



October 1, 2007

Honorable John D. Dingell
Chairman, House Committee on Energy and Commerce
2328 Rayburn House Office Building
Washington, D. C. 20515

Honorable Edward J. Markey
House Committee on Energy and Commerce
2108 Rayburn House Office Building
Washington, D.C. 20515

Honorable Fred Upton
House Committee on Energy and Commerce
2183 Rayburn House Office Building
Washington, D.C. 20515

Honorable Joe Barton
House Committee on Energy and Commerce
2109 Rayburn House Office Building
Washington, D.C. 20515

Re: Competitive Deployment of Telecommunications Facilities

Dear Chairman Dingell and Congressmen Markey, Upton and Barton:

Thank you for your interest in these critical matters before the FCC which not only affect the level of competition in telecommunications services, but also residential and business consumers. We welcome the opportunity to work with you and to support your efforts to examine the process and the impact of recent actions by the FCC. Our member companies have a long history of cooperating with your committee and executive agencies to ensure the development of full and complete records on which the committee and agencies can act. We continue to provide updates and respond to inquiries as requested and tomorrow some of our members will be testifying before your committee.

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Recently, competitive carriers have been unfairly criticized by the incumbent local exchange carriers (“ILECs”) seeking deregulation from the Federal Communications Commission (“FCC”) for not voluntarily submitting evidence of their facilities deployment in response to requests by the ILECs for forbearance from statutory and regulatory requirements. I would like to provide the following information regarding the forbearance proceedings and special access rulemaking proceedings currently pending before the FCC.

The ILECs’ Requests For Forbearance

As I know you are all aware, the Bell Companies have filed a number of forbearance requests, asking the FCC to refrain from enforcing the entirety of Title II of the Communications Act to their broadband services nationwide, and the statutory unbundling requirements in six major metropolitan service areas stretching from New Hampshire to North Carolina and 4 major metropolitan areas in the Midwest, Southwest and Far West. A party petitioning the FCC for forbearance bears the burden of proving that enforcement of the statutory provision or regulation from which forbearance is sought is not necessary to ensure that the rates, terms and conditions of service are just and reasonable and are not unjustly or unreasonably discriminatory; that enforcement of the provision or regulation is not necessary for the protection of consumers; and that forbearance from applying the provision or regulation is consistent with the public interest. Petitioners are required to file all of the evidence necessary to show that a provision of the Communications Act enacted by Congress or a regulation adopted by the FCC is no longer necessary. The FCC invites comments on forbearance petitions and commenting parties may agree with the petitioning party’s evidence, dispute that evidence or file alternative evidence in support of their positions. Such has been the case in the current forbearance proceedings pending before the FCC. COMPTTEL, some of its member companies and other parties have challenged, disputed and raised serious questions concerning the accuracy or sufficiency of the evidence filed by the petitioners. As a part of this process, several individual companies, under protective order, have filed company specific data to prove that the petitioner’s data is flawed, incomplete, inaccurate or not adequate to support its request for forbearance.

In other proceedings, such as the recent dockets considering the mergers of SBC and AT&T, Verizon and MCI and AT&T and BellSouth, competitors have submitted data purchased from a third party, GeoResults, that shows the presence of competitors at the building and at the wire center level. Attached is a filing made at the FCC today by several member companies of COMPTTEL which provided this data again to the FCC in the Verizon forbearance proceeding. As the enclosed filing shows, competition for last mile facilities is insignificant.

Special Access Proceeding

I have recently become aware that the Bell companies have been trying to distract members of the Committee and the Subcommittee by directing their attention away from the competitively poor performance of the special access market, its inability to “self-correct” in a way that a healthy market would, the frustrations that have been expressed in great detail by every significant consumer of these services, and instead pointing to a qualifying statement in a recent Government Accountability Office report that concludes that the special access market is performing poorly in every geographic location in which the FCC deregulated the market for special access services based on what have proven to be inaccurate indicia of competition. The qualifying statement is made with respect to the known presence of competitive facilities, and not the GAO’s determination that the markets that the Commission deregulated have demonstrated deteriorating competitive performance vis-à-vis the markets that are still price regulated. Nonetheless, I did want to squarely address any concerns that competitive carriers were trying to somehow prevent the GAO investigators from getting a complete picture of the competitive market.

- COMPTTEL set up more interviews for the GAO investigators with competitors than did any other group. In each instance a COMPTTEL staff attorney was on the phone, and COMPTTEL’s members committed to providing the GAO investigators with the data they requested. At some point, the law of diminishing marginal returns set in, and the COMPTTEL members they were interviewing were smaller and smaller. At this point, GAO declined to have COMPTTEL set up any more interviews.
- COMPTTEL’s largest national and regional members (about 20 carriers in all) were subpoenaed by the Department of Justice and received requests for information from the FCC as part of those agencies’ review of the recent SBC/AT&T, Verizon/MCI, and AT&T/BellSouth mergers. The FCC is in full possession of all relevant information with respect to the state of competition for special access services. If this information differed markedly from the GAO conclusions, the FCC or the Bells could have stated as much.
- In the year immediately preceding the acquisition of AT&T and MCI by SBC and Verizon, it is notable that AT&T reported in its SEC 10K that of the 180,000 buildings in which it had customers with a demand for special access services, it had only been able to build to about 6,000 of these buildings, and it had been able to purchase transmission from competitors to another 3,000 more buildings. This was when AT&T and MCI were undeniably the biggest competitive wholesalers of local transmission services, and AT&T could, at that time, only find a non-incumbent provider to 5-6% of its total building portfolio. AT&T was required to

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- allow competitors to lease excess capacity into only 400 of its legacy buildings as part of the FCC and DoJ merger remedies.
- In conclusion, COMPTEL's largest members—who would have any meaningful amount of fiber connectivity—have already reported their information to the FCC as part of the merger investigations, or as part of the existing special access docket. That some of this information may have been reported as confidential, and, thus, not publishable by GAO, does not change the accuracy of the GAO's conclusion regarding the poor competitive climate in those areas that the FCC believed would perform best without regulatory constraints on the Bells' market power.

I would ask that you not be distracted by the Bell Companies' complaints about the evidence provided by competitors and instead focus on the real question, which is: are consumers of special access services benefiting more now—with a more concentrated, post-merger, special access market, or does the Bells' prodigious market power need to be constrained by careful regulation? It is easy to see why the Bells would like competitors to spend time trying to prove a negative—that a massively parallel competitive access network is not hiding in plain sight. On the other hand, it is much harder for them to walk away from the mountains of evidence that confirm that no special access customer of any size can get all of its demand from any provider other than the Bell Company.

If I can provide additional information, please do not hesitate to call.

Sincerely,



Jerry James
CEO

cc: Colin Crowell
Amy Levine
Neal Fried