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

In the Matter of	)	
Special Access Rates for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
	)	RM-10593

REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. ("T-Mobile")[1] replies to comments recently filed to refresh the record in this proceeding[2] to stress the need – articulated by the vast majority of competitive providers – for the Commission to strengthen its regulation of the special access services provided by incumbent local exchange carriers ("ILECs"). The record demonstrates that there simply is not sufficient special access competition to discipline the marketplace, and that the premature deregulation of this market – along with other factors such as industry consolidation and grants of pricing flexibility and forbearance to ILECs – has exacerbated the problem.

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1 T-Mobile is one of the major national wireless carriers in the United States, serving over 26 million customers with a network reaching over 280 million people (including roaming and other agreements).

2 *See* FCC Public Notice, *Parties Asked To Refresh Record in the Special Access Notice Of Proposed Rulemaking*, WC Docket No. 05-25, RM-10593, FCC 07-123 (rel. Jul. 9, 2007) ("2007 Notice"); *Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) (the "2005 Notice"). T-Mobile filed comments and reply comments in response to the 2005 Notice. *See* Comments of T-Mobile, WC Docket No. 05-25 (filed Jun. 13, 2005) ("T-Mobile 2005 Comments"); Reply Comments of T-Mobile, WC Docket No. 05-25 (filed Jul. 29, 2005) ("T-Mobile 2005 Replies"). T-Mobile also filed comments in response to the 2007 Notice. *See* Comments of T-Mobile, WC Docket No. 05-25 (filed August 8, 2007) ("T-Mobile 2007 Comments"). These reply comments supplement T-Mobile's previous filings in this docket.

Notwithstanding the passage of more than two years since T-Mobile first filed comments in this proceeding, it finds that its original depiction of the special access marketplace unfortunately remains accurate. T-Mobile and other carriers continue to face extremely high and noncompetitive special access prices, and there still are few meaningful competitive choices among special access suppliers. As the attached declaration of Dave Mayo, T-Mobile's Vice President of Engineering Finance, Strategy and Development, explains, competition is particularly meager for the DS1 base station-to-central office links that T-Mobile buys as special access channel terminations.[3] In fact, the lack of competitive alternatives has required T-Mobile to continue to purchase more than 92 percent of these links from the ILECs.[4] The situation for interoffice transport links, which T-Mobile purchases as channel mileage services, remains almost as dire. Nationwide, the lack of competitive alternatives has forced T-Mobile to purchase more than 90 percent of its channel mileage services from ILECs.[5]

T-Mobile's experience is shared by many other competitive providers in the telecommunications industry. Sprint Nextel points out that wireless companies have few, even potential, alternatives to the ILECs for special access services, and that few non-ILEC vendors have deployed or plan to deploy fiber facilities that reach cell sites.[6] Similarly, CLEC special access customers PAETEC and US LEC note that they must rely on large ILECs for *nearly 100 percent* of their special access needs,[7] and Time Warner Telecom and One Communications state

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3 *See* Attachment A, Declaration of Dave Mayo, ¶5 (Aug. 9, 2007) ("Mayo Declaration").

4 *Id.*

5 *Id.* at ¶6.

6 Sprint Nextel Comments at 31-32 (Aug. 8, 2007). Unless otherwise noted herein, references to the comments of other parties shall refer to their 2007 comments to refresh the record filed on August 8, 2007.

7 PAETEC Communications, Inc. and US LEC Corp. Comments at 5.

that ILECs continue to control the only viable local transmission facilities serving at least 90 percent of the commercial buildings in the United States.[8]

Furthermore, ILEC claims of effective, wide-spread competition for special access from providers of alternative technologies (e.g., microwave links) are misleading.[9] In particular, ILECs dramatically overstate the availability of special access services from such alternative technology providers.[10] Although T-Mobile has had some very limited success in obtaining alternative suppliers in a few discrete markets,[11] even if it were to combine all of the alternative technology special access lines for which it has contracted or for which it is in the process of contracting, and even if it assumed that all of these alternative technology lines were currently deployed (which actually will occur over a multi-year period), these lines would represent approximately two percent of T-Mobile's current DS1 special access needs. The actual deployed alternatives currently in place amount to approximately one percent of T-Mobile's special access needs. These circumstances – extraordinarily limited in geographic scope and quantity – cannot reasonably be extrapolated to somehow suggest a nationally competitive special access market. Moreover, as noted above, the comments of other special access purchasers confirm that T-

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[8] Time Warner Telecom and One Communications Comments at 1.

[9] *See, e.g.,* AT&T Comments at 6-21; Qwest Comments at 19-41; Verizon Comments at 20-31. The record amply demonstrates that existing rules and policies fail to create sufficient competition in the special access market, and instead promote supra-competitive special access rates. The Commission should not further exacerbate these problems by granting ILECs' requests for even more pricing relief. *See, e.g.,* AT&T Comments at 24-28; Verizon Comments at 45-50; Qwest Comments at 53-57.

[10] *See, e.g.,* AT&T Comments at 2-4, 8-21; Qwest Comments at 19-41; Verizon Comments at 13-29.

[11] T-Mobile noted these efforts in footnote 14 of its 2007 Comments.

Mobile's experience is the norm. For example, Sprint Nextel points out that AT&T and Verizon alone provide a combined 81 percent of special access services in the United States.[12]

Similarly, the ILECs' statistical focus on the growth and competitiveness of the wireless *retail* market with multiple nationwide competitors and numerous smaller regional competitors is simply irrelevant to whether the market for wholesale input facilities is competitive.[13] Nor does the wireless provider investment in spectrum and network upgrades touted by the ILECs have any bearing on the competitive standing of the special access market.[14] To the contrary, increased wireless network investment demonstrates the urgency for Commission action. As T-Mobile expands its network and deploys 3G services, its need for special access backhaul services continues to increase.

Equally unavailing is the ILECs' suggestion that self-provisioning, using fixed microwave links or otherwise, is a viable competitive alternative.[15] Although T-Mobile continues to investigate every possible alternative, including deploying its own facilities, in many cases the cost of constructing such facilities is not economically viable. T-Mobile and other special access customers cannot enjoy the same economies of scale as ILECs, which use

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[12] *See* Sprint Nextel Comments at Executive Summary.

[13] *See, e.g.,* AT&T Comments at 47; Qwest Comments at 42-44; Verizon Comments at 5, 29-37. While growth in subscribers and innovation and reductions in prices have characterized the wireless marketplace, such successes simply reflect the incredible explosion in demand among American consumers for high quality advanced wireless services. The performance of the wireless industry in terms of growth, innovation, and pricing would undoubtedly be even stronger if the albatross of supra-competitive pricing for special access were removed from around its neck.

[14] *See, e.g.,* AT&T Comments at 47-48; Qwest Comments at 42-43; Verizon Comments at 5. It is hypocritical for ILECs to argue that lowering special access rates to a competitive level would hinder ILECs' ability and incentive to invest in new facilities and technology while at the same time urge the Commission to ignore the fact that the existing high special access rates obstructs the ability and incentive of purchasers of special access services from investing in new facilities and technologies. *See, e.g.,* Qwest Comments at 16-19.

[15] *See, e.g.,* Qwest Comments at 28-35, 41-42; Verizon Comments at 25-29.

their facilities to provide local exchange services as well as special access services. Further, in cases where cellular sites are located in areas where no ILEC or other special access facilities are available, T-Mobile must use fixed microwave facilities not to replace ILEC special access facilities, but to reach the point where it can connect to the special access facilities obtained from ILECs. Moreover, because the ILECs' pricing structure often is based on volume commitments, even if self-provisioning or alternatives were available for certain links, carriers could not use those alternatives without sacrificing their discounts on their entire portfolio of special access links in those markets.[16] Thus, in the vast majority of cases, self-provisioning is not an economically feasible solution at this time and would redirect essential resources from network expansion and 3G deployment.

In light of the overwhelming record evidence of continuing market failure, T-Mobile urges the Commission to reform immediately the special access regime in several respects:[17]

- Reduce the geographic areas to which pricing flexibility applies from entire Metropolitan Service Areas ("MSAs") to wire centers or pairs of wire centers, which would result in a more tailored and granular analysis to better assess the true state of competition.[18]
- Narrow the product market and separately apply pricing flexibility triggers to: (1) customer premises-to-central office links (channel terminations), (2) interoffice transport links (channel mileage), and (3) other forms of special access, including links between ILEC wire centers and mobile switching centers ("MSCs") and ILEC OCn services.

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16 *See* T-Mobile 2007 Comments at 12-13.

17 *See* T-Mobile 2005 Comments at 15-21; T-Mobile 2005 Replies at 13-17; T-Mobile 2007 Comments at 12.

18 Another reasonable alternative would be to use a zone definition based upon line densities, as suggested in the 2005 Notice. *See 2005 Notice*, 20 FCC Rcd at 2024.

- Adopt more stringent triggers for pricing flexibility in these newly defined markets. One possibility for new triggers would be the triggers for unbundled network elements ("UNEs") that are functionally equivalent to special access services, *i.e.*, high-capacity loops and transport. These triggers would be both more granular and more current than the existing triggers.
- Bar price cap ILECs from all forms of anticompetitive and exclusionary behavior regarding the terms and conditions of their special access services.
- Apply any new pricing flexibility rules to *all* areas and services, including those for which the price cap ILECs have obtained pricing flexibility under existing rules.
- Reform the price cap regime to account for both firm-wide productivity growth as well as increases in scale economies for special access services through mechanisms such as a productivity factor.
- Revise the price cap rate structure to create separate service categories to prevent anticompetitive price manipulation. T-Mobile suggests one category for channel termination/channel mileage services (which face little or no competition) and a separate category for links between ILEC wire centers and MSCs and other services, including ILEC OCn services (which face some, albeit limited, competition).
- Reinitialize price cap rates for special access services based upon forward-looking economic costs.

As interim measures pending reform, the Commission should: (a) immediately impose a 5.3 percent X-Factor on special access services consistent with its proposal in the 2005 Notice; (b) extend the existing special access merger conditions as interim nationwide rules until reform is complete; and (c) subject any pending forbearance or pricing flexibility petitions seeking to eliminate regulation of special access services to close and careful scrutiny in light of the record evidence in this proceeding.

CONCLUSION

The prospects for viable special access competition in the United States have continued to dwindle since the first pleading cycle in this proceeding ended in mid-2005. When the marketplace fails, regulators must act. The record evidence in this proceeding demonstrates overwhelmingly that special access customers have very limited competitive alternatives in much of the country and are paying excessive rates. Therefore, the Commission should give this rulemaking priority consideration and adopt the new rules outlined above as quickly as possible.

Respectfully submitted,

/s/ Thomas J. Sugrue
Thomas J. Sugrue
Vice President Government Affairs

/s/ Kathleen O'Brien Ham
Kathleen O'Brien Ham
Managing Director,
Federal Regulatory Affairs

/s/ Sara F. Leibman
Sara Leibman
Director,
Federal Regulatory Affairs

/s/ Amy R. Wolverton
Amy Wolverton
Senior Corporate Counsel,
Federal Regulatory Affairs

T-MOBILE USA, INC.
401 Ninth Street, N.W.
Suite 550
Washington, D.C. 20004
(202) 654-5900

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