

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

In the Matter of)	
)	CCB/CPD File No. 00-24
Verizon Petition for Pricing Flexibility for)	
Special Access and)	
Dedicated Transport Services)	

VERIZON REPLY COMMENTS

In its Petition Verizon¹ demonstrated where and how it meets the Commission's competition benchmarks for Phase I and Phase II relief. Only two parties oppose Verizon's Petition, and for the most part they do not take issue with Verizon's filing at all. Instead, they take issue with the underlying Commission order. But having elected not to seek reconsideration of that order, their arguments to ignore that order in the evaluation of Verizon's Petition may not be considered. To the extent they do directly address Verizon's filing, with one exception, they do not raise any issues that impact whether Verizon meets the criteria for regulatory relief. The only exception impacts a single service group in a single MSA, and Verizon files corrected information here. For the remaining 65 service/MSA combinations, there is no substantive opposition and Verizon's Petition should be granted.

¹ The Verizon telephone companies ("Verizon") are the local exchange carriers affiliated with Verizon Communications Inc., and are listed in Attachment A. This filing only addresses special access and dedicated transport services as specified in § 69.709 and § 69.711 that are provided through FCC Tariff Nos. 1 and 11 provided by the former Bell Atlantic telephone companies.

I. Verizon's Petition Must Be Evaluated Based on the Benchmarks in the Pricing Flexibility Order

AT&T and WorldCom devote most of their opposition to repeating their arguments that the Commission should not allow pricing flexibility based on the benchmarks in the Pricing Flexibility Order.² But these are the same arguments that the Commission has already rejected in the Pricing Flexibility Order itself. The only new argument is their claim that the fact that Verizon and other carriers meet the benchmark in so many areas is proof of the failure in the order. In fact, it demonstrates the opposite. Because Verizon has competition in so many MSAs, the Commission's Order will allow Verizon to offer the benefits of more competitive pricing arrangements to a larger number of customers.

Regardless, the arguments seeking to modify the Pricing Flexibility Order are not properly before the Bureau in its review of Verizon's Petition. Arguments to reconsider the Pricing Flexibility Order properly should have been filed in a petition for reconsideration. But AT&T and WorldCom chose not to make such a filing within the authorized time period, which has long expired. *See* 47 C.F.R. 1.429(d) (petitions for reconsideration must be filed within 30 days of the publication of an order). Instead, AT&T and WorldCom elected to file an appeal in the D.C. Circuit.

The law is clear that the same party cannot simultaneously appeal and seek reconsideration of the same order:

Petitioners have the option of proceeding directly to the court of appeals, or giving the agency another chance to consider the matter and applying to the court of appeals afterward. We can see no justification for allowing a

² *Access Charge Reform*, 14 FCC Rcd.14221 (1999) ("Pricing Flexibility Order").

petitioner to apply to both the court and the agency at the same time. On the contrary, such a regime could lead only to a waste of resources on the part of the agency, or the court, or both, without any countervailing benefit.

United Transportation Union v. ICC, 871 F.2d 1114, 1118 (D.C. Cir. 1989) (citing *West Penn Power Co. v. EPA*, 860 F.2d 581, 586 (3rd Cir. 1988); see also *Telestar v. FCC*, 888 F.2d 132 (D.C. Cir. 1989). Well aware of the rules, and having elected to fight the Pricing Flexibility Order in court, AT&T and WorldCom cannot now reargue the merits of the Pricing Flexibility Order in the context of this Petition.

Instead, Verizon's Petition must be judged based on the specific criteria adopted by the Commission in the Pricing Flexibility Order. By that measure, the Petition must be approved.

II. Verizon Meets The Criteria for Pricing Flexibility

Both AT&T (at 8-9) and WorldCom (at 2-3) argue that Verizon has failed to provide sufficient detail in its Petition. In particular, they seek revenue data for each wire center. But again, AT&T and WorldCom are seeking to modify the requirements of the Pricing Flexibility Order and call for information that is not part of the formula to calculate the benchmarks under that order. The Pricing Flexibility Order does require that a petitioner identify each collocater by wire center – which Verizon did. But that is the only data that must be provided on a wire center basis.

With respect to *revenues*, the Pricing Flexibility Order merely requires “that the wire centers in which competitors have collocated account for a sufficient percentage of the incumbent's base period revenues generated by the services at issue within the relevant MSA or non-MSA area to satisfy the trigger we have adopted.” Pricing

Flexibility Order, ¶ 172. See also, 47 C.F.R. § 1.774(a)(3)(iv)(B) (petitions must include the “percentage of total base period revenues generated by the services at issue in the petition that are attributable to wire centers in the relevant MSA”). Verizon fully complied with these requirements and included in the Petition total base period revenue as well as a calculation of the percentage of revenues from competitive wire centers within each area (MSA or non-MSA) for which Verizon sought relief. The Pricing Flexibility Order was quite specific in specifying what data was required by wire center, and revenue information was not part of that requirement. The additional data sought by two competitors is highly sensitive marketing data that would provide no additional information relevant to evaluating the Petition. The additional data was not required in the Pricing Flexibility Order, nor should it have been.

Finally AT&T objects that in 13 wire centers in which it is identified as a facilities-based collocater, it is not. AT&T does not deny that it has collocation facilities in these wire centers, but states that it relies on entrance facilities provided by Verizon. AT&T Opposition, Declaration of Charles E. Stock. While AT&T’s order for collocation in these wire centers was premised on AT&T using its own facilities and the space has been engineered so that AT&T may begin such use,³ it appears that AT&T is currently relying on Verizon for the entrance facilities.

³ In AT&T’s application for collocation, it indicated an intent to install its own fiber cable facilities to its collocation node in these offices. Verizon accordingly engineered the space for AT&T’s collocation node and the cable space necessary to connect AT&T’s cable from the vault to the collocations. Once the space was turned over to AT&T, the recurring charges started for both the collocation and cable space. As a result, Verizon’s billing records reflect AT&T using its own cable facilities.

Regardless, the impact on the total Petition is not significant. The 13 collocation sites identified by AT&T represent only 2.5% of the 515 facilities-based collocation sites relied upon in the Petition. Consistent with Commission requirements, Verizon contacted every single collocator included in the Petition and informed each of them that Verizon would be relying on their collocation facility in support of its Petition. The only one to object to *any* of the identified sites was AT&T. Given that record, AT&T's suggestion that the Commission extrapolate AT&T's objections into a broader concern is unsupportable.

A review of the location of the sites identified by AT&T makes clear that the removal of these sites from the Petition has a very limited impact on the total filing. [] of the sites are in the [] MSA. Of these, three wire centers housing these sites have additional collocators (not affiliated with AT&T) identified in the Petition. These sites would still qualify as competitive under the Commission's standards. If the revenue percentage for special access and dedicated transport services in the [] MSA is recalculated after removing the remaining [] sites, it still exceeds the Commission's benchmark of 65% for Phase II relief (72% vs. 74%).⁴

The sites identified by AT&T impact only one other MSA – []. Because this area would no longer qualify for Phase I relief without the AT&T collocation sites, it is removed from Verizon's request in its recalculation of revenue.

⁴ In Attachment B to this filing, Verizon provides a recalculation of revenues for the MSAs and services impacted by removing the 13 sites identified by AT&T. This attachment is being filed as proprietary and subject to the protective order in this proceeding.

Conclusion

The Verizon Petition meets the criteria set forth in the Pricing Flexibility Order and should be approved by the Bureau.

Respectfully submitted,

Michael E. Glover
Of Counsel

Edward Shakin

1320 North Court House Road
Eighth Floor
Arlington, VA 22201
(703) 974-4864

Attorney for the
Verizon telephone companies

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc.. These are:

Contel of Minnesota, Inc. d/b/a Verizon Minnesota
Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Alaska Incorporated d/b/a Verizon Alaska
GTE Arkansas Incorporated d/b/a Verizon Arkansas
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.