

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *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

Today's Order and FNPRM are important next steps for analyzing the state of the marketplace for special access services. Based on the record to date, here is what we know so far from the record, including a voluntary data submission for a limited number of geographic markets: (1) the pricing flexibility rules we froze this summer were not good indicators for predicting where competition would materialize, thus we were unable to ensure that the rates would remain just and reasonable once they are deregulated; (2) we lack the data to properly assess when flexibility should be granted in the future and when we should reassert regulation where flexibility was granted prematurely; and (3) serious questions have been raised regarding whether the terms and conditions for special access services are harming the development of competitive alternatives.

This Commission has worked diligently to be data-driven under Chairman Genachowski, and such is the case with this proceeding. While this particular action has been under consideration for a number of months, I believe the finished product properly reflects the types of data each Commissioner believes is necessary to complete the agency's review of the special access services marketplace. There should be no doubt that this collection of data is sufficient for us to proceed to final analysis and conclusions. Industry and the consumers impacted have waited long enough. The agency has carefully balanced the request for information with the burden on industry to submit that data, and where possible, we are relying upon information the Commission already possesses.

The proposed analysis in the Further Notice observes the value of the antitrust agencies' horizontal merger guidelines, as well as our recent precedent using those guidelines and relying upon a market power analysis, that was upheld by the U.S. Court of Appeals for the 10th Circuit. I believe it is important that we fully consider and follow those guidelines, as we perform our analysis of the data we obtain in this Order. The proposal in the Further Notice is consistent with this. By obtaining the data we seek today, and performing the proposed regression analyses with such data, we will be able to observe what factors in the marketplace impact prices, terms, and conditions, entry and exit in the marketplace, as well as what services users of special access view as substitutes, among other issues. I believe these factors will be useful in our analysis of the special access marketplace, and I look forward to reviewing the comments in the Further Notice concerning our proposed analytical approach in this proceeding.