



Re-regulating Special Access is Not So Special for Consumers

Before the Divestiture of AT&T and the decade to follow, special access services, a copper-based dedicated telecommunications technology, were being used by large businesses, telecommunications companies, PBX operators and government agencies to bypass the telephone company's publicly-switched network. As competition for special access services exploded in the 1980's, the FCC moved special access from a rate-of-return regulated service to a price cap regulated service, and later allowed for complete pricing flexibility in competitive markets. In the last dozen years, high-speed Internet became the norm and special access services, notably the DS1 (1.54 Mb) and DS3 (45 Mb) services, looked somewhat obsolete in the face of the industry's massive investment into fiber and high-speed networks. Today, Internet services keep getting faster without getting more expensive, and wireless phone services keep getting better and cheaper. For instance, my 4g phone is faster than the archaic DS1 copper-based service and the data package is now cheaper than my 3g service was.

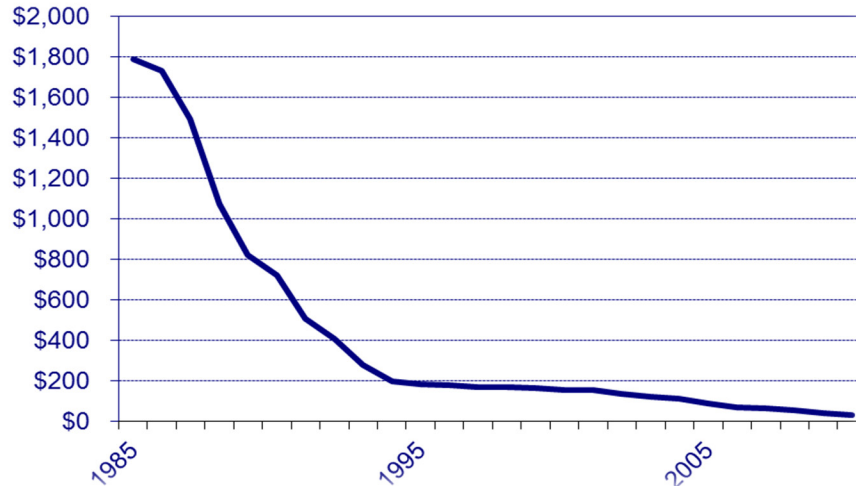
Yet, the FCC is mulling over re-regulating the old service in a scheme that would have one competitor cross-subsidize another. Specifically, some wireless carriers, most notably Sprint and T-Mobile, are pressing the FCC to price regulate special access services. These companies are hoping the FCC will force companies like AT&T and Verizon to sell special access services for backhauling traffic between cell sites and sell these services at artificially-low (regulated) prices. Essentially, Sprint and T-Mobile want the FCC to force its competitors to subsidize them.

With a multitude of technologies – including copper-based, fiber-based, wireless platforms, satellite, cable TV networks – and many competitors in the market in the last thirty years, it is hard for the FCC to justify reregulating the service. Anna-Marie Kovac's [report shows](#) that there continues to be was lack of data that demonstrate the presence of market power. What we do know, as she points out, the FCC can't use the same outdated information to conclude otherwise.

There is no evidence of a market failure that would justify regulation. The lack of market data is one thing, but the evidence of falling prices suggests anything but market power. By using and updating the FCC's own price cap data, as shown in the graph below, special access prices (calculated in terms of revenues per DS0 equivalent lines) continues to decline. Again, that conclusion does not support the case of market power nor does it justify regulatory intervention as a remedy. Without market failure, regulations are unjustified. Where is the analysis demonstrating that regulations would produce increased consumer welfare than in its

absence? The evidence is not there. Instead, a cursory review of the impact of these regulations shows no benefit for consumers, just a windfall for some companies at the expense of other companies.

Special Access Revenues per DSO Equivalent



In short, the imposition of artificially low (regulated) special access prices provides no obvious benefit to consumers. But, Rep. Mike Doyle disagrees and [applauds the FCC](#) for looking into special access rates. He states "This is not just about a battle between carriers ... This is about the pocketbooks of consumers and small businesses. They need all the relief they can get."

Huh? How are consumers benefitted when some carriers are paying the cost of other carriers with no net value being created in the marketplace? When "Carrier A" subsidizes "Carrier B" then "Carrier A's" customers are subsidizing "Carrier B's" customers. So, there is no relief for consumers as Rep. Doyle mistakenly claims, it just creates an umbrella for inefficiencies and market distortions to remain.

The reality is that the plan to reregulate special access is about helping one competitor over another and **not** helping competition or helping consumers.

Moreover, since Sprint and T-Mobile already set their wireless service prices somewhat lower than AT&T and Verizon, why do Sprint and T-Mobile need the help? Subsidizing the low-priced option is nonsensical.

In addition, giving discounted special access to Sprint and T-Mobile removes any incentive for them to build its own network, concentrating the market and undermining investment. The FCC's decision to give these competitors discounted roaming charges has already lead to investment cuts, as evidenced by Sprint's announced to [cut investment in Kansas](#) and to [change in its coverage map](#) – all thanks to roaming subsidies. Policies like these undermine investment, competition and job creation, and they ultimately concentrate the market onto fewer infrastructure-based networks – exactly what policymakers should want to avoid.

Lastly, the copper-based telecommunications network is in sharp decline – with access lines in service, calls and “minutes-of-use” representing less than half the volume of just ten years ago. In light of the high fixed costs needed to build, maintain and operate a ubiquitous network that serves less than a third of the telephony market, the idea of artificially lowering special access revenues will only undermine network investment and affect the services of those consumers still tied to tethered telephony services. Figuring out the shifts of technology, cost of service and where investments are most needed are details better managed by pitting competitors against each other in the market rather than by using regulations to manage competition.

The reregulation of special access would not increase consumer welfare and that should be the sole criteria for evaluating this FCC proceeding.

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