FACT SHEET ON SPECIAL ACCESS LOCK-UP PLANS

To compete in the twenty-first century economy, businesses of all sizes need affordably priced, innovative broadband services. In order to serve those businesses, providers must build or obtain access to facilities that cover the “last mile” to the customers’ locations. Unfortunately, incumbent carriers like AT&T and Verizon control the only existing last-mile facilities to most American businesses. They use their control to charge their competitors excessive rates for access to these facilities, which competitors generally obtain via what is known as “special access” services. Because of their dominance in the provision of these services, the incumbents have been able to engage in a system of exclusionary practices to ensure they lock up future demand for these services. This hinders the ability of competitive carriers to deploy last-mile facilities in parts of the country where it otherwise would be economical to do so. This impedes competition, keeps the incumbents’ profits high, and delays businesses from accessing next-generation services.

What Is “Special Access”??

Special access services transport voice and data over a dedicated transmission line between two or more designated points. Special access service encompasses traditional circuit-based dedicated services such as DS1s and DS3s, and newer packet-based dedicated services such as Ethernet. Special access is a form of broadband service, but it differs from the broadband Internet access service the Commission focused on in the recent Open Internet Order.

Special access is a multi-billion dollar market for the incumbents. Various consumers of all sizes use special access services, either directly from the incumbent or through services offered by competitors leasing special access from the incumbent. For example, small businesses, government entities, hospitals, medical offices, schools, libraries, ATMs and credit card readers use special access to connect to a private network (e.g., a corporate WAN) or to an Internet service provider. Wireless providers also use special access lines for “wireless backhaul,” in which the wireless provider connects its cell towers to the fiber network it uses to transport and terminate its customer’s calls.

Incumbents have last-mile facilities – and provide special access services – to virtually all retail business locations. In contrast, competitors are still building out their networks and face large economic and other hurdles. As a result, the incumbent owns the only last-mile facility to most business locations, and if competitors want to provide service to customers in these locations, they must lease incumbent wholesale special access services. In order to fully serve a multi-location customer, a competitor generally needs to be able to serve all of the customers’ locations. When a competitor buys a special access circuit, it then has a link that enables it to
connect the customer’s location to the competitor’s own network. Special access thus enables the competitor to offer its own services, such as voice, Internet access, and interoffice networking, to the customer.

**What Are Special Access Lock-Up Plans?**

The incumbents have powerful incentives to maintain their control over the special access market and have gone to great lengths to do so, including locking up most of the demand. Incumbents effectively force the largest buyers of special access to commit all or most of their demand over the long term to them, thereby undermining the economics for competitors to build their own facilities where it would otherwise be economically feasible to do so.¹

Here is how it works. The incumbents set their standard, monthly special access prices at exorbitantly high levels. Competitive providers therefore have no choice but to seek discounts off of these prices if they hope to offer their own services at competitive prices. Knowing this, the incumbents condition the availability of such discounts on terms that lock up demand and the competition is shut out. The incumbents’ lock-up plans come in many forms: requiring customers to purchase large percentages of their special access needs from the incumbents for long periods of time, imposing severe penalties that force customers to increase their committed volumes and to keep renewing their plans as they expire, forbidding customers from counting their purchases of next-generation services, such as Ethernet, toward the volume commitments they have made for legacy services (penalizing those who seek to upgrade), etc. The incumbents impose these terms through an assortment of interwoven “off-the-rack” tariff offerings, contract tariffs filed with the FCC, and non-tariffed commercial plans.

**Whom Do These Plans Harm and How?**

At the end of the day, consumers bear the burden of the incumbent’s excessive special access rates. Competitive providers and other enterprises that purchase special access must cover their costs. Moreover, customers suffer from a loss of innovation that is stimulated by the ability of customers to have a robust choice in providers and the ready ability to switch providers and upgrade to new IP technologies. Nearly every type of business, government agency, and non-profit, regardless of size, is impacted. These include community banks that transmit financial information among their branches, police and fire departments that need reliable communications during times of emergency, small businesses that rely on the Internet to market their products, non-profits that rely on the Internet to spread their messages, and countless others. Broadband services are critical to these entities’ operations and ability to grow. Further, the rates businesses

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¹ Because the cost of deploying new facilities is often prohibitive for competitive providers (especially to small or medium-sized businesses or branch locations of larger businesses), buying a special access circuit from an incumbent is frequently the only way that a competitor can serve a given business location.
pay – which are higher than they would be in a fully competitive special access market – directly impact the costs they must pass on to their customers.

Competitive providers also suffer in the face of reduced demand from business customers and financial penalties they will incur if they reduce their purchases from the incumbents under the same lock-up plans. This makes it difficult for those competitive providers to reduce their reliance on special access by building fiber out to more locations.

Ultimately, the only parties that benefit from these plans are the incumbents. Having a ubiquitous network and a huge customer base they are secure in the knowledge that their lock-up plans will keep out competition unless the government steps in. This dynamic keeps service slower, innovation lower, and prices much higher than they would be in a competitive market.

**What Can the FCC Do?**

The FCC needs to investigate immediately the largest incumbents’ special access lock-up plans and prohibit any terms that harm competition, restrain the deployment of competitive facilities, and/or impede the transition to next-generation services. The process for the investigation begins with the issuance by the FCC of a Designation Order that commences a review of the large incumbents’ tariffs.

There are at least two remedies that the Commission can and should take in the tariff review proceeding with regard to these anticompetitive, unjust and unreasonable lock-up provisions:

- The FCC should limit the size of the volume commitments that incumbents may impose as a condition for obtaining a discount or other benefit for special access circuits. While these commitments hinder competition at any level, the FCC could take a step toward limiting the harm of those commitments by finding that any volume commitment that exceeds 50 percent of the customer’s historic purchase volume is unlawful. If the Commission adopted this policy, customers could begin to buy fewer special access circuits from incumbents. This would grow the potential market for other carriers seeking to deploy their own facilities, creating a strong incentive for competitive providers to build out to more businesses.

- The FCC should require incumbents to allow customers to count their purchase of next-generation services, such as Ethernet, toward any volume commitments they have made for legacy services. This would help enable customer upgrades to next-generation services and would allow businesses to experience the benefits of these upgrades.

While the FCC may find that additional reforms are appropriate, these two modest initial steps would help promote greater competition in the provision of business broadband service, whether via special access or over newly constructed competitive facilities. Businesses, government agencies, and nonprofits large and small would directly benefit from improvements in the price and quality of the business broadband services that are increasingly a prerequisite to competing in the twenty-first century.