

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	Tariff Nos. 1, 11, 14, 16
Verizon Telephone Companies)	Transmittal No. 1187
)	
Tariff Nos. 1, 11, 14, 16)	
_____)	

FILED/ACCEPTED

MAY - 7 2012

Federal Communications Commission
Office of the Secretary

PETITION TO SUSPEND AND INVESTIGATE

Pursuant to Section 204(a)(3) of the Communications Act of 1934, as amended (the “Act”) and Section 1.773 of the Rules of the Federal Communications Commission (“Commission”), XO Communications, LLC (“XO”) respectfully requests that the Commission suspend and investigate in part or in its entirety as appropriate¹ the above-captioned tariff filing of the Verizon Telephone Companies (“Verizon”), which was submitted on April 30, 2012 to take effect on fifteen days’ notice.

XO is one of the largest facilities-based competitive providers of telecommunications and information services in the country. XO purchases and uses the DS1 and DS3 special access services of a number of other providers, including Verizon, as inputs to its retail services, and hence will be significantly affected by aspects of this tariff filing if it is allowed to take effect. In its filing, Verizon proposes substantial increases to special access rates contained in its FCC Tariff Numbers 1, 11 and 14. For the reasons explained herein, these increases are demonstrably supracompetitive, reflecting Verizon’s market power in the provision of DS1 and DS3 services,

¹ Verizon Transmittal No. 1187 makes changes to four separate tariffs – Tariff F.C.C. Nos. 1, 11, 14 and 16. XO’s Petition does not address the proposed revisions to Verizon Tariff F.C.C. No. 16 and, with respect to F.C.C. Tariff Nos. 1, 11 and 14, is concerned only with Verizon’s proposed rate increases for DS1 and DS3 services.

especially in the case of channel terminations, and very possibly unlawful. As detailed below, the criteria set forth in the Commission's Rules for suspension and investigation of a tariff filing are well met in this case, warranting the Commission to take such action.

I. THERE IS A HIGH PROBABILITY THAT THE TARIFF WOULD BE FOUND UNLAWFUL AFTER INVESTIGATION.

As set forth in the Commission's rules, the calculations price cap local exchange carriers ("LECs") make to determine their rates for special access services are inordinately complex and often contain information only available to the filing carrier.² As a result, especially given the short time to respond, XO is unable to determine whether the rate increases proposed by Verizon in these tariffs filings for time division multiplex ("TDM") special access circuits meet the Commission's rules or breach the relevant caps where they continue to apply. XO, however, has sufficient evidence that, should the proposed rates go into effect, they will enable Verizon to earn supracompetitive profits. Therefore, these rates are neither just nor reasonable. Consequently, XO urges the Commission to suspend and investigate the tariff to prevent, as explained below, irreparable harm to XO and others that have little or no choice but to purchase these services.

XO's evidence indicating the proposed rates for DS1 and DS3 TDM special access circuits, particularly channel terminations, are supracompetitive is tangible and substantial:

- Verizon's DS1 and DS3 special access rates are already well above (more than 50% above) rates for comparable circuits purchased as unbundled network elements. The proposed rates would exacerbate this. For example, for XO the monthly recurring price for a DS1 channel termination (1.54 Mbps) element in Verizon North territory (New York, price band 5) under the proposed tariff is \$191.15, which includes a

² See e.g., 47 C.F.R. §§ 61.42, 69.114.

significant discount from the “rack” rate. In contrast, the unbundled network element loop rate is \$98.18 (density zone 1B), approximately 50% lower. Similarly, for XO the monthly recurring charge for a DS3 (45 Mbps) channel termination element in Verizon North (New York, price band 4) territory under the proposed tariff is \$1,557.31 (which, again, includes a significant discount), whereas the comparable charge for a DS3 loop unbundled network element is \$801.75, again approximately 50% lower. This same relationship pertains to transport and multiplexing charges in the proposed tariff. The charges for unbundled network elements are cost-based; *i.e.*, established by state commissions in accordance with the Total Elemental Incremental Cost (TELRIC) Rules prescribed by the Commission. Since the TELRIC rules allow LECs to include a reasonable profit margin in their unbundled network element prices, it can be fairly presumed that any special access charges for comparable facilities that exceed the charges for unbundled network elements allow LECs to earn profits that exceed a reasonable profit margin.

- The per unit costs of providing private line circuits are declining, and, with respect to DS1 and DS3 special access circuits, demand is rapidly eroding.³ As a result, prices should be falling not increasing. XO knows this first hand. The average revenue it receives for the provision of a DS1 circuit to end users has declined by approximately 35% in the past three years; the average revenue for a DS3 circuit has declined by approximately 17%.

³ See *e.g.*, *Ex Parte* Filing of Verizon, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25 (May 2, 2012) at Attachment I at 6. (“*Verizon Ex Parte Filing*”).

- The price for a 25 Mbps symmetrical broadband circuit purchased from Verizon's FiOS service is approximately \$75 per month.⁴
- If Verizon's proposed tariff rates are approved, they would constitute Verizon's second rate increase for DS1 and DS3 circuits in less than twelve months. When these increases are combined, rates for DS1 and DS3 circuits would be rising by approximately 12.4% at a time of low inflation and, as discussed above, declining costs and demand.

There is only one reason for the proposed rates increases: Verizon has market power and can exact rents above competitive levels. Verizon's claims that there is sufficient competition in the market for DS1 and DS3 circuits is inaccurate.⁵ In XO's experience, overwhelmingly, Verizon is the sole provider within its operating territories of these circuits, particularly channel terminations. XO has not been able to purchase at wholesale DS1/DS3 TDM service from cable companies.⁶

In comments filed by XO in the Commission's special access docket,⁷ XO submitted that the key metric for determining whether rates for special access services were just and reasonable was an examination of profit margins these carriers earned for provision of these circuits in

⁴ See, <http://www22.verizon.com/home/fiosinternet/plans/>.

⁵ *Verizon Ex Parte Filing* at 6-10.

⁶ The timing of Verizon's proposed rate increases for its special access DS1 and DS3 TDM services warrants additional scrutiny and suggests further that the rate increases are supracompetitive. The proposed rate increases would go into effect just weeks before Verizon and other LECs are required to lower their terminating intrastate switched access charges in response to the FCC's 2011 CAF/ICC order. See FCC 11-161. Verizon's switched access revenues will be declining per Commission regulations, yet that should not give them free license to exploit pricing flexibility and raise rates for other customers who have little choice but to buy from Verizon, as explained above, in recompense.

⁷ Comments of XO Communications, LLC, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25 (Jan. 19, 2010).

comparison to profit margins earned by providers in competitive markets. In light of the evidence produced above, there is more than enough basis for the Commission to investigate whether, with the proposed rate increases, Verizon's profit margins for DS1 and DS3 circuits – most especially for channel terminations – would be far above competitive levels. If that is the case, this would call into question whether the increases are in fact within the rate bands and therefore lawful as required by the Commission's rules. Consequently, the Commission should suspend and investigate.

II. THE SUSPENSION WOULD NOT SUBSTANTIALLY HARM OTHER INTERESTED PARTIES.

The parties interested in this proceeding are wholesale (providers) and retail purchasers (particularly small business consumers) of the special access services set forth in the proposed tariff. In either case, no purchaser rationally would pay prices above competitive levels. Because, as noted above, the non-Verizon supply for these circuits, especially channel terminations, is uncommon if not rare, purchasers would not be harmed by a suspension. To the contrary, purchasers would be harmed if the Commission did not suspend and investigate the proposed tariff.

III. IRREPARABLE INJURY WILL RESULT IF THE TARIFF FILING IS NOT SUSPENDED.

XO purchases special access services, including DS1 and DS3 circuits, at wholesale from Verizon. Its annual expenditures on such circuits are material. Moreover, for DS1 and DS3 circuits, especially channel terminations, in markets where Verizon is the incumbent LEC, XO and other providers and consumers have little or no choice but to purchase these circuits from Verizon. As noted above, if this proposed rate increase is permitted to go into effect on top of the increase last year, XO's rates would have increased by almost 12.5%. XO's only recourse

would be to file a complaint, but this would not cause Verizon to roll back the rate increases once the tariff takes effect. XO would continue to pay until the complaint was resolved, and any retroactive relief would only run from the date on which the complaint was filed.⁸ In the interim, XO would experience a dramatic reduction in its margins because, as discussed above, retail prices are declining by between 17% and over 50% while the key DS1 and DS3 input prices grow by 12.5%. As a result, XO would be disadvantaged in trying to obtain new customers or extend agreements with existing customers.

IV. THE SUSPENSION WOULD NOT OTHERWISE BE CONTRARY TO THE PUBLIC INTEREST.

The petition is consistent with the public interest. The Commission has an obligation to ensure that rates are just and reasonable, that is, that the carrier is not reaping supracompetitive profits from providing the service. As discussed in detail above, there are various indicators that Verizon in fact will earn well above competitive profit margins as a result of the proposed tariff going into effect.

XO and other competitive LECs continue to rely on DS1 and DS3 special access services provided by Verizon as inputs for their retail services and spend substantial amounts annually to purchase these services. Of these services, channel terminations connecting XO's switches to end user premises are the most critical because the alternatives offered by other providers are so limited, if they exist at all. As noted above, for these facilities, the disparity in price between unbundled loops and the DS1 channel terminations post-increase is most glaring. The only rationale that can explain a 50% difference is Verizon's excessive leverage. As such, the public interest would be served by the Commission suspending and investigating the proposed tariff.

⁸ See 47 U.S.C. §204(a)(3).

V. CONCLUSION

The Commission has clear standards for the suspension and investigation of a tariff filing. XO submit that, for the reasons discussed above, these criteria are met with respect to Verizon's filing. Verizon's proposed increases are not just and reasonable and will inflict substantial injury on carriers such as XO and on their customers. Therefore, XO respectfully requests that the Commission suspend and investigate Verizon's April 30, 2012 tariff filing, in part or in its entirety as discussed above, in order to prevent irreparable harm to competitive providers and consumers alike.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Winafred Brantl, do hereby certify that on this 7th day of May, 2012, I have caused the foregoing "Petition to Suspend and Investigate" of XO Communications, LLC to be filed with the Office of the Secretary of the FCC with a copy served via hand delivery, electronic mail and/or facsimile, to the parties listed below:

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