The Frontier and Citizens Incumbent Local Exchange Carriers, operating under the common ownership of Citizens Communications Company (hereafter, the “Frontier Companies”), file these comments in response to the Commission’s October 29, 2002 Notice soliciting comments on AT&T’s petition. The Frontier Companies are opposed to the relief requested by AT&T and recommend that the Commission dismiss AT&T’s petition.

I. INTRODUCTION AND SUMMARY

A. The Proceeding

On October 15, 2002, AT&T Corp. (“AT&T”) filed a Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services. ¹ AT&T requests that the Commission promptly initiate a rulemaking to reform regulation of price cap ILEC rates for interstate special access services. AT&T also asks the Commission to adopt the following interim relief, pending completion of the rulemaking: (1) reduce all special access

rates subject to Phase II pricing flexibility to levels that would produce an 11.25% rate of return and “specify that access purchasers may take advantage of this interim relief without triggering any termination liabilities or other penalties in the Bells’ optional pricing plans”; and (2) impose a moratorium on consideration of further pricing flexibility applications pending completion of the rulemaking.

The Commission issued its Public Notice requesting comments on AT&T’s petition on October 29, 2002.

B. Interest Of The Frontier Companies

As relevant to this proceeding, two Frontier companies have “Phase I and Phase II” pricing flexibility on various access services in the Rochester, New York Metropolitan Statistical Area ("MSA"). None of the Citizens Telecommunications Companies or other Frontier companies have, as of yet, sought pricing flexibility on special access and dedicated transport services. Recognizing the salutary nature of the Commission’s pricing flexibility rules, those companies have a vital interest in the continuance of those rules to be used as and when appropriate.

As discussed more fully below, the AT&T Petition, by its terms, is directed solely at the Bell Operating Companies. No other price cap regulated carriers are mentioned in that pleading. There being no contention that their pricing flexibility practices, or those of any other non-Bell price cap carrier, are improper, the Frontier Companies decline to respond to the specific allegations of the AT&T Petition. The Frontier Companies take the position that the petition

---

2 AT&T Petition at 1.

3 DA 02-2913.

4 See, Frontier Petition for Pricing Flexibility for Special Access and Dedicated Transport Services, Memorandum Opinion and Order, CCB/CPD No. 01-07, DA 01-1661 (rel. July 13, 2001).
offers no justification for any change of the pertinent rules, especially as they relate to non-Bell price cap carriers.

II. THE COMMISSION SHOULD DENY AT&T’S RULEMAKING PETITION AS IT APPLIES TO PRICE CAP-REGULATED LECS OTHER THAN THE “BELLS”

A. No Allegations Are Leveled Against Any Non-Bell Price Cap Carrier

There is a truism that has been pointed out in too many price cap-related pleadings to require citation -- not all price cap carriers are Bells. And, that truism has a corollary – not all price cap carriers that have received special access and dedicated transport pricing flexibility are Bells. While many things can be said about the AT&T Petition, none of which are favorable, one thing that is obvious is that its target is the Bell Operating Companies. The petition levels many allegations against the Bells, both in general and by specific company names, without ever leveling an allegation against any other price cap regulated carrier.\(^5\) See, e.g., the Table of Contents to the AT&T Petition, which, *inter alia*, contends that “[t]he Bells’ special access rates are grossly excessive and unlawful and are becoming more so,” and “[t]he Bells’ unlawful special access rates are having severe and growing anticompetitive effects [emphasis added].”

While on the one hand, AT&T’s Petition is Bell-specific according to its terms, on the other hand, the rules that are under assault apply to all price cap regulated carriers. Non-Bell carriers such as Frontier against whom AT&T levels no complaint are unfairly dragged into a battle solely because they are caught up in the dragnet AT&T has cast. AT&T has offered no justification for changing the “rules of the game” for non-Bell price cap carriers, particularly

\(^5\) On the first page of the Petition, AT&T uses the expressions “large ILECs” and “large ILECs, particularly the Bell Operating Companies.” However, nowhere else in the AT&T Petition is there reference to any entity other than the “Bells” or specific Bell companies.
when the rules of that game, for Bell and non-Bell price cap carriers, were created with the affirmative and knowing agreement of AT&T itself.

B. It Is Premature And Unreasonable To Revisit The Pricing Flexibility Rules

The Commission has long recognized that it should allow incumbent LECs progressively greater flexibility in the pricing of access services as they face increasing competition for the provision of these services. After extensive consideration, the Commission adopted, in August 1999, revised rules governing the provision of interstate access services to advance the pro-competitive, deregulatory national policies embodied in the Telecommunications Act of (1996). Among the significant actions taken, the Commission established a framework for granting price cap LECs greater flexibility in the pricing of interstate access services once they make a competitive showing, or satisfy “triggers,” to demonstrate that market conditions in a particular area warrant the relief they seek. In August 1999, the Commission established a framework to allow price cap LECS to eventually remove dedicated transport and special access services from the Commission’s Part 69 rate structure and Part 61 price cap rules in two phases upon satisfying certain competitive conditions.

An insufficient amount of time has passed since the Commission’s adoption of these rules and the granting of pricing flexibility relief to justify opening a new rulemaking proceeding. The Commission first granted petitions for pricing flexibility starting in the fourth quarter of 2000 to what AT&T refers to as the “Bells”. In addition to granting relief to the Bells, the Commission similarly granted Frontier Telephone of Rochester and Frontier

---


Communications of Seneca-Gorham, Inc., in July 2001, pricing flexibility for certain interstate special access and dedicated transport services. In brief, it has been less than two years since price cap ILECS, including Frontier, have begun to utilize the pricing flexibility relief established by the Commission for dedicated transport and special access services. This is far too little time to judge the effectiveness of the current set of rules. Furthermore, in light of the economic downturn, especially in telecommunications, it is unreasonable for the Commission to initiate a rulemaking to examine making changes to the existing regulatory rules that promote operating in a competitive marketplace.

Additionally, it is premature and unreasonable for the Commission to initiate a rulemaking to examine the current pricing flexibility rules applicable to special access services given that the five-year CALLS plan, adopted by the Commission in May 2001 and endorsed by AT&T (see Section III, following) has not even been in effect for two years. AT&T, a sophisticated industry player, was well aware of the pricing flexibility rules in place upon adoption of the CALLS plan. The CALLS plan overlaid additional access reform changes upon the special access pricing flexibility changes adopted in 1999 to provide what the Commission viewed as a comprehensive solution to a decade long debate over access charge issues.

Considering the interrelationship of the CALLS plan and preexisting pricing flexibility rules and in light of the considerable concessions made to AT&T in the CALLS plan, Frontier believes it would be premature to revisit the current pricing flexibility rules prior to the expiration of the CALLS plan in May 2006.

---

8 In the Matter of Frontier Petition for Pricing Flexibility for Special Access and Dedicated Transport Services, CCB/CPD No. 01-07 (July 13, 2001). AT&T opposed Frontier’s petition. See AT&T Opposition to Frontier Petition For Pricing Flexibility For Special Access And Dedicated Transport Services (filed Apr. 4, 2001).
III. AT&T IS SEEKING TO WITHDRAW THE COMPROMISES INCLUDED IN THE “CALLS” AGREEMENT WHILE RETAINING THE BENEFITS

Although never stated in the AT&T Petition, AT&T was a signatory to the agreement leading to the “CALLS Order.” AT&T, having enjoyed the benefits of the CALLS Order, in the form of reduced and below-cost Average Traffic-Sensitive or “ATS” rates, should here be barred from attempting to renege upon that part of its agreement that has a direct impact upon special access pricing.

The “CALLS Agreement,” to which AT&T was a signatory, presented a comprehensive proposal to set rules for access charges for five years. The Commission recognized that price cap access rates are not being targeted to specific rates of return and that the X-factor did not properly represent industry productivity gains. See CALLS Order at paragraph 60: “[T]he X-factor is now a transitional mechanism to lower access charges to target rates for switched access, and to lower rates for a specified period of time for special access. . . . The compromise advocated by CALLS will provide a solution to the contentious X-factor prescription proceeding for the term of the CALLS proposal . . . ” As a result the previous mandatory reductions for special access service were eliminated as a result of the CALLS Order.

In addition, when the Commission declined to include UNEs as part of the ATS rate calculation, it recognized that the ATS target rates could be below even forward looking cost for some companies: "Including UNEs may drive access charges above or below the intended target

---

9 Footnote 86 in the AT&T Petition is misleading because it attempts to suggest that there was no relationship in the CALLS agreement between switched and special access rates. As discussed below, this is demonstrably incorrect.

10 Sixth Report and Order in CC Docket No. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, and Eleventh Report and Order in CC Docket No. 96-45, FCC 00-193 (May 31, 2001) (the "CALLS Order").

rate, depending upon whether the total element long-run incremental cost (TELRIC) of UNEs is below or above the target rate.\textsuperscript{12} Clearly, the \textit{CALLS Order} sought to implement a compromise that major industry parties, conspicuously including AT&T, agreed to, which contemplated that some rate prescriptions might be below cost. Because the \textit{CALLS Order} contemplated the possibility of below-cost ATS rates, it obviously contemplated the possibility of above-cost rates elsewhere. That was the agreement. If price cap regulated carriers agreed to lower switched access rates potentially below costs, the consideration they bargained to receive was a “sunset” on mandatory special access rate reductions. By requesting in the instant proceeding that Special Access rates be retargeted to 11.25\%, AT&T seeks to recapture a concession it made in the \textit{CALLS} negotiation process while retaining all the benefits (\textit{e.g.}, below-cost ATS rates) it achieved.

Another feature of the rules resulting from the \textit{CALLS} Order is that exogenous costs may not be applied to the ATS rate elements. FCC Rule 61.45(d)(3) provides: "Exogenous cost changes shall be apportioned on a cost-causative basis between price cap services as a group, and excluded services as a group. Total exogenous cost changes thus attributed to price cap services shall be recovered from services other than those used to calculate the ATS rate."\textsuperscript{13} As a consequence of this, exogenous costs related to total interstate revenues (\textit{e.g.}, NANPA and TRS) can be recovered primarily only through CMT and Special Access. This explicitly sets up a mismatch within interstate access between cost causation and cost recovery. Because this mismatch is codified into the Commission's rules, it is totally inappropriate to now attempt to apply rate of return principles to special access.

\textsuperscript{12} See, \textit{CALLS Order} at paragraph 164.

\textsuperscript{13} 47 C.F.R. § 61.45(d)(3).
With its petition, AT&T is attempting to ignore the totality of the bargain it struck over CALLS. However, AT&T cannot be heard to try and keep some of the elements of its bargain while attempting to renege on another crucial element upon which other parties to the bargain have relied.

IV. AT&T’s CALL FOR RATE OF RETURN TYPE REGULATION FOR PRICE CAP CARRIER SPECIAL ACCESS RATES IS UNWORTHY OF CONSIDERATION

AT&T’s attempt to use special access data included in the ARMIS reports of the Bell Companies to establish the proposition that rate of return regulation should be implemented and a rulemaking is needed to revisit pricing flexibility rules for price cap carriers is without merit. In 1991, the Commission instituted price cap regulation for the Bells and GTE, and permitted other LECs to adopt price cap regulation voluntarily, subject to certain conditions.\textsuperscript{14} The Commission abandoned rate of return regulation for price cap ILECS. Instead, the Commission has focused on prices and productivity under price caps and pricing flexibility in a competitive marketplace as a means of avoiding excessive rates. Rate of return concepts have little, if any, relevance in regulating an increasingly competitive marketplace.

Even if rate of return concepts were considered, it is clearly inappropriate to consider return rates for special access services in isolation of other interstate services. Nor is it appropriate to consider return rates for special access services using all conceivable revenues without the accompanying costs. The Commission should not now initiate a rulemaking that would consider reversing direction or turning back the clock on pro-competitive and deregulatory policies such as price cap carrier special access pricing flexibility rules that it has adopted under the mandate of the Telecommunications Act of 1996.

V. THE SECTION 208 PROCESS IS THE APPROPRIATE FORUM FOR AT&T’S COMPLAINTS

Although AT&T opposes using the complaint process to lodge its complaints against the Bells, that process is the appropriate vehicle under the current competitive regulatory paradigm if it believes rates are unreasonable. AT&T cannot abandon the complaint process, with its more appropriate burden of proof of showing that specific carrier rates are excessive, by simply requesting wholesale revisions in a rulemaking proceeding. The Commission fully understood the importance of the complaint process and demonstrated this by establishing and strengthening the Enforcement Bureau.

Initiating a rulemaking proceeding to make arbitrary and wholesale changes to the Pricing Flexibility order and other rules identified by AT&T will not give the current competitive interstate access regulatory paradigm the time and opportunity it deserves following the extensive deliberations of the industry and the recent actions by the Commission with respect to price caps and pricing flexibility. The inappropriateness of the rulemaking process to the kind of relief that AT&T seeks is demonstrated by the fact that non-Bell carriers like the Frontier Companies, against whom AT&T has lodged no complaints, are dragged into this proceeding simply to protect the benefits of the regulatory bargains they have entered.

CONCLUSION

The AT&T Petition should be summarily denied. It is premature at this time to consider replacing the pricing flexibility rules recently established by the Commission. By requesting in the instant proceeding that Special Access rates be retargeted to 11.25%, AT&T seeks to distance itself from the comprehensive agreement made in the CALLS negotiation process while retaining all the benefits it achieved. To the extent AT&T has concerns regarding special access rates, it can pursue relief through the Section 208 relief process. No justification has been shown for
commencing a rulemaking proceeding, especially to the extent that such a proceeding might involve non-Bell price cap carriers.

December 2, 2002

Respectfully Submitted,

Kevin Saville
Citizens Communications Company
2378 Wilshire Blvd.
Mound, MN 55364
(952) 491-5564 Telephone
(952) 491-5515 Fax

Richard Tettelbaum
Kraskin, Lesse & Cosson, LLP
2120 L Street, N.W., Suite 520
Washington, D.C. 20037
(202) 296-8890 Telephone
(202) 296-8893 Fax

Attorneys For Citizens Communications Company