

THE BOC WINS A BATTLE, BUT THE WAR GOES ON

TELECOM POLICY REPORT

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The Bell Operating Companies (BOCs) have long argued that the market for special access is highly competitive. In fact, Qwest, in its recent successful effort to win FCC approval to raise its rates for special access services, made that precise point. Qwest and its sister BOCs -- BellSouth, Verizon and SBC -- genuinely believe that the forces of competition are robust in the special access marketplace.

But beyond the BOCs and other large incumbent local exchange carriers (ILECs), that argument doesn't appear to have a great deal of support.

What is extremely clear is that the BOCs continue to have dominant market power in the most important and growing portion of the telecommunications industry -- the transmission of data. And it is this very reality that has spurred organizations such as the Ad Hoc Telecommunications Users Group, the e-Commerce Telecommunications Users Group, the Special Access Reform Coalition and others to continue pressing the FCC for a rulemaking to reestablish public interest regulation of ILEC interstate special access services.

Under the Commission's existing rules, the BOCs have garnered deregulation for their dominant interstate special access services while at the same time increasing their rates of return -- and, in many cases, their rates for the very services that they contend are fully competitive. This bottom line reality does not at all comport with the forecast made by the FCC when it created its pricing flexibility rules for special access.

Regardless of how the FCC's leadership may view the current state of the special access marketplace -- the Commission thinks the market is competitive -- the fact remains that the transmission of data has become a crucial factor in the internal machinations of various engines driving the American economy.

More than a year ago, Lawrence Spiwak, president of the Washington, D.C.- based Phoenix Center for Legal & Economic Public Policy Studies, and Dr. George Ford, the Center's chief economist, produced a white paper defining the connection between special access services for U.S. businesses and the American economy. In that document, the two men presented a compelling case showing that the FCC's deregulation of special access has produced

"substantial and sustained price increases for special access services where pricing flexibility is granted."

As striking as that conclusion may have been, Spiwak and Ford pressed their argument even farther, saying that special access price increases are "the consequence of ILEC market power rather than price adjustments reflecting costs."

A number of policy wonks have since embraced that same position, claiming that the BOCs are simply fooling the FCC into believing special access services are fully competitive. That may or may not be true. But if the Commission is, in fact, being fooled, the ultimate victim of such deceit will be American consumers. As Spiwak and Ford have previously noted, there is ample evidence to support the notion that the FCC's failure to mitigate the Bells' market power - - particularly in the special access marketplace -- ultimately will result in adverse effects on U.S. consumers and the U.S. economy as a whole. Hence, TPR strongly doubts we have heard the last from critics of the FCC's rules on special access. Indeed, it's a safe bet this contentious issue will again take center stage in the not-too-distant future as the matter continues to percolate, eventually reaching Congress.