

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL
APPROVING IN PART AND DISSENTING IN PART**

Re: *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25; *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593

During my career in the private sector and my six and a half years at the Commission, I have spent an immeasurable amount of time working on the complex public policy questions surrounding “special access” services and facilities. I have reviewed competing, and often conflicting arguments, hypotheses and scenarios. To analyze this issue, in pursuit of a final resolution to the byzantine questions raised, the Commission conducted several data collections on a voluntary basis, but the collections only focused on a limited number of markets. Although those exercises were instructive, they did not produce an adequate record for this proceeding. Having to rely on a persistent lack of relevant information is why I have consistently called upon the FCC to seek detailed and up-to-date special access market data on a nationwide basis. Any potential changes to the special access rules must be transparent and legally-sustainable.¹ Accordingly, I am encouraged that the Commission is now taking the necessary step of conducting this comprehensive data collection, on a mandatory and largely nationwide² basis. This is a necessary step prior to the Commission attempting to approve any additional changes to the special access rules.³ Also, I am pleased that this order seeks data that will specifically shine a light on market participants’ future plans to offer special access services.

Furthermore, I am encouraged that my colleagues have agreed to collect and analyze data regarding “best efforts” business broadband Internet access service. A thorough examination of “best efforts” services is a crucial part of the analysis. Technology has changed considerably since 1999 when the special access rules were adopted by the FCC. Today, many enterprise customers may not perceive the functional difference between services that have been traditionally defined as special access services and high speed Internet access services that are offered on a best efforts basis. I would have preferred that this critical information be gathered at the same granular level as the other data covered in this order. Nevertheless, the inclusion of this information, even at a less granular level, is probative. The Commission’s analysis should rely on a complete picture of all substitutable products and services as seen through the eyes of affected consumers.

Additionally, I support seeking comment regarding the analytical framework to be used upon receiving this data. The FCC’s analysis of the data received in response to this massive data request is equally important to the comprehensive nature of this collection.

¹ While such a comprehensive data collection may seem daunting, the Department of Justice was able to gather such valuable information during its review of the SBC/AT&T and Verizon/MCI mergers in the last decade.

² While I am pleased that most of the data will be collected on a nationwide basis for most aspects of this order, I would have preferred that the data regarding the historical evolution of competitive provider networks also be collected on a nationwide basis. If the Commission decides to change course from the reasoned deregulatory path paved under the leadership of then-FCC Chairman Bill Kennard, it should only do so with a full record of all of the competitive choices available to consumers.

³ I note that any historical reference to the Commission’s decision to suspend the pricing flexibility rules this past August should not be construed as my endorsement of such decision. I dissented from that order because that decision was made without a complete record or adequate analysis. It is my hope that this mandatory data collection will lead to a full and complete record of which any future changes to the regulatory framework will be legally sustainable.

I dissent, however, from the sections⁴ of the further notice that seek additional comment on proposed rules. Among other defects, finalizing a further notice before the record is filled with new evidence is premature. Instead, the Commission should collect the data, analyze it and *then* issue a further notice. I am concerned about the precedential value of this backwards arrangement. It has all the markings of an outcome-based proceeding.

I thank the Chairman for his leadership and patience throughout this process. I also thank each of my colleagues for accommodating many of my priorities. Additionally, I acknowledge the critical part the dedicated expert staff members have played in this process. They have toiled on these issues for many years and will continue to be vital to this process. As we move to the next step, I look forward to working with all of my colleagues and the legions of stakeholders to ensure that we leave no stone unturned in this process so that we have the necessary evidence to make a sound decision.

For all of the reasons set forth above, I respectfully approve, in part, and dissent, in part.

⁴ Sections IV B and IV C.