

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

In the Matter of)	
)	CCB/CPD File No. 00-28
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 II relief. None of the collocators served by Verizon dispute the facts in the Petition. Indeed, only a single party -- AT&T -- opposed the petition. AT&T’s opposition, however, merely repeats its now familiar diatribe against the Commission’s 1999 Pricing Flexibility Order. But while AT&T may complain that it believes that the triggers set by the Commission are “woefully inadequate,” it also implicitly acknowledges that Verizon has met those triggers – the only relevant question here.

At the end of its Opposition, AT&T only briefly attempts to raise arguments to cast the Petition into doubt. But those arguments either ignore prior orders or the text of the Petition itself. It appears that the AT&T filing is a disingenuous effort to *delay* approval on a petition for which it has no basis to argue for *denial*. The Commission should not reward such tactics, and should quickly move to grant Verizon’s petition.

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 §

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

AT&T devotes most of its opposition to repeating its 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.

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 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 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 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.

69.709 and § 69.711 that are provided through FCC Tariff No. 1 provided by the former GTE Telephone Operating Companies.

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

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). AT&T makes no attempt to justify its flouting of the rules again,³ and there is no basis to accept its arguments on 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

Only at the very end of its opposition does AT&T even question whether Verizon meets the standards of the Commission's order. Indeed, much of its opposition is premised on an argument that the Commission standards are flawed precisely because Verizon can meet them here (and elsewhere). It is clear why AT&T puts little emphasis on its substantive arguments – they do not raise a colorable challenge to Verizon's Petition.

AT&T argues that the Petition should fail because Verizon may have relied on collocators using UNE transport to meet the competitive threshold. AT&T Opposition at 9. Verizon did not. As explained in the Petition, the only collocators that were counted used "a non-Verizon transport provider." Petition at 3. This excludes Verizon UNE transport. Indeed, as Verizon explained, it identified qualifying collocators through

³ In Verizon's reply comments on its prior petition, Verizon raised these same procedural concerns. There, as here, AT&T offered no justification for its improper argument.

“physical inspections of the collocation facilities . . . to verify whether the operational collocation facilities were connected to an alternative provider’s transport facility.” *Id.* While AT&T tries to argue that the Petition is ambiguous, it can only do so by ignoring the plain meaning of the words in the Petition.

Second, AT&T argues that the Petition should fail because Verizon did not provide wire center data to AT&T and other competitors. But even AT&T acknowledges that the Bureau has already addressed this issue and rejected AT&T’s argument. AT&T Opposition at 10. It is in keeping with AT&T’s entire opposition that notwithstanding a contrary decision, AT&T continues to make the same arguments in the hope that its claims will appear more acceptable through endless repetition. It is clear that unless AT&T is admonished for its frivolous line of arguments, it will continue to burden the Commission and flout Commission rules in its efforts to delay approval of pricing flexibility petitions.

Conclusion

The Verizon Petition meets the criteria set forth in the Pricing Flexibility Order and should be approved by the Bureau without delay.

Respectfully submitted,

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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.