

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of
Proposed Revisions to Verizon Communications
Tariff F.C.C. Nos. 1 and 11, Transmittal No. 1373

MOTION FOR LATE-FILED PETITION

Qwest Communications International, Inc. and Qwest Communications Corporation, (collectively, "Qwest"), by undersigned counsel, respectfully request that the Commission accept the attached Joint Petition for Suspension or Rejection of Revisions to Verizon Communications Tariff F.C.C. Nos. 1 and 11 ("Joint Petition") relating to Verizon's Transmittal No. 1373.

In attempting to file the Joint Petition yesterday, the "Exit and Get Receipt" button of the Electronic Tariff Filing System ("EFTS") submission process was not activated, because of unfamiliarity with the Commission's EFTS. Activation of the button would have completed the submission in a timely manner on April 18, 2001. For this reason, Qwest submits the Joint Petition along with this motion today, April 19, 2001.

As set forth in the attached Certificate of Service, copies of the Joint Petition were timely served on Verizon Communications on April 18, 2001, by facsimile and first-class mail, pursuant to 47 C.F.R. 1.773(a)(4).

Respectfully submitted,

By: /s/ Margot F. Bester

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Dated: April 18, 2001

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Washington, DC 20554**

In the Matter of
Proposed Revisions to Verizon Communications
Tariff F.C.C. Nos. 1 and 11, Transmittal No. 1373

**JOINT PETITION FOR SUSPENSION OR REJECTION OF REVISIONS
TO VERIZON COMMUNICATIONS TARIFF F.C.C. NOS. 1 AND 11**

Pursuant to 47 C.F.R. § 1.773, Qwest Communications International, Inc. and Qwest Communications Corporation, (collectively, "Qwest") submit the following joint petition for investigation, suspension, and/or rejection of certain sections of the proposed revisions to Verizon Communication Tariff F.C.C. Nos. 1 and 11 as set forth in Transmittal No. 1373, dated April 11, 2001. For the reasons set forth below, the Commission should reject the proposed revisions.

I. FACTUAL BACKGROUND AND INTRODUCTION

Verizon Communications ("Verizon")¹ has proposed changes to its Tariff F.C.C. Nos. 1 and 11 which exact unwarranted penalties and charges, and significantly increase the costs to collocated carriers to obtain direct current ("DC") power for collocated equipment. Under the circumstances, the Commission should reject or suspend the proposed revisions pending a thorough review, by the Commission and all interested parties, of Verizon's proposals and their potential effects on the telecommunications services markets affected.

¹ Verizon was formerly known as the Bell Atlantic Telephone Companies, which include: Verizon Delaware, Inc.; Verizon Maryland, Inc.; Verizon New England, Inc.; Verizon New Jersey, Inc.; Verizon Pennsylvania, Inc.; Verizon Virginia, Inc.; Verizon Washington, D.C., Inc.; and Verizon West Virginia, Inc. *See* Verizon Transmittal No. 1373 (4/11/01) at 1, n.1.

A. The Revisions At Issue

In response to complaint proceedings brought by various CLECs attacking Verizon's improper methods of assessing DC power charges to collocated carriers, Verizon seeks, through the revisions included in Transmittal No. 1373, to transform the rights and obligations of incumbent local exchange carriers ("ILECs") and competitive local exchange carriers ("CLECs") relating to collocation. Through its proposed changes to sections 19.3.9(A)(1); (C)(2); (C)(3)(a)-(e) of Tariff F.C.C. No. 1 and sections 28.2.1(C)(1); (E)(2); (E)(3)(a)-(e) of its Tariff F.C.C. No. 11, Verizon seeks to impose a regime of inspections and penalties relating to DC power which is unfair, unnecessary, and administratively burdensome. The proposed penalties are wholly unwarranted and the related inspection provisions not workable.

The Verizon tariff tries to bill for power based on the total load amps ordered by the customer—that is, the maximum load amps the customer expects to utilize at any given time. In other words, the customer is billed based on expected maximum usage, not actual usage. According to standard industry practice, the customer also orders a fuse size of up to 2.5 times the load amps ordered. This much is standard. However, where Verizon departs from industry practice and from the just and reasonable requirements of the Communications Act is in its proposed audit and penalty provisions. Verizon reserves the right to audit (measure) the actual power drawn by a customer at any time. If, at that particular point (*i.e.*, the point of measurement), the customer's drawn power is exceeding the maximum load amps ordered, but such excess is under ten percent of the ordered power (*i.e.*, ten percent more than ordered), the customer will be required to take immediate steps to reduce power or pay a new rate of 110% of what had originally been ordered (*i.e.*, a ten percent increase). On the other hand, if at the point in time of measurement the customer is exceeding the ordered capacity ten percent or more, Verizon will charge the customer the full fused capacity of the power for six months—a rate 2.5 times higher than the rate for the ordered amp load. This penalty has no relationship to either

Verizon's costs or to Verizon's reasonable operations. It is punitive and unjust and unreasonable under section 202(b) of the Communications Act.

B. Qwest's Stake in the Proposed Revisions and Its Position in the Industry

Qwest is one of the nation's largest providers of telecommunications and data services with over \$50 billion in revenues. Qwest's CLEC entity, Qwest Communications Corporation, has 37 existing collocation sites in New York and 472 such sites throughout the country. Last year Qwest paid Verizon over \$5 million in recurring power charges for collocation.

As set forth below, Qwest urges the Commission to declare the proposed practices of Verizon at issue invalid and reject or suspend the tariffs pending further investigation.

II. DISCUSSION

**Verizon's Proposed Penalties and Inspections Regime Is Unwarranted –
Tariff F.C.C. No. 1, §§ 19.3.9(A)(1); (C)(2); (C)(3)(a)-(e) and Tariff F.C.C.
No. 11, §§ 28.2.1(C)(1); (E)(2); (E)(3)(a)-(e).**

In return for charging the collocators only for the peak estimated load of the equipment, Verizon seeks the right to audit CLECs and impose substantial penalties if they exceed by only 10% the estimated peak load. As submitted, these provisions provide no margin for the practical problem of power spikes and no opportunity to contest an audit or cure the alleged violation in a reasonable time frame.

The relevant sections of Tariff F.C.C. No. 1, section 19.3.9(C) (which are identical to the corresponding sections of Tariff F.C.C. No. 11, section 28.2.2(E)) provide:

The Telephone Company reserves the right to perform random inspections to verify the actual power load being drawn by an Expanded Interconnection arrangement. At any time, without written notice, the Telephone Company may measure the DC power drawn at an arrangement by monitoring the power distribution point.

(1) If the inspection reveals that the power being drawn does not exceed the total number of load amps ordered, no further action will apply.

(2) If the inspection reveals that the power being drawn is greater than 100% and up to 110% of the total number of lead amps ordered, the Telephone Company will provide the customer with written notification by certified U.S. Mail to the person designated by the customer to receive such notice that more power is being drawn than was ordered. Within five (5) business days of the date of notification, the customer Must reduce the power being drawn to match its ordered load or revise its power requirement to accommodate the additional power being drawn. Failure to reduce the power being drawn or submit a revised application within the five (5) business days will result in an increase in the amount of power being billed to 110% of the power ordered in the application an file.

(3) If the inspection reveals that the power being drawn is greater than 110% of the total number of load amps ordered, that arrangement is subject to the following treatment.

(a) The Telephone Company will provide the customer with written notification by certified U.S. Mail to the person designated by the customer to receive such notice that it has exceeded its ordered power.

(b) Additional Labor charges, as set forth in Section 31.13.2 following, apply for the cost associated with performing this inspection.

(c) The Telephone Company will bill the customer for the full fused capacity for each of the next six (6) bill periods following the inspection.

(d) After six (6) months of full fused capacity billing, and upon receipt of an application to revise the power required at that arrangement, the Telephone Company will adjust the billing to reflect the customer's revised power requirement. In the event that a revised application is not submitted, billing at full fused capacity will continue until a revised application is received.

(e) Within fifteen (15) business days of the date of notification, the customer must submit a non-scheduled attestation of the power being drawn at each of its remaining Expanded Interconnection arrangements. Failure to submit this non scheduled attestation will result in the application of Additional Labor charges as set forth in Section 31.13.2 following for any subsequent DC power inspections the Telephone Company performs prior to

receipt of the next scheduled attestation. Scheduled attestations are described in (F) following.

Pursuant to these sections, Verizon proposes have the right to inspect a CLEC's collocation sites at will and impose fines equal to several thousands of dollars, if the site exceeds the predicted maximum power usage on only one occasion by as little as ten percent. These revisions are unwarranted and should be suspended pending the Commission's investigation into the justification for and propriety of the proposed inspections and penalties regime.

Due to power spikes it is entirely conceivable that a collocation site will, on occasion, exceed the predicted maximum of power. Indeed, for this reason it is standard industry practice to fuse power cables for collocated equipment at between 125% and 150% of predicted peak load. Moreover, because the vast majority of the time equipment draws well below the peak power ordered, any minor and unsustained power spikes average out over time across a CLEC's equipment as well as across the entire collocation site. In short, absent sustained usage that exceeds peak ordered power, there is no reason to allow Verizon, or any ILEC, to impose fines or even additional power charges. Instead, upon receipt of evidence of excessive power usage, Verizon should be required to inform the collocater of the issue and seek an explanation. The collocater, on the other hand, should be allowed a reasonable time to conduct its own investigation and, if over usage is confirmed, to provide an explanation for or cure the overage, either by amending its application to account for the increased usage or by bringing the equipment into compliance.

Where the collocater exceeds the anticipated load by a significant margin such as 30% Verizon should notify the CLEC that an augment is needed. Even then, however, the collocater should have the right to contest the measurement and argue that it was an isolated, unanticipated occurrence. Indeed, considering Verizon's engineering involvement with the approval of a CLEC's collocation application, which includes issues relating to power, only after repeated

spikes, actually caused by the addition of unauthorized equipment, should Verizon have any right to require augmentation.

In addition, where imposed, Verizon's proposed fines are clearly excessive. For example, Verizon's penalties would amount to six months of charges at the full fused level of both feeds, or 300% of the predicted peak load normally charged. At the rates proposed for most Verizon states this penalty would amount to approximately \$10,000.00 for a site where the collocater had reasonably requested and Verizon engineering approved a load of 40 amps. Thus, a 5 amp overage for ten seconds could result in a \$10,000.00 penalty. This not only incents Verizon to create faulty audits to collect enormous penalties, it disincent Verizon from conducting appropriate engineering reviews of CLEC collocation applications, and inevitably will entangle CLECs in drawn-out disputes and administrative burdens, all to the detriment of an efficient, competitive, open telecommunications market.

III. CONCLUSION

For the foregoing reasons, the Commission should reject or suspend the foregoing sections of Verizon's Tariff F.C.C. Nos. 1 and 11 included in Transmittal No. 1373 as set forth above because they violate section 201(b) of the Communications Act.

Respectfully submitted,

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*Attorneys for Qwest Communications International,
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Dated: April 18, 2001

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Joint Petition for Suspension or Rejection of Revisions to Verizon Communications Tariff F.C.C. Nos. 1 and 11** was served by facsimile and first-class mail on the 18th day of April, 2001, and that the foregoing **Motion for Late-Filed Petition** was served by facsimile and first-class mail on the 19th day of April, 2001 on the following:

Kenneth W. Rust
Director, Government Relations – FCC
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and that the foregoing **Joint Petition for Suspension or Rejection of Revisions to Verizon Communications Tariff F.C.C. Nos. 1 and 11** together with the foregoing **Motion for Late-Filed Petition** was served upon the following electronically on the 19th day of April, 2001:

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