Research

Primer: The Basics of Special Access

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Introduction

The special access market is in the crosshairs of Federal Communications Commission (FCC) action, and faces a wave of new rules meant to engineer outcomes under the veneer of competition. This regulatory trend has been demonstrated before, with spectrum, with interconnection, and with network neutrality. In each, the agency extended its reach to the periphery of its legal authority in the hopes of creating the Goldilocks market.[1] As AAF has catalogued, the agency has been myopic to some of the key problems in regulating innovative markets.[2] Without appropriate agency consideration for dynamism, consumers could be harmed. In the final analysis, the agency should approach this issue with regulatory humility and works towards the removal of rate regulation, the goal set out in 1997 after the Telecommunication Act.

What is special access?

Special access refers to the dedicated and general purpose connection lines purchased from incumbent local exchange carriers or ILECs, that acts as an input for the wireless industry, government buildings, and other general purpose data networks. In contrast to residential consumers, these services are specifically dedicated for use and don't run on the public switched telephone network or PSTN. However, the nearly 100-year-old telephone network is undergoing a radical restructuring as fiber and advanced IP technologies are being induced at all levels of service.[3] The FCC is currently investigating the contract terms and conditions of special access deals, and has made overtures to more onerously regulate the space.

Competition and Special Access

Internet infrastructure has undergone profound changes even while the legal regime for special access basically stayed the same. Beginning first with the buildout during the

Dotcom boom in 2000-2001 and continuing throughout the 2000s with the development of streaming video technology, ILECs have steadily faced tougher competition from cable companies, CLECs, and other large providers. The soft boundaries between the different markets on the Internet complicate the clean market analysis suggested by the proceeding. For example, Sprint is moving towards fixed wireless products to provide backend data handling for their wireless network, in part to save on costs related to special access.[4] The movement of cable companies into these markets also attests to increasingly fuzzy demarcations between service providers.[5] For Comcast, it has been a huge driver for growth, with nearly 20 percent increases.[6] Time Warner Cable has also posted 20 percent increases in their wholesale transport business and now reach nearly 1 million buildings with their network.[7] Cox has maintained double digit growth rates in this business while Charter has promised an expansion into the business side of the market to the tune of $2.5 billion.[8] Given how much debt that Charter intends to take on with their merger, this sector will likely be an integral part of the plan to compete.

What is Next for Special Access?

So what should we expect from the FCC's changes? A wave of competition is probably not in the cards. By even the CLECs estimates, more expansive regulation of the market could result in a 0.2 percent change in fortunes in their favor.[9] Indeed, the last time an inquiry of this was conducted, one economist at the FCC retorted that, "What specifically explains the actual difference [in special access prices] isn't obvious."[10] Whatever the outcome of the proceeding, there is sure to be serious disagreement and likely ambiguous effects. As one seasoned telecom lawyer adroitly noted, "The CLECs' gripes are certainly reasonable (from their perspective), but they are not competition-affecting issues; they are bargaining issues."[11] Much like the rest of the industry, the FCC seems to be meddling with the tradeoffs, and one hopes this doesn't become yet another effort by the agency to pick winners and create losers. Counterintuitively, efforts to regulate the prices and conditions of the market might hamper its development. Weighting the regulatory balance in the favor of CLECs could mean competitors to ILECs in this space have less incentive to get into the markets.[12]

Conclusion

The extent of Federal Communication Commission power over the Internet has been an ongoing fight. When the Communications Act was updated in 1996, there was a consensus among those in the agency, policy makers on the Hill, and analysts that less regulation was better. But in masterful orchestration, efforts are being pursued to undermine the original intent of the law. At its core, the network neutrality fight was and will always be about agency power. Truth be told, it was a masterful move to extend the power of the agency

under the veneer of consumer protection. But what will follow the implementation of Title II? Now that the ball is rolling for more tight regulation of consumer Internet service, the focus has shifted toward the business end of things. Special access has to be understood within the totality of these acts. The communication market is quickly advancing and competition is robust for a number of markets. The FCC likely wants to act now while its opportunity to expand its regulatory scope is still fresh. Instead, it should be cautious about stifling innovation and dynamic market forces.

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[1] See Will Rinehart, *The FCC Shouldn't Expand Spectrum Reserves*, https://www.americanactionforum.org/insights/the-fcc-shouldnt-expand-spectrum-reserves; and Will Rinehart, *The Real History of Title II and Investment*, https://www.americanactionforum.org/research/the-real-history-of-title-ii-and-investment.

[2] Will Rinehart, *How to Think about Modern Media Mergers*, https://www.americanactionforum.org/research/how-to-think-about-modern-media-mergers.

[3] Tom Wheeler, *The IP Transition: Starting Now*, https://www.fcc.gov/news-events/blog/2013/11/19/ip-transition-starting-now.

[4] Sean Buckley, *Sprint disses ILECs' inflated special access costs as FCC completes comment period*, http://www.fiercetelecom.com/story/sprint-disses-ilecs-inflated-special-access-costs-fcc-completes-comment-per/2016-01-25.

[5] Sean Buckley, *Cable hones its wholesale skills in special access, wireless backhaul,* http://www.fiercetelecom.com/special-reports/cable-hones-its-wholesale-skills-special-access-wireless-backhaul.

[6] Sean Buckley, *Comcast Business surpasses $5B revenue run rate, sees growing traction in enterprise segment*, http://www.fiercetelecom.com/story/comcast-business-surpasses-5b-revenue-run-rate-sees-growing-traction-enterp/2016-02-04.

[7] Business Wire, *Time Warner Cable Reports 2015 Third-Quarter Results*, http://www.businesswire.com/news/home/20151029005425/en/Time-Warner-Cable-Reports-2015-Third-Quarter-Results.

[8] Verizon, *Re: Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No.*

05-25 and RM-10593, http://apps.fcc.gov/ecfs/document/view?id=60001325009.

[9] Sean Buckely, *Level 3: Freeing CLECs from ILEC lock-up plans for special access can spur $86M revenue boost*, http://www.fiercetelecom.com/story/level-3-freeing-clecs-ilec-lock-plans-special-access-can-spur-86m-revenue-b/2015-09-28; The FCC estimates that the special access market is about $40 billion in total, and this filing states that revenues could be boosted by about $86 million.

[10] Douglas Galbi, *DS1 & DS3 rate dispersion across U.S. states*, http://www.purplemotes.net/2010/08/15/ds1-ds3-rate-dispersion-across-u-s-states/.

[11] Jonathan Lee, *Why Is the FCC Hiding the Ball on Special Access Price Regulation*, http://www.telecomsense.com/2015/10/why-is-the-fcc-hiding-the-ball.php.

[12] Randolph May, *Special Access: A Special FCC Debacle in the Making*, http://freestatefoundation.blogspot.com/2013/12/special-access-special-fcc-debacle-in.html.