



PUBLIC NOTICE

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PARTIES ASKED TO REFRESH RECORD IN THE *SPECIAL ACCESS* *NOTICE OF PROPOSED RULEMAKING*

WC Docket No. 05-25, RM-10593

Comment Date: (14 days after date of publication in the Federal Register)

Reply Comment Date: (21 days after date of publication in the Federal Register)

Pursuant to the rules governing notices of proposed rulemakings,¹ the Commission invites interested parties to update the record pertaining to the *Special Access NPRM*, which the Commission adopted in January 2005.² In the *Special Access NPRM*, the Commission commenced a broad examination of the regulatory framework to apply to price cap local exchange carriers' (LECs) interstate special access services,³ including whether the special access pricing flexibility rules which the Commission adopted in 1999 have worked as intended.⁴ In response to the *Special Access NPRM*, the Commission received comments on June 13, 2005 and reply comments on July 29, 2005.⁵

Since these comments were filed, a number of developments in the industry may have affected parties' positions on the issues raised in the *Special Access NPRM*. These developments include a number of significant mergers and other industry consolidations,⁶ the continued expansion of intermodal

¹ 47 C.F.R. §§ 1.415, 1.419.

² *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) (*Special Access NPRM*). Special access services do not use local switches; instead they employ dedicated facilities that run directly between the end user and an IXC's point of presence, where an IXC connects its network with the LEC network, or between two discrete end user locations. *Id.* at 1997, para. 7.

³ *Special Access NPRM*, 20 FCC Rcd at 1995-97, paras. 1-5.

⁴ See 47 C.F.R. §§ 69.701 *et seq.*; *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, 14224-25, 14232-33, 14234-35, 14257-310, paras. 1-4, 19, 24-26, 67-175 (1999), *aff'd WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

⁵ The Wireline Competition Bureau entered a Protective Order in this proceeding to enable parties to submit documents that contain proprietary or confidential information and to ensure adequate protection for such documents. *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Order, 20 FCC Rcd 10160 (2005).

⁶ See, e.g., *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, Order on Reconsideration, 22 FCC Rcd 6285 (2007); *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290 (2005); *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433 (2005); see also *Notice of Streamlined Domestic 214 Applications Granted, Transfer of Control of*

competition in the market for telecommunications services, which affects the uses of, and competition to provide, a variety of special access services or alternatives; and the release by GAO of a report summarizing its review of certain aspects of the market for special access services.⁷ Accordingly, we request that parties refresh the record in this proceeding to reflect the effects of these developments. Parties should include any new information or arguments that may be relevant to the Commission's consideration of what action, if any, may be appropriate in this proceeding. We also ask parties to address the specific questions below, which were not raised in the *Special Access NPRM*.

First, parties should comment on the effect of the post *Special Access NPRM* mergers and other industry consolidation on the availability of competitive special access facilities and providers. Parties should also comment on the effect these mergers may have had on scale economies or the profitability of special access services. In addition, since the release of the *Special Access NPRM*, demand for wireless voice and wireless broadband services has increased, and special access has been an important input for these services.⁸ We seek comment on how special access pricing affects the price and availability of wireless services and the investment in and deployment of wireless networks. In the *Special Access NPRM*, the Commission sought comment on both the price and cost of special access services, and on how costs for special access facilities should be estimated.⁹ We seek comment here on methods that may be used to estimate the costs of special access facilities, including whether models may appropriately be used to estimate such costs.¹⁰ We note that a number of carriers have embarked on significant upgrades to their networks to provide high capacity services to their customers.¹¹ We seek information on projected costs per customer to deploy these facilities. To assist in the assessment of the reasonableness of rates for special access services, we ask parties to supplement the record with information on vendor prices for high capacity transmission equipment, outside plant, fiber, and fiber installation, and on prices for nonregulated services that provide similar or equivalent capabilities to special access services, such as Ethernet and packet-based services.

Looking Glass Networks Holding Co. Inc. to Level 3 Communications Inc., WC Docket No. 06-116, Public Notice, 21 FCC Rcd 8709 (2006).

⁷ Government Accountability Office, *FCC Needs to Improve its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, Report 07-80 (Nov. 2006) (GAO Report).

⁸ See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 06-17, Eleventh Report, 21 FCC Rcd 10947 (2006); see also *CMRS Market Competition*, WT Docket No. 07-71, Sprint Nextel Corporation Comments at 3-5 (filed May 7, 2007).

⁹ *Special Access NPRM*, 20 FCC Rcd at 2016-17, para. 65.

¹⁰ For example, cost and engineering models have been used to estimate the cost of Unbundled Network Elements. Could they also be used to estimate costs of special access facilities? See, e.g. Stegeman, Parsons, and Wilson, *Proposal for a Competitive and Efficient Universal Service High-Cost Approach* (attachment to Letter from Gene DeJordy, Steve R. Mowery and Mark Rubin, Alltel Wireless, to Marlene H. Dortch, Secretary, FCC (filed May 31, 2007 in *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *High Cost Universal Service Support*, WC Docket No. 05-337)).

¹¹ See, e.g., Letter from Jim Lamoureux, General Attorney, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC (filed June 2, 2006 in *IP-Enabled Services*, WC Docket No. 04-36; *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Protection and Competition Act of 1992*, MB Docket No. 05-311); Letter from Leora Hochstein, Executive Director, Federal Regulatory, Verizon, to Marlene Dortch, Secretary, FCC (filed May 11, 2006 in *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311).

In the *Special Access NPRM*, the Commission noted that an examination of the current state of competition in the marketplace is critical to a determination of whether our pricing flexibility rules have worked as intended.¹² We asked parties to comment and provide data on whether DS-1 special access channel terminations between the LEC end office and the customer premises are in the same product market as DS-3 and OCn channel terminations.¹³ In light of rapid changes in fiber technologies, we now ask parties to comment on whether we should further subdivide optical fiber services into low capacity OCn services (such as OC-3) and higher capacity OCn services. We particularly seek information as to how much capacity competitors believe is necessary to justify building new facilities to serve customers.

This inquiry is also relevant to the Commission's analysis of demand responsiveness. In the *Special Access NPRM*, the Commission stated that parties may demonstrate that the market for a particular special access service is not competitive by showing that a significant number of an incumbent price cap LEC's customers cannot purchase a comparable special access service from an entity other than the LEC.¹⁴ Parties are invited to comment on whether any changes in the market have affected the availability of comparable alternatives. To the extent that parties contend that continued regulation of special access services is warranted, we request that they provide specific proposals for an appropriate regulatory scheme to assure reasonable rates and conditions for special access services. Finally, we ask parties to comment on the analysis and findings in the *GAO Report* summarizing GAO's review of competition in the market for special access services.

Parties may file comments in response to this notice no later than **14 days after this Public Notice appears in the Federal Register**, with the Secretary, FCC, 445 12th Street, SW, Washington, DC 20554. Reply comments may be filed with the Secretary, FCC, no later than **21 days after this Public Notice appears in the Federal Register**. All pleadings are to reference **WC Docket No. 05-25 and RM-10593**. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal; or (3) by filing paper copies.¹⁵

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the websites for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or

¹² See *Special Access NPRM*, 20 FCC Rcd at 2018-19, paras. 71-73.

¹³ See *Special Access NPRM*, 20 FCC Rcd at 2022, para. 83.

¹⁴ See *Special Access NPRM*, 20 FCC Rcd at 2025, para. 94.

¹⁵ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). **Parties are strongly encouraged to file comments electronically using the Commission's ECFS.**

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Parties should also send a copy of their filings to Margaret Dailey, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-A232, 445 12th Street, SW, Washington, DC 20554, or by e-mail to margaret.dailey@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

Documents in WC Docket No. 05-25 and RM-10593 are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW, Room CY-A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com. These documents may also be viewed on the Commission's website at <http://www.fcc.gov>. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁶ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required.¹⁷ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.¹⁸

For further information, contact Margaret Dailey of the Pricing Policy Division, Wireline Competition Bureau at (202) 418-2396.

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¹⁶ 47 C.F.R. § 1.1200 *et seq.*

¹⁷ See 47 C.F.R. § 1.1206(b)(2).

¹⁸ 47 C.F.R. § 1.1206(b).