

Special Access Reform

Delivering on the Promise of Broadband



Just Some of the Supporters of Reform



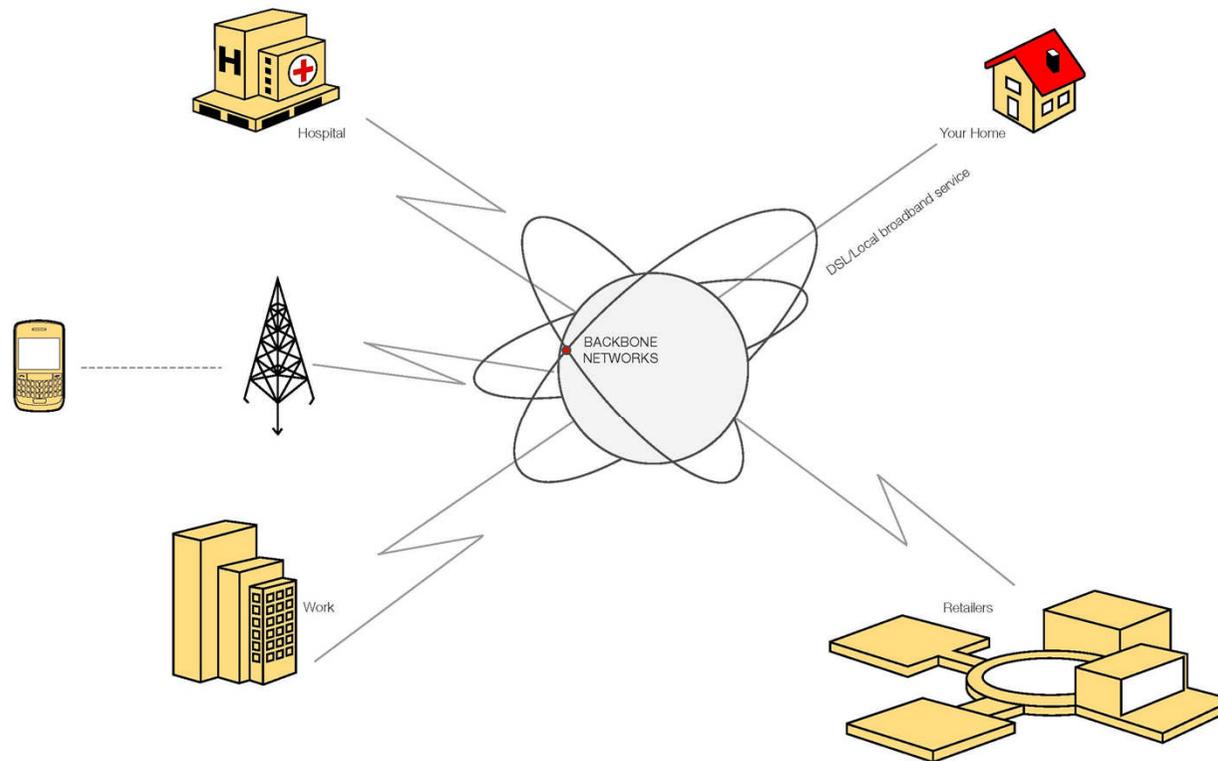
CBEYOND®



The Ad Hoc
Telecommunications
Users Committee



Special Access is Everywhere



Special Access is Critical to the Broadband Ecosystem

Who uses special access?

Better question: Who *doesn't* use special access?

- Schools, universities, and hospitals
- Next generation 911
- Federal, state, and local governments
- Rural telecommunications providers
- Wireless carriers
- All major industry channels from financial services to manufacturing to retail
- Small, medium, and enterprise businesses
- **Anyone who needs a dedicated data connection**

Reform Means Broadband Deployment

- Rural providers: lower prices enable delivery of broadband services to unserved/underserved areas.
- Wireless carriers: expand and advance data networks.
- Schools: expand access to Internet; tele-learning.
- Public Safety: expand access to network resources.
- Health care providers: advance telemedicine; electronic records; efficiency and cost savings.
- Governments: improved electronic services to constituents.
- Businesses: Intranet/Internet access; cost savings, improved productivity, global competitiveness.
- *And on and on and on...*

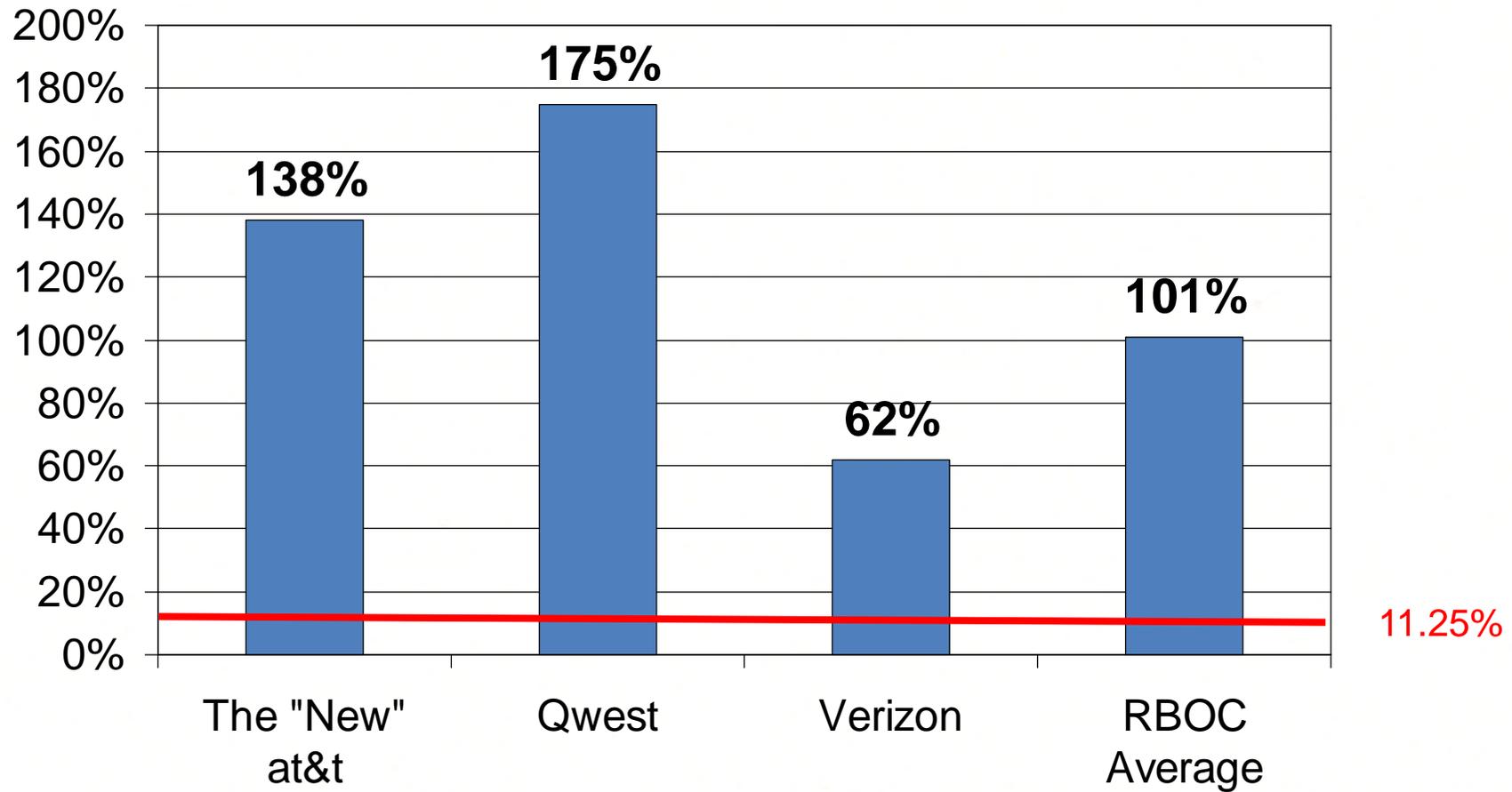
This is a Broken Market

- **The market in almost every part of the country does not support competition for core DS-1, DS-3, and similar Ethernet channel termination facilities.**
 - AT&T and Verizon control an overwhelming percentage of the special access market across the country.
 - Even in the urban core, where competition should be most prevalent, AT&T and Verizon still dominate.
 - NRR/GAO studies.
- **DOJ Verizon-MCI and SBC-AT&T analysis on potential competition:**
 - Competitor wouldn't deploy to building as close as 1/10th mile to its facilities unless demand was ≥ 2 DS-3s (approx. 88 Mbps).
 - Competitor wouldn't deploy to a building within 1 mile from its facilities unless demand was \geq an OC-48 (approx. 2.4 Gbps).

The Result ...

- Unreasonably high prices and anticompetitive terms and conditions that purchasers are forced to accept because there is no alternative.
- Prices are vastly inflated.
- Profits far above “just and reasonable.”
- Prices way above comparable products (UNEs, FiOS).
- Terms and conditions stifle what little competition might otherwise develop.
- Term and volume commitments lock up demand.

Special Access RORs for 2007



AT&T on Special Access and Market Dominance.

- AT&T's CEO told *Fortune Magazine* that “the No. 1 issue” for getting adequate bandwidth to cell towers “is getting fiber to these cell sites. That’s where the bottleneck is.”
- “So the more wireless you become, the more wireline-centric we as a company become to deliver bandwidth. The companies that will win are the companies that can do it all. They have the spectrum as well as the fixed-line infrastructure to deliver this kind of traffic.”

Wireless Backhaul Does Not Address Competition Concerns

- We wish it did.
- The NoChokePoints Coalition members have every incentive to make wireless backhaul a viable option.
- Even if wireless broadband companies are successful, they will not provide adequate competition.
- FiberTower, for example, serves only a tiny percentage of backhaul needs, and the inherent restraints of wireless backhaul mean that it will not be a significant competitor to the ILECs in the foreseeable future.
- GAO and NRRI found that wireless was not a significant special access competitor.

Wireless Backhaul Does Not Address Competition Concerns

- Wireless backhaul does not discipline incumbent prices or behavior today – we would buy it if it were available.
- Why won't wireless be an effective competitor to ILEC special access in the foreseeable future?
 - First, line-of-sight limitations.
 - Second, limited range.
 - Third, low volumes mean equipment is too costly to justify use in low-capacity applications.
 - Fourth, roof access, roof-down re-wiring, and other building issues add cost and delay.
 - Fifth, terms and conditions often prevent purchasers from switching.
 - Incumbents do not face these limitations, and incumbents already have facilities in place that have been paid for through monopoly rents.
- **The result: wireless backhaul, even if successful will serve only a small percentage of special access customers.**

Cable Does Not Address Competition Concerns

- Only fiber — not hybrid-fiber coax is a substitute for DSn lines.
- Although cable passes the majority of American homes, it is not available in many of the areas requiring special access — for example, at rural cell-phone towers and many businesses.
- NRRI found that cable has “poor prospects” outside areas that it already serves.
- Thus, NRRI found that cable and fixed wireless do not constrain the ILECS because they act only “on the fringes of special access markets.”

Incumbents' Arguments Against Reform Don't Add Up

- They refuse to provide relevant data.
- They can only find “competition” by conflating markets.
 - But high-capacity transport market and core channel terminations market are very different.
- Cable, fixed wireless are not significant competitive options for these facilities.
- They hide the ball by saying most MSAs are under some pricing regulation.
 - But the vast majority of the population, and the vast majority of special access revenues, are in “price flex” areas.
 - And even where regulation remains, it is regulation in name only as prices bear no relationship whatsoever to cost.

Incumbents' Arguments Against Reform Don't Add Up

- ILECs claim that reform will undermine broadband investment, but that just doesn't make sense.
 - Investment follows competition, not monopoly — ILECs are investing to respond to cable broadband, and not in rural America.
 - The FCC long ago abandoned the theory that monopoly rents and implicit cross-subsidies would serve the public interest.
 - Even with reform, special access rates of return are likely to be very high, supporting investment. Do ILECs really need 100 percent rates of return to justify investment?

Incumbents' Arguments Against Reform Don't Add Up

- Special-access reform will not undermine the goal of price caps.
 - Price caps are designed to encourage efficiency, not to ensure high rates of return, as the ILECs have argued.
 - The Commission's duty is to ensure that rates are just and reasonable.
 - Reform would ensure a very healthy rate of return.
- DSn services are still vital.
 - Typical cell site uses 1 or 2 DS-1s; even with 3G, fewer than 3 are necessary.
 - Businesses use DS-1s for credit card transactions, inventory management, and other applications.
 - VOIP and IP PBX providers continue to use DS-1s.
- ***Incumbents are advocating non-factual arguments because they cannot argue against the facts: special access is not competitive, it is a huge cash cow for incumbents, and they don't want to give it up.***

How Did this Happen, Anyway?

- The FCC eliminated protections and eliminated rational productivity accounting because it predicted competition would arise – but competition did not arise.
- The special access market is a monopoly in most parts of the country but existing regulations pretend too many areas are competitive – the “trigger” is defective.
- CALLS Order was intended to last 5 years and the FCC should have acted to put the next step in place – but it's been 9 years since CALLS.

What Should Be Done

- The FCC should issue a fast and focused data request as soon as possible.
- Delay means billions of dollars more to line ILEC coffers rather than being invested in broadband facilities and delivered to consumers through lower prices.

Three Necessary Reforms

Once the FCC sees the data it should:

- Fix the pricing flexibility “competitive triggers” – Present triggers do not identify competitive areas, nor do they identify where competition is likely to occur.
- Lower prices – The FCC relaxed price regulations on the prediction that competition would arise to restrain prices, but it never happened.
- Address anticompetitive terms and conditions – Anticompetitive terms and conditions on existing discount plans stifle what little competition might otherwise arise.

