

INTRODUCTION

The NAM is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. The NAM's mission is to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to U.S. economic growth. Headquartered in Washington, D.C., the NAM has 10 additional offices across the country.

DISCUSSION

Special access services are high-capacity dedicated transmission links used to distribute voice and data traffic. These services are sold by incumbent wireline, cable and fixed wireless companies directly to businesses and other communication service providers that need to transport large volumes of voice and data traffic. As with many other communication services, multiple providers are now competing vigorously to provide high capacity services like special access.

Despite a number of alternatives available to competitive service providers including cable, wireless and satellite offerings, some comments filed with the FCC raise concerns over a lack of competition in this market. A number of these comments cite high profits realized by the incumbent companies as evidence of the lack of competition. These claims, however, are based on outdated allocations as reported in the FCC's Automated Reporting Management Information System (ARMIS). The ARMIS category allocations between special access and other services provided over the same network are inherently arbitrary and the current set of data is long outdated, reflecting pre-broadband-era allocations. In fact, the data have been repeatedly discredited by independent third parties, such as the FCC and the National Regulatory Research Institute (NRRI)².

² See Special Access NPRM; FCC Public Notice, Parties Asked To Refresh Record in the Special Access Notice of Proposed Rulemaking, WC Docket No. 05-25, RM-10593, FCC 07-123 (July 9, 2007); GAO Report; Peter Bluhm & Dr. Robert Loube, National Regulatory Research Institute, Competitive Issues in Special Access Markets, 09-02 (Jan. 21, 2009).

Despite these claims, however, prices in the high-capacity services market have dropped considerably since 2001.³ Claims of lack of competition are contradicted further by public announcements that incumbent companies are promoting new offerings in high-capacity services.⁴ Moreover, the special access market remains largely under the protection of FCC price controls, which are lifted only when the FCC determines that there is adequate competition. Incumbent local exchange carriers cannot increase their rates over the price caps set for those areas. Even where pricing flexibility has been granted, incumbent providers are still subject to enforcement action if the FCC finds their rates to be unreasonable.

A key factor in the success and accuracy of any economic study on competitiveness is access to comprehensive data. Unfortunately, recent studies by both the FCC and the GAO⁵ of the special access market, which did not include complete pricing and network availability data from competitive firms, have not resulted in a useful analyses of competition in dedicated access areas. Before taking any regulatory action, the FCC should undertake a comprehensive analysis of the state of competition, including more extensive and comprehensive data.⁶

³ Ibid.

⁴ See USTelecom Report, *High-Capacity Services: Abundant, Affordable, and Evolving*, (July 2009), attached to USTelecom filing to FCC on *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket. 05-25, *National Broadband Plan for Our Future*, GN Docket. 09-51, which can be found at <http://www.ustelecom.org/uploadedFiles/Issues/Filings/20090716.Letter.Special.Access.Report.WC.Docket.05.25.09.51.pdf>

⁵ See U.S. Government Accountability Office (GAO), *FCC Needs To Improve Its Ability To Monitor and Determine the Extent of Competition in Dedicated Access Services*, GAO-07-80, (Nov. 2006), <http://www.gao.gov/new.items/d0780.pdf>.

⁶ The NAM understands that competitive firms may consider this information confidential and proprietary, and are reluctant to divulge this information to the FCC. However, the FCC has in the past entered into agreements that would protect proprietary information from unauthorized use or disclosure. Specifically, the Freedom of Information Act, 5 U.S.C. Section 552(b)(4) provides for an exemption from disclosure to third-parties by U.S. Government Agencies of information that is confidential or proprietary, as well as the Trade Secrets Act, 18 U.S.C. Section 1905 which prohibits publication, divulgence or release of commercial or financial information of private parties by U.S. Government Agencies.

CONCLUSION

The NAM commends the Commission for encouraging competition through regulatory forbearance. By doing so, it has promoted a competitive and innovative Internet that enables broadband network operators to take advantage of technology to maximize capacity, avoid bottlenecks, protect privacy and meet the differing technical requirements of a wide range of Internet services and applications. In addition to reiterating comments made in our previous filing, the NAM further recommends that the FCC should undertake a comprehensive economic analysis of the existing special access market. Once the market analysis is completed, we recommend that the FCC look at all possible solutions, along with the concomitant benefits, drawbacks and downstream economic impacts before advancing any regulation or legislation that would affect any existing market, either wireline or wireless.

Respectfully submitted,

THE NATIONAL ASSOCIATION OF MANUFACTURERS

By:



Marc-Antony Signorino
Director, Technology Policy
National Association of Manufacturers
1331 Pennsylvania Avenue, N.W. - 6th Floor
Washington, D.C. 20004-1790
Msignorino@NAM.org

July 20, 2009