

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Verizon Telephone Companies) Transmittal No. 1187
Tariff FCC Nos. 1, 11, and 14)

**PETITION OF TW TELECOM AND WINDSTREAM
TO SUSPEND AND INVESTIGATE**

Pursuant to Section 1.773 of the Commission’s rules,¹ tw telecom inc. (“tw telecom”) and Windstream Communications, Inc. (“Windstream”) hereby petition the Commission to suspend and investigate Transmittal No. 1187 filed by the Verizon Telephone Companies (“Verizon”) on April 30, 2012. In that transmittal, Verizon proposes significant increases to “certain Special Access Pricing Flexibility rates in Tariff FCC Nos. 1, 11 and 14.”²

DISCUSSION

In Transmittal No. 1187, Verizon once again seeks to exploit its freedom from price cap regulation in geographic areas subject to Phase II pricing flexibility. In so doing, Verizon seeks to exacerbate the harm that special access purchasers already experience under the Commission’s flawed pricing flexibility special access regulations.

Specifically, Verizon seeks an across-the-board six percent increase in month-to-month prices for its special access channel termination, channel mileage and multiplexing services in Phase II Metropolitan Statistical Areas (“MSAs”) throughout its entire incumbent LEC footprint.

¹ 47 C.F.R. § 1.773.

² See Letter from Frederick Moacdieh, Executive Director – Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 1187, at 2 (filed Apr. 30, 2012) (“Transmittal No. 1187”).

Verizon increased its rates for all of the same services³ in all of the same MSAs covered by Transmittal No. 1187 by approximately six percent on July 16, 2011.⁴ Thus, since Verizon has received Phase II pricing flexibility for channel mileage and multiplexing services in virtually every MSA in its incumbent LEC territory, the result of the rate increases proposed in Transmittal No. 1187 would be a *second* six percent increase in ten months for essentially all channel mileage and multiplexing charges throughout the Verizon incumbent LEC footprint. If allowed to take effect, the proposals in Transmittal No. 1187 would also result in a *second* six percent rate increase in ten months for most of Verizon's channel termination services in Phase II MSAs in the legacy GTE incumbent LEC footprint. Verizon's ability to increase rates two times in less than one year underscores that business customers and competitors have no alternative but to purchase special access from Verizon and that customers must pay whatever price Verizon chooses to extract.

The Commission has a duty under Section 201(b) of the Communications Act to ensure that Verizon's special access prices are just and reasonable.⁵ Here, the Commission must carry out that responsibility by suspending and investigating the rates proposed in Transmittal No. 1187, because the available evidence shows that the rates proposed in that Transmittal almost certainly violate the just and reasonable requirement in Section 201(b).

To begin with, a combined rate increase of approximately 12 percent in less than one year indicates that Verizon is exploiting its market power by setting its special access prices well

³ In 2011, Verizon also increased the prices for mileage and multiplexing associated with switched access services.

⁴ See Letter from Frederick Moacdieh, Executive Director – Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 1152 (filed July 1, 2011, and effective July 16, 2011).

⁵ See 47 U.S.C. § 201(b).

above reasonable levels. Verizon is of course free from any rate regulation in the provision of special access services in Phase II MSAs. Verizon's proposal to implement a combined 12 percent unilateral rate increase in less than ten months indicates that competition does not constrain Verizon's rates in Phase II areas. This should come as no surprise to the Commission since it has candidly admitted that the competitive pricing flexibility "triggers" are flawed.⁶ It is also well-understood that Verizon is unlikely to face widespread facilities-based competition in the provision of special access services in most locations.⁷ Verizon is therefore apparently free

⁶ The Commission has recognized for more than a decade that its pricing flexibility rules are flawed. For example, in 1999, the Commission acknowledged that "collocation by competitors does not provide direct evidence of sunk investment by competitors in channel terminations between the end office and the customer premises" but it adopted collocation-based "triggers" for channel terminations anyway because it "appear[ed] to be the best option available" at the time. *In re Access Charge Reform et al.*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 14221, ¶ 103 (1999) ("*Pricing Flexibility Order*"); see also Government Accountability Office, Report to the Chairman, Committee on Government Reform, House of Representatives, *FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, GAO-07-08, at 42 (Nov. 2006) ("GAO Special Access Report"). In 2003, the Commission expressly recognized that "[b]ecause the revenue trigger [for transport] requires only a single collocated competitor and the purchase of substantial amounts of special access in a concentrated area, *this test provides little indication that competitors have self-deployed alternative facilities.*" *In re Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 16978, ¶ 397 (2003) ("*TRO*") (subsequent history omitted) (emphasis added). The Commission also recognized that "the pricing flexibility trigger based on alternative transport-based collocation" is defective because it "does not indicate that the competitive fiber facilities [actually] connect to collocations in any other incumbent LEC central offices." *Id.* In fact, the Commission held in 2003 that "evidence of self-deployment demonstrates better than any other kind of evidence what business decisions competitive carriers have *actually* made regarding the feasibility to deploy facilities without relying on the incumbent LEC." *Id.* ¶ 308 (emphasis in original).

⁷ The Department of Justice found in 2005 that "[f]or the vast majority of commercial buildings in its territory, [Verizon] is the only carrier that owns a last-mile connection to the building." *United States of America v. Verizon Communications Inc. and MCI, Inc.*, Complaint, No. 1:05-cv-02103, ¶ 15 (D.D.C. Oct. 27, 2005). This is also why the Commission found in 2007 that there were no significant providers of loop or transport facilities in six MSAs in the Verizon territory, including Pittsburgh and Virginia Beach (where Verizon has Phase II pricing flexibility for channel terminations). See *In re Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh,*

to set prices for the services encompassed by Transmittal No. 1187 at whatever price it chooses. Given that special access services are indispensable to businesses and wholesale carrier customers, such customers will almost certainly continue to buy the services even if they are priced far above Verizon's costs and far above the prices that would be yielded by competition. Thus, as a matter of basic pricing theory, it is logical to expect that the prices proposed in Transmittal No. 1187 are far above a reasonable measure of Verizon's costs and far above the rates that a competitive market would yield.

It is significant that most of the prices proposed in Transmittal No. 1187 are well above Verizon's special access prices for the same services in areas subject to price cap regulation. One would expect that Verizon's special access rates would be lower, not higher, in areas where Verizon has received pricing flexibility due to the presumed presence of competition. But in fact, the opposite now seems to be the case for Verizon.

This is the case with the rates proposed in Transmittal No. 1187. Table 1 attached hereto compares the current and proposed Phase II price flex rates for selected special access services covered by Transmittal No. 1187 with the prices for those services that Verizon charges in comparable areas subject to price cap regulation. This comparison shows that Verizon's Phase II price flex rates for DS1 channel terminations and DS1 channel mileage are frequently well above the comparable price cap rates. For example, under Verizon Tariff FCC No. 11, in price band 6, Verizon's current Phase II special access month-to-month rate for DS1 channel terminations is

Providence and Virginia Beach MSAs, Memorandum Opinion and Order, 22 FCC Rcd. 21293, ¶¶ 38, 41 (2007) (“6-MSA Order”). Due to the lack of sufficient facilities-based competition in the Verizon territory as well as in the AT&T, legacy BellSouth, and legacy Qwest territories, the Government Accountability Office found in 2006 that these LECs’ special access “list prices and revenue are *higher* on average for circuit components in areas under [P]hase II flexibility . . . than in areas under [P]hase I flexibility or under price caps.” See *GAO Special Access Report* at 27 (emphasis added); see also *id.* at 27-29.

\$310.64, or approximately 34 percent, higher than the comparable price cap rate of \$231.49, and the Phase II special access month-to-month rate of \$329.28 proposed in Transmittal No. 1187 is 42 percent higher than the comparable price cap rate. Similarly, under Verizon Tariff FCC No. 14, in price band B, Verizon's current Phase II special access month-to-month rate for DS1 channel terminations is \$291.50, or approximately 26 percent, higher than the comparable price cap rate of \$232.00, and the Phase II special access month-to-month rate of \$308.99 proposed in Transmittal No. 1187 is approximately 33 percent higher than the comparable price cap rate.

In addition, under Verizon Tariff FCC No. 14, in price band A, Verizon's current Phase II special access month-to-month per-mile rate for DS1 channel mileage is \$58.30, or nearly three times the comparable price cap rate of \$21.56, and in Transmittal No. 1187 Verizon proposes to increase its Phase II special access month-to-month per-mile rate even further, to \$61.80. Likewise, under Verizon Tariff FCC No. 14, in price band B, Verizon's current Phase II special access month-to-month per-mile rate for DS1 channel mileage is \$14.42, or nearly double the comparable price cap rate of \$8.79, and in Transmittal No. 1187 Verizon proposes to increase its Phase II special access month-to-month per-mile rate even further, to \$15.29.

In light of this evidence, it is critical that the Commission take action now, in this tariff review proceeding, to suspend and investigate the rates proposed in Transmittal No. 1187. Given the absence of price cap regulation in Phase II areas, the tariff submission and review process is the primary means by which the Commission can fulfill its responsibility under Section 201(b) to ensure that Verizon's special access rates are just and reasonable. Indeed, when it defended the *Pricing Flexibility Order* as a reasoned decision, the Commission pointed out to the D.C. Circuit that consumers are protected "under the relaxed Phase II regime" because

they “may challenge an ILEC’s tariff filing” pursuant to Section 204 of the Act.⁸ The Commission emphasized that “*even after obtaining Phase II relief, carriers remain subject to statutory obligations to charge just, reasonable and nondiscriminatory rates.*”⁹

If those words and the Commission’s Section 204 authority are to have any meaning, the Commission cannot sit idly while Verizon exploits the Commission’s flawed regulatory regime for special access to charge what are almost certainly unreasonably high rates. Accordingly, the Commission must suspend and investigate Verizon Transmittal No. 1187.

Respectfully submitted,

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⁸ Corrected Brief for Federal Communications Commission, *MCI WorldCom v. FCC*, No. 99-1395, at 27-28 (D.C. Cir. Sept. 12, 2000).

⁹ *Id.* at 28 (emphasis added).

TABLE 1

TARIFF	Tariff Reference	Comparable Price Cap Month-to-Month ("MTM") Fixed Mileage Rate	Comparable Price Cap MTM Chan. Term. Rate Or Per Mile Rate (as applicable)	Phase II Special Access ("SPA") MTM Fixed Mileage Rate	Phase II SPA MTM Chan. Term. Rate Or Per Mile Rate (as applicable)	Proposed Phase II SPA MTM Fixed Mileage Rate	Proposed Phase II SPA MTM Chan. Term. Rate or Per Mile Rate (as applicable)	Percent increase in SPA Rate	State	Circuit Type	Product Type	Line Item Code Or USOC (Univ. Svc Order Code)	USOC Description	Price Flex. Band	Are Phase II Price Flex. Rates Applied?	SPA Rate Increased in 2011?	SPA Rate Increased in 2012?
VERIZON GTE FCC14	Section 5.7.7 Page 5-209		\$ 10.22		\$ 13.78		\$ 14.61	5.68%	CA	DS1	Mileage/Transport	1LFSX	SPECIAL TRANSPORT-PER MILE	C	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-210		\$ 56.55		\$ 53.00		\$ 56.18	5.66%	CA	DS1	Mileage/Transport	10X1X	FLAT RATED SPECIAL TRANSPORT ONE YEAR - PER MONTH	A	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-210		\$ 41.84		\$ 39.22		\$ 41.57	5.65%	CA	DS1	Mileage/Transport	10X5X	FLAT RATED SPECIAL TRANSPORT FIVE YEARS - PER MONTH	A	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-209		\$ 25.34		\$ 32.33		\$ 34.27	5.66%	CA	DS1	Mileage/Transport	TRG	SPECIAL-TRANSPORT TERMINATION	A	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-209		\$ 32.02		\$ 40.81		\$ 43.26	5.66%	CA	DS1	Mileage/Transport	TRG	SPECIAL-TRANSPORT TERMINATION	C	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-209		\$ 26.02		\$ 33.18		\$ 35.17	5.66%	CA	DS1	Mileage/Transport	TRG	SPECIAL-TRANSPORT TERMINATION	B	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-210		N/A*		\$ 68.37		\$ 72.47	5.66%	FL	DS1	Mileage/Transport	10X1X	FLAT RATED SPECIAL TRANSPORT ONE YEAR - PER MONTH	A	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-210		N/A*		\$ 53.85		\$ 57.08	5.66%	FL	DS1	Mileage/Transport	10X5X	FLAT RATED SPECIAL TRANSPORT FIVE YEARS - PER MONTH	A	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-210		N/A*		\$ 55.65		\$ 58.99	5.66%	FL	DS1	Mileage/Transport	10X5X	FLAT RATED SPECIAL TRANSPORT FIVE YEARS - PER MONTH	C	Y	Y	Y
VERIZON BA FCC1	Section 7.5.9 Page 7-264	\$ 46.66	\$ 19.17	\$ 58.30	\$ 29.01	\$ 61.80	\$ 30.75	5.66%	All states in tariff	DS1	Mileage/Transport	1L5L5	SPECIAL TRANSPORT PER MILE	4	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-210		N/A*		\$ 54.91		\$ 58.20	5.65%	FL	DS1	Mileage/Transport	10X5X	FLAT RATED SPECIAL TRANSPORT FIVE YEARS - PER MONTH	B	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-209		N/A*		\$ 34.56		\$ 36.63	5.65%	FL	DS1	Mileage/Transport	TRG	SPECIAL-TRANSPORT TERMINATION	A	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-209		N/A*		\$ 36.15		\$ 38.32	5.66%	FL	DS1	Mileage/Transport	TRG	SPECIAL-TRANSPORT TERMINATION	C	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-209		N/A*		\$ 35.30		\$ 37.42	5.67%	FL	DS1	Mileage/Transport	TRG	SPECIAL-TRANSPORT TERMINATION	B	Y	Y	Y
VERIZON BA FCC1	Section 7.5.9 Page 7-264	\$ 46.66	\$ 19.17	\$ 58.30	\$ 29.01	\$ 61.80	\$ 30.75	5.66%	All states in tariff	DS1	Mileage/Transport	1L5L5	SPECIAL TRANSPORT PER MILE	5	Y	Y	Y
VERIZON BA FCC1	Section 7.5.9 Page 7-264	\$ 46.66	\$ 19.17	\$ 58.30	\$ 29.01	\$ 61.80	\$ 30.75	5.66%	All states in tariff	DS1	Mileage/Transport	1L5L5	SPECIAL TRANSPORT PER MILE	6	Y	Y	Y
VERIZON NY FCC11	Section 30.7.9 pp30-114	\$ 47.12	\$ 19.17	\$ 58.30	\$ 29.01	\$ 61.80	\$ 30.75	5.66%	NY	DS1	Mileage/Transport	1L5XX	CHANNEL MILEAGE - SWITCH AND SPECIAL - PER MILE BAND	6	Y	Y	Y
VERIZON NY FCC11	Section 30.7.9 pp30-114	\$ 47.12	\$ 19.17	\$ 58.30	\$ 29.01	\$ 61.80	\$ 30.75	5.66%	NY	DS1	Mileage/Transport	1L5XX	CHANNEL MILEAGE - SWITCH AND SPECIAL - PER MILE BAND	4	Y	Y	Y
VERIZON NY FCC11	Section 30.7.9 pp30-114	\$ 47.12	\$ 19.17	\$ 58.30	\$ 29.01	\$ 61.80	\$ 30.75	5.66%	NY	DS1	Mileage/Transport	1L5XX	CHANNEL MILEAGE - SWITCH AND SPECIAL - PER MILE BAND	5	Y	Y	Y
VERIZON NY FCC11	Section 30.7.9 pp 30-130		\$ 251.93		\$ 241.36		\$ 255.84	5.66%	NY	DS1	Multiplexing	MQ1	SPECIAL-MULTIPLEXING- 1.544 MBPS HC	4	Y	Y	Y
VERIZON NY FCC11	Section 30.7.9 pp 30-55		\$ 231.49		\$ 310.64		\$ 329.28	5.66%	NY	DS1	Chan Term	TMECS	CHANNEL TERM - 1.544 MBPS SVC OR DOVPATH	6	Y	Y	Y
VERIZON NY FCC11	Section 30.7.9 pp 30-55		\$ 177.12		\$ 205.63		\$ 217.97	5.66%	NY	DS1	Chan Term	TMECS	CHANNEL TERM - 1.544 MBPS SVC OR DOVPATH	4	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.6 Page 5-203		N/A*		\$ 227.90		\$ 241.57	5.66%	FL	DS1	Multiplexing	MQ1	SPECIAL MULTIPLEXING - DS1 TO VOICE	A	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.14 Page 5-209.1		\$ 7.36		\$ 11.77		\$ 12.48	5.69%	TX	DS1	Mileage/Transport	1LFSX	SPECIAL TRANSPORT-PER MILE	A	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.14 Page 5-324.1		\$ 21.56		\$ 58.30		\$ 61.80	5.66%	TX	DS3	Mileage/Transport	1LFSX	SPECIAL TRANSPORT-PER MILE	A	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-209.1		\$ 9.95		\$ 15.69		\$ 16.63	5.65%	TX	DS1	Mileage/Transport	1LFSX	SPECIAL TRANSPORT-PER MILE	C	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-209.1		\$ 8.79		\$ 14.42		\$ 15.29	5.69%	TX	DS1	Mileage/Transport	1LFSX	SPECIAL TRANSPORT-PER MILE	B	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-210.1		\$ 67.85		\$ 68.37		\$ 72.47	5.66%	TX	DS1	Mileage/Transport	10X1X	FLAT RATED SPECIAL TRANSPORT ONE YEAR - PER MONTH	A	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-210.1		\$ 56.55		\$ 53.85		\$ 57.08	5.66%	TX	DS1	Mileage/Transport	10X5X	FLAT RATED SPECIAL TRANSPORT FIVE YEARS - PER MONTH	A	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-209.1		\$ 37.30		\$ 35.19		\$ 37.30	5.66%	TX	DS1	Mileage/Transport	TRG	SPECIAL TRANSPORT TERMINATION	A	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-209.1		\$ 49.66		\$ 46.85		\$ 49.66	5.66%	TX	DS1	Mileage/Transport	TRG	SPECIAL TRANSPORT TERMINATION	C	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-209.1		\$ 45.62		\$ 43.04		\$ 45.62	5.66%	TX	DS1	Mileage/Transport	TRG	SPECIAL TRANSPORT TERMINATION	B	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-208		\$ 295.70		\$ 284.93		\$ 302.03	5.66%	CA	DS1	Chan Term	EUW	DS1 Special Access Line	A	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-208		\$ 303.25		\$ 291.50		\$ 308.99	5.66%	CA	DS1	Chan Term	EUW	DS1 Special Access Line	B	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-208		\$ 323.50		\$ 298.18		\$ 316.07	5.66%	CA	DS1	Chan Term	EUW	DS1 Special Access Line	C	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-208.1		N/A*		\$ 284.93		\$ 302.03	5.66%	FL	DS1	Chan Term	1XCDX	DS1 Special Access Line	A	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-208.1		N/A*		\$ 291.50		\$ 308.99	5.66%	FL	DS1	Chan Term	1XCDX	DS1 Special Access Line	B	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-208.1		N/A*		\$ 298.18		\$ 316.07	5.66%	FL	DS1	Chan Term	1XCDX	DS1 Special Access Line	C	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-208.2		\$ 225.00		\$ 284.93		\$ 302.03	5.66%	TX	DS1	Chan Term	1XCDX	DS1 Special Access Line	A	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-208.2		\$ 232.00		\$ 291.50		\$ 308.99	5.66%	TX	DS1	Chan Term	1XCDX	DS1 Special Access Line	B	Y	Y	Y
VERIZON GTE FCC14	Section 5.7.7 Page 5-208.2		\$ 275.00		\$ 298.18		\$ 316.07	5.66%	TX	DS1	Chan Term	1XCDX	DS1 Special Access Line	C	Y	Y	Y

*Florida does not have price cap zones.

CERTIFICATE OF SERVICE

I, Matthew Jones, do hereby certify that on this day, May 7, 2012, I caused to be served a true and correct copy of the foregoing Petition of tw telecom and Windstream to Suspend and Investigate on the following parties:

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