

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

In the Matter of:)	
)	
Verizon Telephone Companies)	Transmittal No. 179
Tariff F.C.C. Nos. 1, 11, 14)	
)	

**WORLDCOM PETITION TO REJECT OR,
IN THE ALTERNATIVE, SUSPEND AND INVESTIGATE**

I. Introduction

WorldCom, Inc. (WorldCom), pursuant to Section 1.773 of the Commission's Rules, hereby petitions the Commission to reject or, in the alternative, suspend and investigate the above-captioned transmittal filed by the Verizon Telephone Companies (Verizon) on April 16, 2002.¹

¹ Rejection of a proposed tariff or proposed changes to an existing tariff is warranted when the proposal is prima facie unlawful in that it can be demonstrated that it conflicts with the Communications Act or a Commission, rule, regulation or order. See, e.g., American Broadcasting Companies, Inc. v. FCC, 633 F.2d 133, 138 (D.C.Cir. 1980); Associated Press v. FCC, 448 F.2d 1095, 1103 (D.C.Cir. 1971); MCI v. AT&T, 94 FCC 2d 332, 340-41 (1983); AT&T, 67 FCC 2d 1134, 1158 (1978), recon. denied, 70 FCC 2d 2031 (1979).

Suspension and investigation of a proposed tariff or tariff modification is warranted when significant questions of unlawfulness arise in connection with the tariff. See AT&T Transmittal No. 148, Memorandum Opinion and Order, FCC 84-421 (released Sept. 19, 1984); ITT, 73 FCC 2d 709, 719 (1979); AT&T, 46 FCC 2d 81,86 (1974); see also Arrow Transportation Company v. Southern Railway Company, 372 U.S. 658 (1963).

In Transmittal No. 179, Verizon proposes to amend those sections of its interstate access tariffs that list Metropolitan Statistical Areas (MSAs) subject to Phase II pricing flexibility. In Verizon Tariff Nos. 1 and 11 (the former Bell Atlantic access tariffs), Transmittal No. 179 adds four MSAs to the list of MSAs with Phase II pricing flexibility for at least entrance facilities and interoffice transport: Boston, MA; Stamford, CT; Sharon, PA; and Worcester, MA. Transmittal No. 179 also extends Phase II pricing flexibility to channel terminations in seven MSAs where Verizon previously enjoyed Phase II pricing flexibility only for entrance facilities and interoffice transport: Pittsburgh, PA; Scranton, PA; Harrisburg, PA; Lancaster, PA; Huntington, KY; State College, PA; and Binghamton, NY.

By amending the pricing flexibility status of the 11 Verizon Tariff FCC Nos. 1 and 11 MSAs, Transmittal No. 179 would automatically change the rates for many services provided in those MSAs. Pursuant to Verizon Tariff Nos. 1 and 11, once an MSA has been reclassified as a “Phase II” MSA, services in that MSA immediately become subject to special “Phase II” rates that Verizon has previously listed in its tariff.² Those Phase II rates are shown in Verizon Tariff Nos. 1 and 11 as “price band” 4, 5 or 6 rates, to distinguish them from the “rate zone” 1, 2, or 3 rates that apply to services that are still under price caps.³ For example, if Transmittal No. 179 were permitted to go into effect, interoffice transport services in the Boston MSA currently subject to “zone 2” rates would instead be subject to the “price band 5” rates previously filed in Tariff FCC No. 11.

² See, e.g., Verizon Tariff FCC No. 11, Section 15.3(A)(1)-(2).

³ Id.

While Verizon characterizes Transmittal No. 179 as a simple amendment of the list of Phase II MSAs, Transmittal No. 179 would, in fact, subject Verizon's customers to substantial rate increases for many services in the 11 Verizon Tariff Nos. 1 and 11 MSAs that are the subject of Transmittal No. 179. Almost without exception, the "price band" 4, 5, and 6 rates that would apply once those MSAs are designated as Phase II MSAs are much higher than the zone 1, 2, and 3 rates that currently apply.

Significantly, the higher rates that would apply if Transmittal No. 179 is permitted to take effect would apparently apply even to customers in existing term plans. Verizon's tariff makes no provision for "grandfathering" existing term plan customers.

For example, in the six Verizon Tariff FCC No. 1 MSAs where Phase II pricing flexibility is being extended to channel terminations, five-year term plan customers would see the price of channel terminations increase dramatically:

- Voice grade channel terminations in zone 2/price band 5 would increase from \$18.07/month to \$24.83/month, an increase of 37 percent.⁴
- DS-0 channel terminations in zone 2/price band 5 would increase from \$56.20/month to \$76.69/month, an increase of 38 percent.⁵
- DS-1 channel terminations in zone 2/price band 5 would increase from \$155.40/month to \$184.31/month, an increase of 19 percent.⁶

⁴ Tariff FCC No. 1, Section 7.5.3(A)(1).

⁵ Tariff FCC No. 1, Section 7.5.16(C), pages 7-277, 7-277.2.

⁶ Tariff FCC No. 1, Section 7.5.16(C), page 7-278.

- DS-3 channel terminations in zone 2/price band 5 would increase by 9 percent.⁷

Similarly, in those MSAs where Phase II pricing flexibility is being extended to entrance facilities and interoffice transport, five-year term plan customers of Verizon's Facilities Management Service (FMS) would see dramatic increases in the multiplexing and FMS administration fee rate elements:

- Five-year term plan DS3/DS1 multiplexing rates would increase from \$0.66 per DS0 equivalent channel to \$2.00 per DS0 equivalent channel, an increase of 203 percent.⁸
- The FMS administration fee would increase from \$0.28 per DS0 equivalent channel to \$0.55 per DS0 equivalent channel, an increase of 96 percent.⁹

The Commission should reject or, in the alternative, suspend and investigate Transmittal No. 179 because Verizon's proposal to impose rate increases on term plan customers in mid-term fails to meet the Commission's "substantial cause for change" test.

II. Transmittal No. 179 Does Not Meet the Substantial Cause for Change Test

The grant of Phase II pricing flexibility does not in any way preclude the Commission from exercising its suspension powers under Section 204(a) of the Act.

⁷ Tariff FCC No. 1, Section 7.5.9(1)(a) ("base rate," "per DS3 at each secondary premises," would increase from \$2556.71 to \$2779.04, an increase of 9 percent)

⁸ Compare Verizon Tariff FCC No. 11, Sections 30.7.18(B)(3), 31.7.18(B)(3).

⁹ Compare Verizon Tariff FCC No. 11, Sections 30.7.18(B)(4), 31.7.18(B)(4).

Indeed, the Commission has emphasized that (1) carriers that have received Phase II pricing flexibility remain dominant carriers, i.e., carriers with market power;¹⁰ and that (2) to prevent carriers from exercising that market power, the Commission will continue to review and, if necessary, suspend and investigate the tariff filings of Phase II ILECs.¹¹

Moreover, consistent with the Commission's recognition of continuing ILEC market power, the Pricing Flexibility Order did not accord Phase II tariff filings the presumption of lawfulness. Under the Commission's rules, the only dominant carrier tariff filings that enjoy the presumption of lawfulness are below-cap filings for services under price cap regulation.¹² Once ILEC services have been removed from price cap regulation through the grant of Phase II pricing flexibility, tariff filings related to those services are no longer considered *prima facie* lawful under any circumstances.

At a minimum, the Commission should reject or, in the alternative, suspend and investigate Verizon Transmittal No. 179 because Verizon has failed to demonstrate the required "substantial cause" for material changes to existing term plans. As the Commission recognized in the RCA Americom Decisions,¹³ customers have "legitimate

¹⁰ Access Charge Reform, Fifth Report and Order and Further Notice of Proposed Rulemaking, released August 27, 1999, at ¶ 151 ("Phase II relief is not tantamount to non-dominant treatment.")

¹¹ Brief of Federal Communications Commission at 27 n.24, MCI WorldCom v. FCC, No. 99-1395 (D.C. Cir.).

¹² 47 C.F.R. §1.773(b)(iv)

¹³ RCA American Communications, Inc., Memorandum Opinion and Order, 86 FCC 2d 1197 (1981) (RCA Americom 1981 Order); RCA American Communications, Inc., Memorandum Opinion and Order, 94 FCC 2d 1338 (RCA Americom 1983 Order); RCA American Communications, Inc., Memorandum Opinion and Order, 2 FCC Rcd 2363

expectations . . . for stability in term arrangements.”¹⁴ Contrary to that expectation, Transmittal No. 179 would impose dramatic rate increases on even those customers that have made a long-term commitment to Verizon’s services. For example, as discussed above, a customer that has made a five-year commitment to purchase a Zone 2 DS-1 channel termination from Verizon in the Pittsburgh MSA would see the price for that service jump from \$155.40 per month to \$184.31 per month, an increase of 19 percent.¹⁵

Pursuant to the RCA Americom Decisions, such extensive revisions of a dominant carrier’s long-term service tariff will be considered reasonable only if the carrier can demonstrate “substantial cause” for the revisions.¹⁶ The Commission found that, in order to “balance[] the carrier’s right to adjust its tariff . . . against the legitimate expectations of customers for stability in term arrangements,” the reasonableness of a proposal to revise material provisions in the middle of a term “must hinge to a great extent on the carrier’s explanation of the factors necessitating the desired changes at that particular time.”¹⁷ As the D.C. Circuit has explained, the “substantial cause for change” test requires carriers to show both that increased costs justify the increased rates and that customers, who may

(1987) (RCA Americom Final Order).

¹⁴ RCA Americom 1981 Order, 86 FCC 2d at 1201.

¹⁵ Verizon Tariff FCC No. 1, Section 7.5.16(C) (comparing Rate Zone 2 and Price Band 5 rates).

¹⁶ RCA Americom 1981 Order, 86 FCC 2d at 1201-1202

¹⁷ Id.

have relied on the original tariff, would not be unduly burdened by the higher rates.¹⁸

Nothing in the Pricing Flexibility Order affects the applicability of the substantial cause test. Regardless of the particular regulatory scheme, “the substantial cause for change test [is] a tool for defining the appropriate zone of reasonableness” under section 201(b) of the Act for changes to long-term service arrangements.¹⁹ In fact, the Commission has even applied the substantial cause for change test to nondominant carrier tariff filings.²⁰

In violation of the Commission’s “substantial cause for change” requirement, Verizon has presented absolutely no explanation for its proposal to impose dramatic rate increases on existing term plan customers in mid-term. Verizon’s failure to provide the required explanation is, by itself, sufficient to warrant rejection or suspension and investigation of Transmittal No. 179.²¹

In any event, Verizon has experienced no change in circumstances that could be used to meet the “substantial cause for change” test. In weighing customers’ legitimate expectation of stability against carriers’ business needs, the Commission has found carriers

¹⁸ Showtime Networks, Inc. et al. v. FCC, 932 F.2d 1, 3 (D.C. Cir. 1991).

¹⁹ Hi-Tech Furnace Systems, Inc. v. Sprint Communications Company, 14 FCC Rcd 8040, 8045-8046 ¶12 (1999) (citing RCA Americom 1983 Order, 86 FCC 2d 1338, 1340).

²⁰ Id. at ¶¶ 13-14 (“To date, the Commission has applied the substantial cause test to individually negotiated contract tariffs filed by both dominant and nondominant carriers.”)

²¹ See, e.g., AT&T Communications Transmittal Nos. 2404 and 2535, Order, 5 FCC Rcd 6777 (AT&T Transmittal No. 2404 Rejection Order); AT&T Communications Contract Tariff No. 374, Order, 10 FCC Rcd 7950 (1995); AT&T Communications Contract Tariff No. 360, Order, 11 FCC Rcd 3194 (1995).

to meet the requirements of the substantial cause for change test only when they could demonstrate unforeseeable increases in cost or in traffic volume.²² Verizon's special access services have not experienced any material changes in business circumstances, much less cost increases that would "constitute an injury to [Verizon] that outweigh[s] the existing customers' legitimate expectation of stability."²³ And, because Verizon cannot demonstrate such unforeseeable cost increases, there is no need to even consider the second prong of the substantial cause for change test.²⁴

In the absence of a substantial cause for change showing, the Commission should require Verizon to implement the Commission's grant of Phase II pricing flexibility in a manner that does not conflict with existing term plan customers' legitimate expectations of stability. Verizon could, for example, grandfather existing term plan customers at the rates in effect in non-Phase II MSAs.

²² RCA Americom Final Order, 2 FCC Rcd at 2367-2368; Hi-Tech Furnace Systems, Inc. and Robert Kornfeld v. Sprint Communications Company, Memorandum Opinion and Order, 14 FCC Rcd 8040, 8046-8047 (1999).

²³ 5 FCC Rcd at 6779 ¶ 21.

²⁴ Showtime v. FCC, 932 F.2d at 3 (carrier must "show both that increased costs justify the increased rates and that customers, who may have relied on the original tariff, would not be unduly burdened by the higher rates.") See also AT&T Transmittal 2404 Rejection Order, 5 FCC Rcd at 6779 (rejecting changes to term plan based solely on absence of cost justification).

III. Conclusion

For the reasons stated herein, the Commission should reject or, in the alternative, suspend and investigate Verizon Transmittal No. 179.

Respectfully submitted,
WORLDCOM, INC.

/s/

Alan Buzacott
1133 19th Street., NW
Washington, D.C. 20036
(202) 887-3204
FAX: (202) 736-6492

April 23, 2002

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on April 23, 2002.

/s/ Alan Buzacott

Alan Buzacott
1133 19th Street., NW
Washington, D.C. 20036
(202) 887-3204

CERTIFICATE OF SERVICE

I, Alan Buzacott, do hereby certify that copies of the foregoing Petition to Reject or, in the Alternative, Suspend and Investigate, were sent via first class mail, postage paid, and by facsimile*, to the following on this 23rd day of April, 2002.

Tamara Preiss**
Chief, Competitive Pricing Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Judy Nitsche**
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Qualex International**
c/o FCC
445 12th Street, SW
Room CY-B402
Washington, DC 20554

Richard T. Ellis*
Director, Federal Affairs
Verizon
1300 I Street, NW
Suite 400 West
Washington, DC 20005
FAX: (202) 336-7922

Hand Delivered**

Alan Buzacott