



Robert W. Quinn, Jr.
Senior Vice President
Federal Regulatory and
Chief Privacy Officer

AT&T Services, Inc.
1120 20th St., NW, Suite 1000
Washington, DC 20036
T: 202 457.3851
F: 202 457.2020

June 19, 2012

VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW – Lobby Level
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 Friday, June 15, I had a discussion with Matthew Berry, Chief of Staff for Commissioner Ajit Pai. During the course of that discussion, I made reference to the aforementioned proceedings currently before the Commission.

With respect to AT&T's pending pricing flexibility petition and the associated special access proceeding, I explained the difficult investment environment for wireline infrastructure and the need to transform the existing wireline infrastructure to more efficient IP infrastructure. I also explained that a path to retire the traditional POTS TDM architecture is necessary to make continued investment possible, particularly in rural areas. In addition I made the point that our pricing flexibility were unopposed during the Comment cycle and questioned the fairness of a process that would change the rules literally hours before the due date of those petitions. My comments were consistent with the attached bullets that we have used for discussion purposes during this proceeding and the substance of two previous AT&T Blogs on this subject that were previously filed in this proceeding and are attached here as well.

If you have any questions or need additional information, please do not hesitate to contact me. Pursuant to section 1.1206 of the Commission's rules, this letter is being filed electronically with the Commission.

Sincerely,

Robert W. Quinn, Jr.

ATTACHMENTS

cc: Matthew Berry

ATTACHMENT 1

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 COMPTTEL'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 COMPTTEL'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.

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.

ATTACHMENT 2

Rewarding Misbehavior...

Posted by: [Bob Quinn](#) on June 8, 2012 at 1:05 pm

Earlier this week, I wrote about [the special access order](#) circulated at the Commission and explained why a backwards looking focus on legacy, [practically-obsolete](#) technology would lead to less fiber infrastructure investment, less innovation, less job creation and would be completely contrary to the Obama Administration's [goals](#) in each of those areas. Today, I am going to talk a little bit about process. We all know the [buzzwords](#) of this Commission when it comes to process: fact driven, open and transparent. I want to contrast those words with what has occurred in this proceeding over the last few weeks. Bear with me while I give you some background.

The proceeding here is pretty straightforward. Twelve years ago, the Clinton-FCC, led by then Chairman [Bill Kennard](#), set forth a framework that would lead to [pricing de-regulation](#) of then state-of-the-art data services (1.5 Mbps) in markets where there were sufficient competitive facilities being built to compete with the legacy telephone company. The idea was to recognize the significant infrastructure investment that had been made in the wake of the [1996 Telecom Act](#). In passing that [Order](#), the FCC [explained](#) that it recognized that its selection of [pricing flexibility triggers](#) was “not an exact science,” but rather a [policy determination](#) “based on our agency expertise, our interpretation of the record before us in this proceeding, and our desire to provide a bright-line rule to guide the industry.” In other words, the Order was based on a factual record. Later, the FCC extended its pro-investment philosophy by de-regulating fiber and packet-based services in order to incent new investment in broadband infrastructure. (Believe me, the heart of this particular debate is the desire of competitive carriers to re-impose the obligation to unbundle fiber at [TELRIC](#) rates. But that is for [another blog](#)).

The competitive carriers and so-called public interest groups active in this proceeding have tried to reverse that pricing flexibility decision for more than 10 years. Because the prior Order was based on a factual record, the competitive industry bears the burden of going forward and demonstrating the lack of competition in these markets. One of the problems that policymakers have had, however, in analyzing what is going in this market is that no one really has accurate data on what competitive facilities exist in the marketplace. As strange as it may seem, despite all of the reporting requirements in our industry, competitive carriers have never been required to identify how much fiber and infrastructure they have built in any given market. And when policymakers have attempted to address this lack of data, the competitive community has continually thrown up roadblocks. When the GAO studied this market in 2006, it was stymied in its ability to analyze the market because competitive carriers refused to provide data. When the NRRI studied the issue in 2008-09, they hit the same stone wall. When the FCC asked the industry [for data in 2010](#), the competitive community once more refused to provide the data necessary for the FCC to conduct its analysis.

Just last year, in a [federal court proceeding](#), the FCC again called out competitors for failing to submit data concerning their experience in the special access market stating that only seven out of 90 [COMPTel](#) members had responded to the FCC's 2010 Request for Data. Seven out of 90. Sounds more like my Cubs' winning percentage this year than it does like the response rate you would expect from a group that wants to convince policymakers to change the status quo.

And, according to an April 17 TRDaily article, the FCC's own Sharon Gillett [recently remarked](#) on the "incredible dearth of data" from competitors and the Commission's inability to "do the analysis without the data."

With that, one might think that the FCC would leave in place its de-regulatory policies until it had adequate data on which to revise or create new policies. Not so, as we learned Monday. The FCC, despite its asserted lack of data, circulated an Order to suspend the pro-investment price de-regulation framework approved 12 years ago until the FCC could make competitors respond to a mandatory data request. Meanwhile, AT&T and many other carriers have submitted reams of data demonstrating the extensive competition that exists in these markets. And so we're clear, that mandatory data request is not in the item that was circulated Monday. It is a statement that at some point in the future the FCC will submit a mandatory data request to CLECs. Interesting process.

The other shoe dropped Tuesday when [FCC staff announced](#) in a Public Notice that it was submitting 99 documents – comprising more than 10,300 pages of new evidence – into the record in the proceeding. One presumes that the reason this data needed to be submitted in the record is that the staff in crafting the Order on circulation actually relied on this evidence (and cited extensively from the evidence) in its proposed Order. If this is true, why was the evidence not submitted into the record until *after* the Order went on circulation? Indeed, why was it not submitted into the record months ago? At least then AT&T and others could have responded to the evidence and had those replies considered before a final Order was circulated.

As it stands, this last minute submission seems intended to thwart that very sort of opportunity, which seems at odds with the spirit, if not the letter, of the [Administrative Procedure Act](#). In short, this process is unseemly and raises questions as to what's really afoot at the Commission.

This FCC has explained for years that they have insufficient data on which to base a special access decision, yet they now circulate an Order despite that lack of data. They dump 10,000 pages into the record after their Order is circulated, giving no time for anyone to consider that evidence, let alone respond. Then they conclude that they now have a sufficient basis to overturn a well-established, judicially affirmed deregulatory decision that was based on a far more extensive record involving actual (as opposed to missing) data.

From a process perspective, this does not represent the gold standard for openness and transparency. We have argued for nothing more than a fact-driven, open and transparent process. We are confident that when policymakers see the amount of competitive fiber deployed in metropolitan markets, it will be easy to conclude that the right pro-investment strategy is to incent carriers to extend their existing fiber infrastructure into the many commercial office buildings across the country; to transition from the legacy [TDM technology](#) of yesterday to the all-IP world the industry needs to achieve the Administration's goals. The economy needs this kind of infrastructure infusion and the current policies are not taking us there fast enough. Instead, the agency, despite the lack of data, seems intent to reward the same petitioners who for years have thumbed their noses at the FCC's data requests. If this Order goes forward under these circumstances, it will not be the FCC's finest hour.

Repealing De-Regulation: How Not to Build a Roadmap Towards an All-IP World

Posted by: [Bob Quinn](#) on June 5, 2012 at 7:55 am

The FCC has circulated an order that would undo more than 12 years of [Clinton-era](#), deregulatory pricing policy on legacy non-packet services. The services in question are called “special access” services – 95% of which are slow 1.5 megabits per second (Mbps) [TDM](#) (think [POTS](#)) services. That is not a misprint. We are not talking about 100 Mbps connections – services we should actually be figuring out how to get to more people in more places. We are not even talking about fiber. We are talking about legacy, copper-based services that are so slow the services would not qualify for a single dollar of Universal Service Fund (USF) support if they were deployed to homes throughout rural America under the Commission’s recent [USF order](#).

We are concerned about the impact the proposed action is going to have for the overall transition to IP technology that the FCC had begun in that USF order. The transition to IP cannot happen fast enough. The industry needs to move to a more cost-effective, all-IP infrastructure if we are going to remain a globally competitive economic force. In regulatory time, that transition must occur with incredible speed. Once subsidies are removed from TDM/POTS infrastructure, carriers will need to nimbly move to retire that infrastructure to make way for an all-IP world. In the USF order, the FCC took a great step in that direction by declaring the [obsolescence](#) of TDM/POTS.

To make those investments work, however, there must also be a path away from [the costs of the legacy infrastructure](#). AT&T itself is in the process of evaluating how we are going to address the overall [rural investment issues](#) in our own footprint. Today’s announcement by the Commission will have a significant impact on those calculations and the feasibility of long-term rural investment. Simply put, if there is no clear path to migrate to an all-IP infrastructure, that investment calculation looks much more challenging.

The FCC should be creating a parallel path for these services like it created in the consumer market. In other words, we should be crafting a plan to retire these services and get businesses and competitive carriers on the path towards deploying fiber-based broadband services that are much faster than 1.5 Mbps.

Some competitors may argue that they can’t build more fiber to businesses. But the reality is that many of them do exactly that. Level 3 says it [has fiber within](#) 500 feet of more than 100,000 “enterprise” office buildings. Sprint just conducted a [huge RFP](#) for fiber-based backhaul services and awarded contracts to between 25 to 30 different backhaul vendors across the U.S. all willing to build high-capacity Ethernet backhaul.

Cable companies have been aggressively competing for years by building out their own footprint. Verizon builds fiber to three homes in the hope that that one customer of

three chooses to buy video, voice and broadband service from them. Clearly this is not a “natural monopoly” where investment is impossible.

With the right policies, we could have this type of significant investment in every area on the path to an all-IP world. That is what the Obama Administration called for in its mission to get high speed wireless broadband to 98% of Americans and its renewed call earlier this year to create jobs by upgrading the nation’s infrastructure, including its [communications infrastructure](#). And this is exactly the kind of wide-scale infrastructure investment that can create jobs, keep the economy moving and keep America globally competitive. The mission is clearly articulated and appears to have universal bi-partisan support – broadband infrastructure investment creates jobs. But we need a plan to get there and, unfortunately, that does not appear to be the road the FCC has chosen to go down. The rhetoric is good, but at some point we have to walk the talk. Right now, it’s all just talk.

So, what are we going to do instead? Apparently, we are going to go backwards and try to figure out the perfect way to price-regulate a technology that is fast becoming obsolete. The one thing guaranteed is that the stable pricing regimes that have been in place for 12 years will be challenged in litigation by competitive carriers across the country – all arguing for lower rates; none explaining how lower rates on yesterday’s technology will actually spur investment in fiber-based IP technologies. Who will benefit? Those companies who are clinging to yesterday’s technology so that they do not have to invest in America’s future.

Instead of creating a path to fiber, significant infrastructure investment by all carriers, job creation and achieving the nation’s broadband goals, we are going to instead pursue policies that will result in *less* fiber, *less* infrastructure investment, *less* job creation, and *less* broadband. It’s not that we haven’t pulled this kind of transformation before. We managed the move from horse and buggy to automobile and became the world’s automotive leader in the process back then. But if we pursued policies early in the 20th century with the same game plan we are pursuing broadband policies today, we’d have a lot of cars still being [pulled around by horses](#).