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June 13, 2012

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Portals II, Room TW-A325
Washington, DC 20554

Re: *Special Access Rates For Price Cap Local Exchange Carriers*, WC Docket No. 05-25, *Pacific Bell Telephone Company Petition For Pricing Flexibility Under Section 69.727 Of The Commission's Rules*, WCB/Pricing File No. 12-04, *Southwestern Bell Telephone Company Petition For Pricing Flexibility Under Section 69.727 Of The Commission's Rules*, WCB/Pricing File No. 12-05

Dear Ms. Dortch:

On Monday, June 11, 2012, Robert Quinn, Christopher Heimann, and the undersigned, of AT&T, met with Angela Kronenberg, Legal Advisor to Commissioner Clyburn, to discuss the Commission's on-going investigation of the marketplace for special access services and AT&T's pending pricing flexibility petitions. AT&T argued that as no one has challenged its showing that it has met the applicable triggers for pricing flexibility in the San Antonio and San Francisco/Oakland metropolitan statistical areas, it plainly is entitled under the Commission's current rules to the relief it has requested. As the Commission itself has recognized, until such time as the Commission finds, based on an "adequate evidentiary record" (which the Commission itself has acknowledged is currently lacking),[1] that the existing pricing flexibility rules (including the triggers) are inadequate and should be changed, its review of pricing flexibility petitions is properly confined to determining whether the applicable triggers are met.

Additional topics touched upon in our discussion are summarized on the attached materials, which were either distributed at the meeting or subsequently provided to Ms. Kronenberg at her request.

Pursuant to section 1.1206 of the Commission's rules, this *ex parte* notification is being filed electronically for inclusion in the record of the above-referenced proceeding.

Sincerely,

F S Simone

ATTACHMENTS

cc: A. Kronenberg

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[1] COMPTEL, et al., United States Court of Appeals for the District of Columbia Circuit Case No. 11-1262 (filed Oct. 6, 2011) (opposing COMPTEL's request for mandamus directing the FCC to complete its special access rulemaking, inter alia, on the ground that "the Commission is still in the process of gathering data it needs to assess whether its special access rules should be revised").

TDM-based DS1 and DS3 Are Legacy Services in Decline

"In any industry subject to significant technological change, it is important that the evaluation of competition be forward-looking rather than based on static definitions of products and services. Insight can best be gained by looking at product life cycles, the replacement of older technologies by newer ones, and the barriers facing suppliers that offer those newer technologies. In the case of broadband services, it is clear that the market is shifting generally in the direction of faster speeds and additional mobility." U.S. Dept. of Justice, Comments on Nat'l Broadband Plan, Jan. 2010

➤ ***The Special Access Marketplace has changed dramatically since 2010 with the irreversible marketplace shift to Ethernet services and other packet-based services***

- Ethernet services are displacing legacy TDM services
  - AT&T sales of DS1s and DS3s to wireless carriers peaked in April 2011
    - By EOY 2011, wireless carrier purchases of DS1s declined by nearly 20%
- The displacement of special access by Ethernet services is not limited to wireless customers
  - Report shows purchasers' allocation of their spending to DS3 and below declined from 68% in 2008 to only 36% in 2011
- Comcast blogged on 5/3/12 that its internal survey results confirm the ascendance of Ethernet, describing the "'death of the T1. " It stated that "[a]ccording to the survey, Ethernet is the most common technology used by organizations today (65%) and overwhelmingly the solution that organizations plan to invest in over the next 12 to 24 months (57%)."

➤ ***Wireless Carriers are leading the conversion using numerous alternative suppliers***

- **Sprint** RFPs for contracts to provide Ethernet backhaul to 40K of its ~ 45K cell sites
  - Has awarded contracts for 25K sites with 15K to be awarded in mid-2012
  - "will end up with 25 to 30 significant backhaul providers that will likely be a mix of incumbent LECs, cable MSOs, and alternative carriers, all of whom will be expected to deliver Ethernet predominantly over fiber"
- **T-Mobile** has publicly announced that it is committed to using Ethernet backhaul for all of its 3G cell sites and has largely completed this transition
  - More than half of its connections for 3G-capable cell sites awarded to various cable operators, alternative fiber providers, and a wholly owned subsidiary of a utility company
  - Backhaul cost per megabyte reduced by 90%

➤ ***The Ethernet Marketplace is robust and intensely competitive***

- There are 9 facilities-based Ethernet providers with $\geq$ 4% marketshare, including tw telecom, Cox, XO, Time Warner Cable, Level 3 and Cogent
  - No provider has > 24% marketshare
- XO's network can provide Ethernet services to >10M businesses and approximately half of its enterprise customers are served via Ethernet
  - 70% of its new orders are related to Ethernet
  - XO also provides fiber-based wholesale services to large carriers, cable operators and mobile operators
- Level 3 is a major supplier to Verizon Wireless

- Cable's Ethernet marketshare is projected to increase substantially over the next several years, from close to 25% to approaching 30% (Heavy Reading Insider July 2011)
    - For example, Comcast said on 5/2/12, "Metro-E and PRI trunk voice, which are now available in all of our markets are making an increasing contribution to the business services results."

➤ ***Competitive wireline provider announcements demonstrate business model evolution***

- Cbeyond announced long-term dark fiber purchases from Zayo and Fiberlight to connect more than 700 buildings, displacing DS-1 circuits purchased from ILECs (May 2012)
    - 75% - 85% of these buildings have not been previously served by fiber
    - Costs of $35K - $45K per building
        - Lower costs than prior estimates due to:
            - Proximity to existing fiber rings
            - Suburban locations cheaper to serve than "downtown high rises"
            - Latest generation technology costs continue to decline
    - Cbeyond's target is to "light" 1,000 buildings by EOY 2013
- tw telecom disclosed that "Strategic Ethernet & VPN" account for over 25% of their total revenues and grew by 23.7% in the past year (May 2012)
    - Wireless carrier revenues now account for 6% of twtc's total revenue
    - Two-thirds of revenue is fully on-net

➤ ***Competitive responses to the two voluntary data requests were limited, incomplete and inadequate to assess the availability of competitive alternatives***

- < 10 CLECs responded to the 1st data request
    - Many of those failed to provide fiber maps or mapping data
- Only 7 competitive providers responded to the 2nd data request
    - While cable companies have become major competitive providers, the sole cable respondent was RCN
- Only last October the Commission advised the D.C. Circuit Court of the shortcomings of data before it, saying "[u]nfortunately, the Commission has faced obstacles in its efforts to gather the data it needs to make an informed decision on special access. For instance, in response to the FCC's October 2010 request for special access data, fewer than 10 percent of petitioner COMPTEL's service provider members (7 of approximately 90) submitted data concerning their experience in the special access market."

➤ ***Special Access volume and term discounts are pro-competitive and voluntary***

- AT&T offers many discount plans, including term discounts with no volume commitment
- Customers may also choose discount plans with both volume and term discounts covering only a fraction of their overall volumes to those plans
    - This allows significant volumes that can be readily moved to competitive providers
- Suggestions that customers are somehow "locked-in" to AT&T services are false

- ***AT&T's unopposed pending petitions for Phase II Pricing Flexibility for end-user chan terms in the San Francisco/Oakland and San Antonio MSAs should be granted***
  - The Commission's pricing flexibility rules were designed over a decade ago, as one of the few mechanisms it has to consider changes in the competitive landscape and provide relief from pricing regulation
  - Since these rules were implemented, nine companies have been granted relief via 38 petitions covering 270 market areas
    - AT&T, specifically, has been granted relief via 25 petitions covering 150 market areas
  - AT&T's petitions before the FCC today show that 27 collocated competitors exist in the San Francisco/Oakland MSA and there are 17 collocated competitors in the San Antonio MSA
  - The FCC should grant this relief and not change course mid-stream as AT&T has met the competitive benchmark test that has been in place since 1999

  - ***Sprint's filing is procedurally improper and thus should be stricken from the record***
    - Although the Bureau gave Sprint and other interested parties 47 days (more than 3-times the amount of time stipulated in the Commission's rules) to file, no party opposed during that extended comment period. Sprint waited until May 23rd (two and a half months after the opposition deadline) to file its opposition to AT&T's petitions.
    - Sprint fails to request a waiver of the filing deadline or offer any explanation why it failed to file within the generous 47 day filing period established by the Bureau.
    - Sprint's Opposition fails to advance a single argument or shred of evidence that Sprint could not have adduced within the deadline.
    - Sprint's late-filed Opposition makes a mockery of the Commission's pricing flexibility pleading rules and deadlines, as well as of the Bureau's notice seeking comment on AT&T's petition.
  - ***Sprint's Opposition seeks relief that departs from and is fundamentally at odds with well-settled principles of administrative law and Commission precedent.***
    - Sprint does not allege that AT&T has failed to show that the pricing flexibility triggers are met. Instead, Sprint launches a collateral attack on the triggers themselves.
    - Sprint takes the position that merely *initiating* an investigation into *whether* the existing pricing flexibility rules are working as intended frees the Commission at any time to assume the conclusion that they are not – regardless whether it has even collected the data that would be necessary to answer that question – and simply refuse to comply with its rules.
    - The Commission itself recently acknowledged in its opposition to COMPTEL's special access mandamus petition that, "[t]he FCC has yet to draw any firm conclusions about the accuracy of its predictions regarding special access"[1] and "that, because it "[l]ack[ed] sufficient data to resolve this fundamental dispute,"[2] it "appropriately recognized that it should make no decisions about revising its special access rules before it ha[d] compiled and analyzed an adequate evidentiary record."[3]
    - As recently as 2010 the Wireline Competition Bureau rejected GCI's opposition to a pricing flexibility petition filed by ACS of Anchorage that raised arguments identical to those raised by Sprint here.

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[1] FCC Mandamus Opposition at 17.

[2] That is, "whether its current special access rules ensure just and reasonable rates." *Id.* at 15.

[3] *Id.* at 19.

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News Analysis

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After reading I've got the feeling that I was fed the Tower Cloud infomercial ... **chechaco**

Sprint to Reveal Backhaul Contract Winners Friday

OCTOBER 5, 2011 | Carol Wilson | **Comment (1)**

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ORLANDO, Fla. -- Backhaul Strategies for Competitive Carriers -- Sprint Nextel Corp. (NYSE: S) will announce on Friday the winners of its second round of backhaul contract awards, a senior executive said here on Tuesday.

Sprint VP of Roaming and Access Planning Paul Schieber revealed the plans here in Orlando, where the main message from the keynote presenters was that some of the best backhaul opportunities for alternative carriers can be found in smaller cities and rural areas.

Sprint has awarded its first round of backhaul contracts, for about 10,000 sites, and will issue the second round of awards, for 15,000 sites, this Friday. The carrier will announce the third round of awards for another 15,000 sites in mid-2012. Many of those unassigned sites are in less populated areas.

The news follows *Light Reading Cable*'s report last week that Sprint had issued a request for proposal (RFP) for fiber-based backhaul. (See Sprint to Place Big Backhaul Bet .)

Schieber said Sprint will end up with "25 to 30 significant backhaul providers" that will likely be a mix of incumbent LECs, cable MSOs and alternative carriers, all of whom will be expected to deliver Ethernet predominantly over fiber for Sprint's new multi-mode network, which will combine the CDMA, IDEN and WiMax networks it uses today. It will be up to Ericsson AB (Nasdaq: ERIC), the company to whom Sprint outsourced its network operations, to merge these many networks into a seamless operation, Schieber said. (See Ericsson, Sprint in $5B Managed Services Deal.)

Sprint could still build its own backhaul facilities, where the alternatives presented don't meet its requirements, including in some less populated markets, according to Schieber. But to date, he is pleased with the way the industry has stepped up.

But winning those deals won't be easy. In addition to the typical technical requirements such as low latency, jitter and packet loss, high reliability and multiple VLANs per tower, Sprint is also looking for features from backhaul providers such as automated exchange of orders, billing and trouble tickets, a rapid process for turning up more bandwidth including for special events or natural disasters, and backhaul support for micro-cells such as femtos and picos.

Being first to a given tower or set of towers with fiber is great, Schieber said, but won't guarantee selection.

Getting practical

In addition to Schieber's keynote speech, Ron Mudry, CEO of Tower Cloud Inc. , which is delivering mobile backhaul services throughout the Southeastern U.S., encouraged competitive carriers to look beyond the NFL cities for backhaul opportunities.

Mudry offered some practical reasons why alternative carriers should look to less-populated areas to deliver backhaul, as Tower Cloud does in places like rural Georgia, and smaller cities and towns in Alabama, Georgia and Florida.

For one thing, competition is already very stiff in the larger markets, while there is still opportunity in smaller cities/towns and rural areas. All but 15 percent of mobile backhaul bandwidth is in non-NFL cities or rural areas, with 15 percent in Tier 2 cities, 37 percent in Tier 3 and 33 percent in rural areas, Mudry said. Individual sites in those areas actually require more bandwidth due to lower cell-site density.

"We are delivering 30 percent more bandwidth per tower in places like Albany, Columbus and Valdosta, than we are in Atlanta," Mudry said.

The trick is to figure out how to serve those smaller networks economically. Tower Cloud leases existing dark fiber where available from other carriers, utility companies and municipalities. Those companies are easier to find in large cities, but they can be found in smaller ones as well, he says, particularly as utility companies use dark fiber to create smart grids.

The same networks that deliver fiber to cell towers can also reach universities, hospitals, military bases and other sites with high-bandwidth needs, helping to amortize the cost of fiber. Microwave helps fill out areas where fiber just isn't feasible but Tower Cloud keeps that to 20 percent or so of its network.

In very rural areas, the key to winning backhaul contracts can be a regional play, which helps wireless operators avoid having to deal with multiple rural LECs or other carriers, Mudry said.

— Carol Wilson, Chief Editor, Events, *Light Reading*

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Seeking Alpha α

tw telecom's CEO Discusses Q4 2011 Results - Earnings Call Transcript

February 9, 2012 | about: TWTC

- Presentation
- Q&A
- Participants

Executives

Larissa Herda - Chairman, CEO and President

Mark Peters - EVP and CFO

Carole Curtin - VP, IR

Analysts

Simon Flannery - Morgan Stanley

Frank Louthan - Raymond James

Barry McCarver - Stephens

Colby Synesael - Cowen and Company

Dave Coleman - RBC

David Dixon - FBR Research

Tim Horan - Oppenheimer

Donna Jaegers - D. A. Davidson

Michael Funk - Bank of America Merrill Lynch

tw telecom Inc. (TWTC) Q4 2011 Earnings Call February 9, 2012 9:00 AM ET

Barry McCarver - Stephens

The transport pricing in the press release, you mentioned there a slight decline on the revenue line from contract renewals. I just want a little more color on that?

Mark Peters

With the transport and that's largely from the carriers, those can be lumpy. I mean we always have contract come up for renewal or specific circuits or specific networks that we're selling to customers and carriers in particular, that will come to current pricing. I can't give you a percentage on what those are. But those can be lumpy. And so that's kind of a nature of the carrier revenue and the transport business.

Larissa Herda

Yes. I mean the reality is DS1s and DS3s are going down. Waves are going up. And so you're going to see them in the separate category. Obviously you're seeing data going up which includes our Ethernet product portfolio. So you know there is actually some good news, I think a lot of good news and that is that on our network services revenue line, a big chunk of that is from the carrier customers.

And really prior to this past year, we didn't see the carriers prolifically trying to sell Ethernet services. And then there was a reason for that because it's hard for them to go to their sales force and buy Ethernet from a company like us when they had to have a solution that was more ubiquitously an Ethernet solution and until the larger incumbent carriers were offering Ethernet solutions on a wholesale basis, you know other types of carriers that don't have fiber into a lot of buildings really couldn't offer those services.

This past year there has been a more incoming carriers' that offer those services, but the reality is that their pricing is not particularly attracted so companies in order to be able to compete are going to have to be able to have something else to build with their solution, fortunately for us we have so much fiber and so many buildings on the network. We're able to leverage those types of offerings.

But we're getting a lot more Ethernet orders coming from the carriers as a result and we would expect that just to continue to grow. So that will help to offset them not buying as many DS1s and DS3s, and we think there is shift that's going to be going on over time to more Ethernet services from the carriers.

Barry McCarver - Stephens

Is it safe to assume that that shift is probably pretty good for your margins?

Larissa Herda

It's excellent for our margins because we sell the Ethernet, its primarily on net to customers. For international carriers we can provide them Ethernet connectivity, but we also will be providing connectivity to these carriers, we don't have to connect to them in every location around the country. We can provide one-to-many locations. So we have a very efficient strategy for connectivity. Companies that want to buy Ethernet services from each individual carrier, even if they go to a common location they generally have to develop contractual agreements. And there is a whole lot of things that go along with that, it's a very time consuming process.

But with us, we can manage the whole network ubiquitously across the country. So it's a very attractive solution for companies who don't have network in the United States. And obviously we all know Ethernet is very scalable. It's very easy to increase the bandwidth and the type of solutions we provide are emendable to that. So yes I think just generally speaking it's a very positive trend. It's a future trend. It's going to take time because the carriers win more Ethernet services. Lot of them are still learning.

We've been doing Ethernet since 2002 or something like that and we've been doing it longer than anybody in the industry. So we know how to do it. And we've been teaching carriers how to do it quite frankly to help enable them to buy from us. So it takes time and there is no real standards. So they've got to do it differently in different places. And I think that's where we come in as a very positive intermediary in that process to be able to offer the connectivity, not only to our buildings, but to really any location that you can get Ethernet.

We're connecting to not only the big carriers, but smaller carriers that are starting to provide Ethernet and have put on that buildings. We've been working really hard to try to build some relationships so that we can have, first of all competition for the services that we're buying. And if we can buy from another carrier that's not an incumbent and they provide better pricing, that's what we're going to do.

So our goal is to be connected to as many buildings that have Ethernet capability and then so that we have this very best reach. And we've done a lot of work in that direction. And we still have some to go. But we're miles ahead of lot of other companies.