelanski (2007), p. 65.

I declare under penalty of perjury that the foregoing is true and correct.



Michael D. Topper
Executed February 24, 2010

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ATTACHMENT B

Declaration of
Quinn Lew and Anthony Recine

REDACTED FOR PUBLIC INSPECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
Special Access Rates for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25 & RM-10593

DECLARATION OF QUINTIN LEW AND ANTHONY RECINE

1. My name is Quintin Lew. My business address is One Verizon Way, Basking Ridge, New Jersey 07920. I am a Senior Vice President in Verizon's Global Wholesale Group and have worked at Verizon for more than 23 years. In this capacity, I am responsible for the marketing of Verizon's regulated special access products, with a focus on wholesale customers. I have more than 20 years experience with Verizon or its predecessors in the areas of marketing, strategic planning and business development.

2. The purpose of my portion of this declaration is to provide information about the discount plans and service level agreements that Verizon has introduced for its regulated special access services (*i.e.*, high-capacity services that are subject to price-cap regulation or the Commission's pricing flexibility rules). Specifically, I describe (i) Verizon's generally available discount plans, (ii) Verizon's customer-specific pricing flexibility offerings, which are tailored to the requirements of individual customers and (iii) Verizon's service level agreements. These offerings are an important part of the competitive landscape and were developed to respond to numerous customer demands, including demands for substantial discounts on special access services, demands for individually tailored discount plans, and demands for provider

commitments with respect to the on-time provisioning of special access products and network performance.

3. As I explain below, Verizon's generally available discount plans provide special access customers substantial discounts on Verizon's special access products. Verizon's generally available discount plans contain a range of terms and conditions, and offer discounts based on term, or some combination of term and volume, giving customers a range of choices. Verizon's special access customers can and do select the generally available discount plan that best meet their business needs. Customers are not required to purchase all of their special access services from Verizon, or even purchase large volumes of special access services from Verizon to receive substantial discounts under Verizon's generally available discount plans.

4. Additionally, I explain the business reasons for offering term and volume discounts and I describe the benefits that term and volume discounts provide customers and providers. Contrary to the claims of some parties seeking additional regulation of the terms and conditions of ILEC discount plans, term and volume discount plans do not prevent customers from self-provisioning or purchasing services from other providers.

5. I also explain that the termination and shortfall provisions under Verizon's generally available discount plans are reasonable and allow customers to retain a significant portion of the discounts they received. Generally, customers that exit a plan before they complete the selected term of years are left no worse off than if they had signed up for the actual term of years for which they obtained service. Likewise, for those plans with minimum volume commitments, customers that fall short of the volume commitment typically only pay the difference between what they paid for the special access services they actually purchased, and what they would have paid if they satisfied the required commitment level.

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