

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
In the Matter of Special Access for Price Cap Local Exchange Carriers)	WC Docket No. 05-25
)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services)	RM-10593
)	

**COMMENTS OF
THE NEW JERSEY DIVISION OF RATE COUNSEL**

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TABLE OF CONTENTS

SUMMARY	ii
I. INTRODUCTION	1
II. BACKGROUND	2
III. FURTHER NOTICE OF PROPOSED RULEMAKING	6
A. Pricing signals should encourage economically efficient investment	10
B. Carriers’ transition to an IP network should not cloud the FCC’s judgment about the structure of special access markets.	11
C. Panel regressions should inform but not delay the FCC’s deliberations in this proceeding	11
D. The FCC should afford minimal weight to potential competition, particularly because past predictions about entry have not borne out.	12
V. FNPRM: SECTION IV.C	13
VI. CONCLUSION	14

SUMMARY

The New Jersey Division of Rate Counsel (“Rate Counsel”) commends the Federal Communications Commission (“FCC” or “Commission”) for undertaking a long-overdue thorough analysis of the structure of special access markets throughout the country in order to provide the foundation for improved regulatory oversight of the rates, terms, and conditions of these vitally important services. Just and reasonable prices are essential to support a healthy economy, to encourage the development of a robust national broadband network, and to ensure that the prices that consumers ultimately pay for products and services that depend on businesses’ purchase of special access services are reasonable.

Rate Counsel urges the FCC to complete its data-driven examination of special access markets expeditiously. A tension exists between pursuing a rigorous analysis and taking steps to correct the flawed regulation that now exists. To resolve this tension, Rate Counsel recommends that the FCC: (1) establish and announce deadlines for its completion of this process; and (2) clarify and confirm that it intends to make an informed, timely decision in which it will apply its administrative experience, even if stakeholders continue to identify areas in which yet more data might be collected or yet more analyses could be conducted. In other words, Rate Counsel cautions the FCC against embarking on an endless pursuit of yet more data and yet more analyses. Instead, the FCC should make a good faith effort to gather and examine relevant market structure evidence and to analyze the results of regression analyses. Then based on this comprehensive analysis, the FCC should make timely, informed decisions about how to improve the workings of the presently flawed special access markets in the United States.

As to the merits of the approach discussed in the FCC's Report and Order and Further Notice of Proposed Rulemaking, Rate Counsel concurs that geographic markets must be defined sufficiently narrowly as to encompass where competition is actually occurring. Traditional market structure analyses are appropriate (based on providers' market shares; supply and demand elasticity; and carriers' cost structures, size and access to resources). Rate Counsel also supports the proposed use of benchmarks as a way to gauge the reasonableness of rates (where rates in markets with pricing flexibility are higher than those in markets without pricing flexibility, this outcome certainly suggest that predictions about competition were misplaced).

Furthermore, Rate Counsel recommends that the FCC afford little weight to potential competition as a market-disciplining factor – there is a clear history of predictive judgment mis-gauging the extent of competition that would actually occur in special access markets. Finally, Rate Counsel supports fully the FCC's plan to investigate possible anti-competitive terms and conditions such as tying arrangements and onerous early termination penalties that lock in purchasers' demand, thwarting their migration to other suppliers.

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**COMMENTS OF
THE NEW JERSEY DIVISION OF RATE COUNSEL**

I. INTRODUCTION

The New Jersey Division of Rate Counsel (“Rate Counsel”), an agency representing New Jersey consumers,¹ files comments in response to the Further Notice of Proposed Rulemaking, issued by the Federal Communications Commission (“FCC” or “Commission”).² This proceeding regarding special access services has been ongoing for many years, and its outcome directly affects the prospects for competition in the wireless, wireline, and broadband

¹/ Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities.

²/ *In the Matter of Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25; RM-10593, *Report and Order and Further Notice of Proposed Rulemaking*, rel. December 18, 2012 (“*Order/FNPRM*”). Initial and reply comments on Sections IV.A and IV.C are due February 11, and March 12, 2013, respectively. Federal Register, January 11, 2013 (78 FR 2600).

markets, which, in turn, affects the rates, quality and diversity of services that the industry offers to consumers. Also, the rates that businesses pay to purchase special access – an essential input to their goods and services – affect the prices that consumers ultimately confront for these goods and services.

Rate Counsel commends the FCC for undertaking a long-overdue thorough analysis of the structure of special access markets throughout the country in order to provide the foundation for improved regulatory oversight of the rates, terms, and conditions of these vitally important services. Just and reasonable prices are essential to support a healthy economy, to encourage the development of a robust national broadband network, and to ensure that the prices that consumers ultimately pay for products and services that depend on businesses' purchase of special access services are reasonable. Rate Counsel urges the Commission to complete its collection and analysis of data in a timely manner so that it can expeditiously correct the existing flawed regulatory system, whereby carriers earn excess profits, unreasonable terms and conditions lock in purchasers of special access, and pricing flexibility has been prematurely granted.

II. BACKGROUND

Special access services are dedicated, high-capacity services that local telephone companies provide to business customers and competitors that link cell phone towers, serve business customers and transport data to the Internet. In filings submitted since the FCC opened the proceeding in 2005, incumbent local exchange carriers (“ILEC”) and other parties have contended that the special access market is competitive and that the FCC should take a hands-off approach. However, competitors and consumer groups have cited price increases and exorbitant

ILEC profits where pricing flexibility has been granted, and have urged the Commission to eliminate or reform its pricing flexibility and special access rules.

Consumers ultimately pay for inflated prices either directly to ILECs (in the instance of large consumers) or indirectly in the prices they pay for non-ILEC telecommunications services (the services of competitive local exchange carriers (“CLEC”) or of wireless and broadband services, for example) as well as goods and services across the economy. The inefficient rates lead to loss of consumer welfare, and thwart competition. Also, high special access rates thwart broadband deployment (in those instances where CLECs rely in part on ILECs’ special access services in order to provide broadband services). This connection to broadband was recognized in the FCC’s National Broadband Plan, which recommended that the FCC “take steps to ensure that special access rates, terms, and conditions are just and reasonable.”³

This proceeding, which was started with a complaint filed by legacy AT&T, has been pending eight years. During the intervening years, by acquiring legacy AT&T (the erstwhile long-distance carrier/CLEC), SBC successfully silenced a major advocate of special access reform. Similarly, Verizon’s acquisition of MCI silenced another advocate of special access reform. Presently, multiple complex proceedings are before the FCC, and, therefore, if few consumer advocates (which, in contrast with ILECs, have limited resources), weigh in on this proceeding, the FCC should not construe their silence as acquiescence that markets are functioning properly.

^{3/} Federal Communications Commission, *Connecting America: The National Broadband Plan*, report submitted to the U.S. Congress, March 17, 2010 (“Plan” or “NBP”), Chapter 4, p. 36. The American Recovery and Reinvestment Act of 2009 (“ARRA”) was signed into law on February 17, 2009. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (“ARRA”). As part of the Broadband Technology Opportunities Program established by the ARRA, the FCC was required to develop a National Broadband Plan by February 17, 2010. The FCC requested an extension of that deadline in January, 2010. See, Letter to Honorable John D. Rockefeller, Chairman, Committee on Commerce, Science and Transportation, United States Senate from Julius Genachowski, Chairman, Federal Communications Commission, January 7, 2010.

On November 5, 2009, the FCC released a Public Notice seeking comment on “the appropriate analytical framework for examining the various issues” raised in the *2005 Special Access NPRM*.⁴ Initial comments were filed in early 2010. The initial comments were divided, as expected, between the BOCs and other parties, with AT&T, for example, questioning whether the FCC should use its administrative resources to examine the special access market. Other commenters cited price increases where pricing flexibility has been granted and urged the Commission to eliminate or reform its pricing flexibility rules.

On September 19, 2011, the FCC sought additional data from carriers regarding their special access services⁵ and on August 22, 2012, the FCC released a Report and Order suspending its special access rules.⁶ The rules had allowed for automatic pricing flexibility grants based on certain “triggers” that were heretofore considered indicators of a competitive market. The FCC concluded that there is “significant evidence that these rules, adopted in 1999, are not working as predicted, and widespread agreement across industry sectors that these rules fail to accurately reflect competition in today’s special access markets.”⁷ The FCC cited its forbearance process as available for targeted relief while new rules were being developed and indicated that it would issue a “comprehensive” order seeking data within sixty days.⁸

^{4/} Federal Communications Commission Public Notice, “Parties Asked to Comment on Analytical Framework Necessary to Resolve Issues in the *Special Access NPRM*,” rel. November 5, 2009 (DA 09-2388).

^{5/} FCC News Release, “FCC Issues Comprehensive Data Request in Special Access Proceeding,” September 19, 2011.

^{6/} *In the Matter of Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25; RM-10593, *Report and Order*, rel. August 22, 2012.

^{7/} *Id.*, at para. 1.

^{8/} *Id.*, at paras. 6-7.

In its August 2012 Report and Order, the FCC concluded that its “Collocation Trigger”⁹ failed as a proxy for the presence of competition (specifically, competition sufficient to constrain special access prices and guard against anticompetitive practices).¹⁰ The FCC found, in part, that entry occurs in much smaller geographic areas than expected.¹¹ In analyzing the results of prior grants of flexibility, the FCC stated: “In sum, more than a third of the cases in which pricing flexibility was granted were premised on the existence of collocations where 65 percent or more of the special access revenue generated within the MSA came from 25 percent or fewer of the wire centers in the MSA. This is consistent with extreme variations in business density. Qualitatively, this suggests that MSA-wide grants of pricing flexibility have encompassed areas in which little or no competitive entry would be expected.”¹² The FCC concluded, regarding the definition of geographic area for the purposes of granting flexibility: “recent data indicates that competitors have a strong tendency to enter in concentrated areas of high business demand, and have not expanded beyond those areas despite the passage of more than a decade since the grant of Phase II relief.”¹³ Finally, the FCC found that collocation has not developed into facilities-based competition as previously predicted.¹⁴

^{9/} The collocation trigger measures the extent of collocation with a metropolitan statistical area. “Collocation – as used in the competitive showing rules – is an offering by an incumbent LEC whereby a requesting telecommunications carrier’s transmission equipment is located, for a tariffed charge, at the incumbent LEC’s central office. The Commission predicted that collocation by competitors in incumbent LEC wire centers would be a reliable indicator of competition because collocation typically represented a financial investment by a competitor to establish facilities within a wire center.” *Id.*, at para. 29.

^{10/} *Id.*, at para. 5.

^{11/} *Id.*, at para. 36.

^{12/} *Id.*, at para. 46.

^{13/} *Id.*, at para. 48.

^{14/} *Id.*, at para. 69.

III. FURTHER NOTICE OF PROPOSED RULEMAKING

On December 18, 2012, the FCC released its *Order* and *FNPRM*, seeking comprehensive data and also seeking “comment on a proposal to use the data to evaluate competition in the market for special access services.”¹⁵ In its *Order*, the FCC requires providers and purchasers of special access services (as well as providers of “best efforts Internet access data services with a capacity equal to or greater than a DS1 connection that are marketed to enterprise customers”¹⁶) to submit data to the FCC in order to allow it to comprehensively evaluate the special access market.¹⁷ The FCC’s data collection also includes information on intrastate access services offered through a state tariff or state-approved contract in order to ensure that the FCC has a full view of the market.¹⁸ This is a mandatory data collection – failure to respond will result in a monetary forfeiture.¹⁹

The FCC delegated authority to the Wireline Competition Bureau to undertake the data collection, stating:

The data collection we adopt today is set forth in Appendix A. Given the complexities associated with ensuring that the specific questions asked meet the Commission’s needs as expressed in this Report and Order, navigating the Paperwork Reduction Act process, and actually collecting, cleaning, and analyzing the data, we delegate limited authority to the Bureau to: (a) draft instructions to the data collection and modify the data collection based on public feedback; (b) amend the data collection based on feedback received through the PRA process; (c) make corrections to the data collection to ensure it reflects the Commission’s needs as expressed in this Report and Order; and (d) issue Bureau-level orders and Public Notices specifying the production of specific types of data, specifying a collection mechanism (including necessary forms or formats),

¹⁵ / *Order/FNPRM*, at para. 1.

¹⁶ / *Id.*, at para. 18.

¹⁷ / *Id.*, at para. 13.

¹⁸ / *Id.*, at para. 19.

¹⁹ / *Id.*, at para. 55.

and setting deadlines for response to ensure that data collections are complied with in a timely manner, and (e) take other such actions as are necessary to implement this Report and Order.²⁰

Thus, it would appear the timeline for data responses is unclear at this time.

In its *FNPRM*, the FCC begins “a process to more effectively determine where relief from special access regulation is appropriate and otherwise update our special access rules to ensure that they reflect the state of competition today and promote competition, investment, and access to services used by businesses across the country.”²¹ Rate Counsel is hopeful that the process will lead not only to regulatory *relief*, but also to mending the flawed pricing flexibility that has been granted, i.e., to regulatory *oversight* where market conditions so warrant. As to the merits of the approach discussed in the FCC’s Report and Order and Further Notice of Proposed Rulemaking, Rate Counsel concurs that geographic markets must be defined sufficiently narrowly as to encompass where competition is actually occurring.²²

In Section A of the *FNPRM*, the FCC seeks comment on the “market analysis” the FCC will conduct to evaluate whether the pricing flexibility rules result in just and reasonable rates.²³ The FCC seeks comment on several proposals that resulted from its *Analytical Framework Public Notice*²⁴ and proposes a “one-time, multi-faceted market analysis.”²⁵ In Section B of the *FNPRM*, the FCC seeks comments on changes to the pricing flexibility rules after the market analysis is complete and also seeks recommendations regarding the actions the FCC should

²⁰/ *Id.*, at para. 52, footnote omitted.

²¹/ *Order/FNPRM*, at para. 56.

²²/ *See, e.g., id.*, at footnote 153, stating: “However, the evidence we do have indicates that granting pricing flexibility throughout an entire MSA base don collocation in only a small part of that MSA was inappropriate.”

²³/ *Id.*, at para. 56.

²⁴/ *Id.*, at para. 59.

²⁵/ *Id.*, at para. 72. However, the FCC does “not foreclose the possibility that further analyses may be needed in the future.” *Id.*, at para. 56.

undertake if data indicates that competition is insufficient to discipline prices in areas where carriers have already obtained relief.²⁶ In Section C of the FNPRM, the FCC seeks “data and information on the terms and conditions offered by incumbent LECs for special access services to facilitate our understanding of competition in the special access market and our ability to craft rules that properly address the state of the marketplace.”²⁷ In these comments, as requested by the FCC, Rate Counsel responds to Sections A and C of the FNPRM.

Among other things, in its report and order, the FCC chose not to resolve the market-definition issue but instead decided for the purposes of data collection “to simply take a broad approach.”²⁸ The FCC further decided to “collect data on a nationwide basis to ensure the most comprehensive and accurate assessment of competition in markets for special access services subject to [its] pricing flexibility rules.”²⁹ The majority of the data that the FCC will collect will be for the calendar years 2010 and 2012 to provide some time series data, which will enable the FCC to analyze market structure, price, and demand based on diverse factors such as building codes, climate, and soil quality.³⁰ The FCC also observes that the time series of data will allow it to “assess potential competition.”³¹ The data that the FCC will collect is comprehensive, including, among other things, information relating to the terms and conditions associated with special access service sales.³²

IV. FNPRM: SECTION IV.A

^{26/} *Id.*, at para. 57. Comments on Section B of the FNPRM are due August 19, 2013 and September 30, 2013.

^{27/} *Id.*

^{28/} *Id.*, at para. 18.

^{29/} *Id.*, at para. 23.

^{30/} *Id.*, at paras. 27-28.

^{31/} *Id.*, at para. 29.

^{32/} *Id.*, at para. 39.

The FCC proposes and seeks comment on a market analysis that it intends to undertake to assist in assessing “whether the pricing flexibility rules result in just and reasonable special access rates and what regulatory changes may be needed.”³³ As the FCC observed, Rate Counsel and others have previously recommended that the Commission adopt a market power analytic framework (based on providers’ market shares; supply and demand elasticity; and carriers’ cost structures, size and access to resources).³⁴ Rate Counsel supports the FCC’s proposed structural market analysis such as that conducted in the *Qwest Phoenix Forbearance Order*.³⁵ Others have proposed comparisons of actual purchase prices for special access to specific benchmarks.³⁶ Rate Counsel welcomes the FCC’s comparison of special access rates as a way to assess the level of competition that exists in various markets. Price increases in a declining cost industry suggest a lack of market discipline. Price increases in areas for which ILECs have acquired pricing flexibility undermine the findings of competition that justified the regulatory relief that the FCC prematurely granted. An outcome with rates in markets that have been granted pricing flexibility being higher than those rates in markets without pricing flexibility suggests that the industry’s and the FCC’s predictions about competition were misplaced.³⁷

Rate Counsel supports, with some reservations, the FCC’s proposal to supplement the structural market analysis with panel regressions.³⁸ Furthermore, Rate Counsel recommends that the FCC afford little weight to potential competition as a market-disciplining factor – there is a

³³/ *Id.*, at paras. 5 and 73.

³⁴/ *Id.* at para. 60, citing Rate Counsel 2009 PN Reply, at 9-11 (and citing others).

³⁵ / *Id.* at para. 71, citing to, among other orders, *Qwest Phoenix Forbearance Order*, FCC Rcd at 8622.

³⁶/ *Id.*, at para. 62.

³⁷ / *Id.*, at para. 62.

³⁸ / *Id.*, at para. 71.

clear history of predictive judgment mis-gauging the extent of competition that would actually occur in special access markets.³⁹

Rate Counsel supports an analytically sound evaluation but is concerned that the process, if unduly stretched out, could prevent the timely and long-overdue modification to the present flawed system of price regulation. The process of seeking comment on how the special access pricing flexibility rules might change, based on the FCC's thorough market analysis (including steps that the FCC should take where relief has already been provided but where the data and analysis show that competition is insufficient to discipline the market), will not begin until late summer 2013.⁴⁰ Delay in relief helps incumbents and harms competitors and consumers. There is a serious risk that the exercise of analyzing the market in great detail could become an academically irresistible topic that could pre-occupy the FCC for years to come. Therefore, Rate Counsel urges the FCC to establish firm timetables for completion.

A. Pricing signals should encourage economically efficient investment.

The FCC discusses, among other things, its intended analysis of what leads competitive providers to invest in markets.⁴¹ Rate Counsel welcomes competitive entry in special access markets, but opposes incorrect pricing signals that encourage inefficient investment. In geographic markets where potential competition is unlikely because of high entry barriers, ILECs should not be permitted to sustain artificially high rates based on the rationale that high "umbrella" rates might encourage entry.

³⁹ / See, e.g., *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket 09-135, Memorandum Opinion and Order, 25 FCC Rcd 8622 (2010) ("FCC Qwest Phoenix Forbearance Order"), at paras. 34-35.

⁴⁰ / *Id.*, at para. 57.

⁴¹ / *Id.*, at para. 67.

B. Carriers' transition to an IP network should not cloud the FCC's judgment about the structure of special access markets.

The FCC refers to AT&T's argument that "the Commission's special access rules have hindered carriers' transition to IP-based services, and that they encourage reliance on legacy services."⁴² AT&T's reliance on carriers' transition to an IP network as a way to justify deregulation and to threaten, in the absence of such deregulation, to fail to invest in broadband is well-established, and should be afforded no weight.⁴³ Rate Counsel recommends that the FCC ignore AT&T's attempt to avoid regulation of its special access rates, terms, and conditions under the guise that such regulation hampers carriers' network investment.

C. Panel regressions should inform but not delay the FCC's deliberations in this proceeding.

The FCC also proposes "to conduct panel regressions," and "expect[s] that the output of such panel regressions will assist us in delineating both relevant product and geographic markets."⁴⁴ Rate Counsel concurs with the FCC that econometric modeling can assist the FCC in determining relevant markets, but cautions that, unless the FCC establishes clear time tables and unless the FCC retains leeway to apply its administrative expertise to resolve potential debates about the regressions, an unintended consequence could be to prolong the resolution of this long-pending proceeding. Ultimately, the FCC should establish a decision-making process that enables it to be informed but not constrained by its thorough analysis of the special access market. Stakeholders likely will find endless rationales for revisiting, faulting, and second-

⁴² / *Id.*, at para. 75.

⁴³ / *See, e.g.*, In the Matter of Policies to Respond to the Ongoing Technological Transition of Voice Networks, et al., GN Docket No. 12-253, initial comments of the National Association of State Utility Consumer Advocates, January 28, 2013.

⁴⁴ / *Order/FNPRM*, at para. 68, footnote omitted.

guessing regression analyses, elasticity studies and data that the FCC collects. Ultimately, the FCC should clearly retain and re-affirm its authority to exercise its administrative expertise in reaching decisions about where to re-impose regulatory oversight to address instances of excessive profits, unreasonable terms and conditions, and unjust rates.

The FCC also seeks comment on how it might balance analytic rigor with administrative feasibility.⁴⁵ If, as the FCC anticipates, its “one-time, multi-faceted market analysis” enables it to develop new proxies for assessing special access competition,⁴⁶ it is particularly important that the proxies be unambiguous.

D. The FCC should afford minimal weight to potential competition, particularly because past predictions about entry have not borne out.

The FCC cites recommendations that the FCC deregulate based on anticipated future competition.⁴⁷ Rate Counsel cautions the FCC against placing undue weight on speculation regarding competitors’ possibly entry into markets as way to justify regulatory relief. In order to be relevant, potential competition must be imminent and likely. Predictive judgment about special access markets failed in the past to protect consumers and competitors from premature pricing flexibility, which led to price increases and exorbitant rates of return by ILECs. The FCC anticipated levels of competition that did not evolve. Rate Counsel is hopeful that the FCC will afford significantly more weight to actual competition than it does to potential competition.⁴⁸

⁴⁵ / *Id.*, at paras. 77-78.

⁴⁶ / *Id.*, at para. 78.

⁴⁷ / *Id.*, at para. 63.

⁴⁸ / *See id.*, at para. 48, stating that the FCC “agree[s] with commenters” that “it is important to grasp the effects of potential, as well as actual, competition.” The FCC should be mindful of its own conclusions in the *FCC Qwest Phoenix Forbearance Order*. For example, the FCC concluded that its predictions about competition were unfounded: “Upon further consideration, we find that these predictions have not been borne out by subsequent

V. FNPRM: SECTION IV.C

The FCC states that the “record would benefit from additional, specific, and detailed discussion of terms and conditions which are alleged to be unjust or unreasonable.”⁴⁹ Furthermore, based on the record thus far (which includes allegations that ILECs are improperly locking in customers, imposing early termination penalties, and using tying arrangement anti-competitively as well as responses by ILECs that “vigorously dispute these allegations”),⁵⁰ the FCC seeks data and information on this issue.⁵¹ Among issues about which the FCC seeks comment are: information about which specific terms and conditions are considered unjust and unreasonable, whether they are unjust and unreasonable only where a provider has market power, and effective remedy or remedies.⁵² Rate Counsel opposes terms and conditions that unfairly lock in customers and that discourage customers from migrating among suppliers of special access. Certainly if ILECs are offering customers benefits in areas where the ILECs have market power in exchange for the customers agreeing to purchase the ILECs’ services in more competitive markets,⁵³ the FCC should prohibit such anticompetitive practices. As the FCC addresses the critically important matter of ensuring that the terms and conditions for special access are just and reasonable, it is essential to acknowledge that ILECs confront compelling economic incentives to use their market power to lock in customers and also, absent regulatory prohibitions to the contrary, possess the ability to do so.

developments, were inconsistent with prior Commission findings, and are not otherwise supported by economic theory.” *FCC Qwest Phoenix Forbearance Order*, at para. 35.

⁴⁹ / *Order/FNPRM.*, at para. 92.

⁵⁰ / *Id.*, at para. 92, cite omitted.

⁵¹ / *Id.*, at para. 93.

⁵² / *Id.*

⁵³ / *Id.*, at para. 92.

VI. CONCLUSION

Rate Counsel urges the FCC to complete its data-driven examination of special access markets expeditiously. A tension exists between pursuing a rigorous analysis and taking steps to correct the flawed regulation that now exists. To resolve this tension, Rate Counsel recommends that the FCC: (1) establish and announce deadlines for its completion of this process; and (2) clarify and confirm that it intends to make an informed, timely decision in which it will apply its administrative experience, even if stakeholders continue to identify areas in which yet more data might be collected or yet more analyses could be conducted. In other words, Rate Counsel cautions against the FCC embarking on an endless pursuit of acquiring yet more data and yet more analyses. Instead, the FCC should make a good faith effort, based on its proposed one-time collection of data, to gather and examine relevant market structure evidence, and then should make informed decisions about how to improve the workings of the presently flawed special access markets in the U.S.

Rate Counsel supports the Commission's proposed comprehensive, fact-based, and analytically rigorous examination of the special access market. Rate Counsel urges the Commission to make a best-faith effort to collect and analyze data rigorously but cautions that such an effort should not become an end unto itself but rather should be the foundation upon which the FCC applies its administrative expertise in order to correct the presently flawed regulatory oversight of special access markets.

Respectfully submitted,

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