

In the Matter of _____)
 Revisions by the Verizon _____)
 Telephone Companies to Tariffs _____)
 F.C.C. Nos. 1 and 11, _____)
 Transmittal No. 232 _____)

Covad Communications, by its counsel and pursuant to 47 C.F.R. § 1.773, hereby petitions the Federal Communications Commission (the “Commission”) to reject, or alternatively, to suspend and investigate the following: (1) the revisions to Section 16.9 of Tariff F.C.C. No. 1 filed by the Verizon Telephone Companies (“Verizon”) in Transmittal No. 232 on August 9, 2002, with an effective date of August 24, 2002; and (2) the revisions to Section 17.4 and Section 31.17.4 of Tariff F.C.C. No. 11 filed by Verizon in Transmittal No. 232 on August 9, 2002, with an effective date of August 24, 2002. Collectively, these tariff revisions will be referred to herein as the “PARTS tariff.”¹

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elements (UNEs). Covad believes that Verizon's PARTS tariff represents a direct assault on the Commission's ongoing consideration in multiple rulemaking proceedings of issues vitally important to Covad's continued ability to obtain UNEs to provide broadband services to its customers. In addition, if the Commission were to allow Verizon's PARTS tariff to go into effect, there exists the possibility that Verizon's PARTS tariff could become the only practicable means by which Covad could provide service to customers accessible through PARTS network facilities. In fact, because to date Covad has been unable to serve customers from remote terminals, a tariffed PARTS service offering could be the only means for Covad to begin serving this market on an interim basis. Thus, Covad is also a potential customer under these tariffs. For all of these reasons, Covad has a direct stake in the filing of Verizon's PARTS tariff.

In effect, Verizon's PARTS tariff constitutes an "end-around" the Commission's deliberations in the *Triennial Review NPRM*, *Broadband NPRM*, and the *Dominance/Non-Dominance NPRM* proceedings.² Covad has been an active participant in all of these proceedings, urging the Commission to reaffirm Covad's continued right to obtain unbundled local loops and transport to serve its customers. As Covad set out in great detail in its comments and reply comments in the *Triennial Review* proceeding, the Commission's loop unbundling rules apply fully to all loop facilities, including attached electronics.³ As a result, loops that pass through next-generation digital loop carrier

² *In re Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 16 FCC Rcd. 22781 (2001) (*Triennial Review NPRM*); *In re Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 17 FCC Rcd. 3019 (2002) (*Broadband NPRM*); *In re Review of Regulatory Requirements for Incumbent LEC Broadband Services*, 16 FCC Rcd. 22745 (2001) (*Dominance/Non-Dominance NPRM*).

³ See *UNE Remand Order* FCC 99-238, at ¶ 175 ("the loop includes attached electronics, including multiplexing equipment used to derive the loop transmission capacity").

systems (NGDLC) fall within the ILEC obligation to provide UNEs under section 251(c)(3). As the Commission has repeatedly held, the loop is a transmission medium that runs “between an incumbent LEC’s central office and the loop demarcation point at the customer premises” – the loop is still a loop whether it is made out of copper or fiber, and whether or not it passes through a digital loop carrier or other remote concentration device.⁴

Verizon’s PARTS tariff represents a direct assault on the Commission’s existing UNE rules that require access to NGDLC under 251(c)(3),⁵ by attempting to transform such access into an interstate telecommunications service. Moreover, Verizon’s tariff filing attempts to bind the Commission’s consideration of loop unbundling issues in the pending Triennial Review proceeding. In short, Verizon’s PARTS tariff attempts to take loop network facilities out of the purview of ILEC unbundling and TELRIC pricing obligations under sections 251(c)(3) and 252(d)(1) of the Act,⁶ and drop them into the Commission’s legacy regulatory framework for interstate access services. If Congress had really intended, however, that new network architectures would be regulated in the same manner as interstate switched access, it hardly needed to pass into law the Telecommunications Act of 1996.⁷

⁴ *Id.* at ¶ 167.

⁵ *Id.* at ¶ 175 (“Some loops, such as integrated digital loop carrier (IDLC), are equipped with multiplexing devices, without which they cannot be used to provide service to end users. Because excluding such equipment from the definition of the loop would limit the functionality of the loop, we include the attached electronics . . .”).

⁶ *See* 47 U.S.C. §§ 251(c)(3), 252(d)(1).

⁷ In fact, as the D.C. Circuit U.S. Court of Appeals recently held, Congress’ intent was that legacy, tariffed interstate services would be migrated into the new regulatory framework established by the 1996 Act, specifically citing sections 251 and 252. *See WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002); *see also* 47 U.S.C. § 251(g).

In addition to these obvious procedural defects in Verizon's filing, Verizon's PARTS tariff contains substantive defects that severely constrict the manner in which Covad and other Verizon customers would access this new network technology, and thus renders the tariff an unlawful substitute for UNE access to NGDLC-delivered loops. Verizon's tariff restricts Covad's ability to access PARTS facilities in any technically feasible manner, the broad standard under which Covad would access PARTS as a UNE.⁸ Instead, Covad is limited to accessing PARTS via one of two choices, both of which require Covad to be collocated at the end user's serving wire center: (1) permanent virtual circuit ("PVC") channels established over a dedicated DS3 connection; or (2) PVC channels established over a dedicated OC3 connection. The PARTS tariff restricts Covad's ability to access PARTS facilities to locations where Covad is either physically or virtually collocated, impinging upon Covad's right to access UNEs in any technically feasible manner, including but not limited to collocation.⁹

Furthermore, Verizon's PARTS tariff attempts to decide for the Commission the very questions about NGDLC access posed by the Commission in its *Triennial Review* proceeding, namely the types of bandwidth and the amount of upstream and downstream bandwidth that should be made available over NGDLC facilities. Verizon's tariffed offering would limit Covad to unspecified bitrate (UBR) services available in only four speed configurations:

⁸ See 47 U.S.C. § 251(c)(3); 47 C.F.R. §§ 51.307, 51.321.

⁹ See 47 C.F.R. § 51.321(b). Indeed, the Wireline Competition Bureau recently reaffirmed the long-standing rule that a competitor's options for accessing UNEs are not limited to collocation. See *In the Matter of Petitions of Cox Virginia Telcom, Inc., WorldCom, Inc., and AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration*, Memorandum Opinion and Order, DA 02-1731, para. 217 (rel. Jul. 17 2002).

1. A maximum downstream data rate of 768 Kbps, with a maximum upstream data rate of 128 Kbps;
2. A maximum downstream data rate of 1.5 Mbps, with a maximum upstream data rate of 128 Kbps;
3. A maximum downstream data rate of 1.5 Mbps, with a maximum upstream data rate of 384 Kbps; and
4. A maximum downstream data rate of 384 Kbps, with a maximum upstream data rate of 384 Kbps.

Verizon's rather brief and narrow menu of choices for its competitors severely restricts Covad's ability to use unbundled PARTS facilities to provide innovative service offerings and to target customers in niche broadband markets, as Covad has historically done. For example, Verizon's tariffed options would prevent Covad from offering a combined voice and data product over DSL, for which Covad would require two PVCs per customer with delay guarantees on the voice channel. Covad would require Verizon to offer a constant bitrate (CBR) PVC for such a product. Verizon's PARTS tariff, however, appears to be limited to the services Verizon would offer at retail, not the services competitors could offer over PARTS facilities. Because Verizon's tariff is a "take it or leave it" offering, Covad would have no ability to obtain different technical parameters or points of interconnection that would permit Covad the access to NGDLC-delivered loops required by the Act and the Commission's rules. Moreover, Verizon's attempt to offer PARTS loops solely through its interstate tariff would hinder negotiation of interconnection agreement contract provisions that provide access to such loops.

For the reasons already given, Verizon's tariff must not be allowed to go into effect. Furthermore, the Commission must investigate, as part of its inquiry into this tariff filing, why Verizon failed to provide timely notice in compliance with the Commission's rules to Covad and other carriers of the network changes set out in its tariff. Verizon's PARTS tariff violates Verizon's obligations to provide notice of network changes to affected carriers, under section 251(c)(5) of the Act and the Commission's implementing rules in 47 C.F.R. 51.325 *et seq.*¹⁰ Verizon has provided competitors with insufficient notice of its new network architecture prior to filing its PARTS tariff – indeed, to date, Verizon has provided hardly any substantive detail at all about this new network architecture. Covad further believes that Verizon's tariff, in its current form, still fails to provide sufficient information to competitors and potential customers about the manner in which they may make use of Verizon's PARTS architecture. Verizon's tariff fails to provide sufficient information for Covad to make operationally ready its own OSS, provisioning processes, retail processes and marketing for its services employing this new network architecture. Verizon fails to provide competitors with detailed information about pre-ordering, ordering, provisioning, billing, or any other information pertinent to competitors being able to provision services using PARTS. Verizon, meanwhile, has been developing its back office systems and processes in conjunction with its rollout of the PARTS network architecture.

Because Verizon's tariff constitutes the first notice of any kind about the manner in which Verizon will allow competitors to access PARTS, the Commission must

¹⁰ Section 51.325(a) of the Commission's rules requires Verizon to "provide public notice regarding any network change that [w]ill affect a competing service provider's performance or ability to provide service." 47 C.F.R. § 51.325. Section 51.331 of the Commission's rules requires Verizon to provide such notice at

expressly bar Verizon from utilizing its PARTS facilities on a retail basis for at least the next 12 months, or until competing carriers have been given sufficient opportunity to upgrade their own networks to access the PARTS-enabled loops on an unbundled basis, should they choose to do so. Verizon's PARTS tariff may not be allowed in any event to go into effect for at least the next 12 months.¹¹ Verizon's last minute, unannounced tariff filing accomplishes exactly the anti-competitive goal that the Commission's rules seek to prevent: Verizon now has a one year head start over its competitors in utilizing upgraded loops in its network, and competitors are left to scramble in an effort to catch up. The tariff inquiry that the Commission must open should examine this issue, and the matter should also be referred to the Commission's Enforcement Bureau for investigation.

Even if the Commission were ultimately to allow Verizon's tariff to go into effect, the 15 day notice period provided for Verizon's PARTS tariff is woefully insufficient to allow Verizon's competitors and potential customers to review the cost support submitted by Verizon. Verizon's PARTS service is a completely novel offering, which has never before been reviewed by competitors, potential customers, or this Commission. Thus, 15 days is far too short a time period for interested parties to review the cost materials underlying Verizon's rates for this first-time offering. Therefore, even if the Commission ultimately decides to allow Verizon's tariff to go into effect, the Commission should at least suspend Verizon's PARTS tariff for 5 months and set it for investigation. Parties should be given ample opportunity to demonstrate to the Commission that the PARTS

the "make/buy" decision point, and in the normal course no less than one year prior to deployment of the network change. 47 C.F.R. § 51.331

¹¹ See 47 C.F.R. § 51.331.

tariff is in fact an end-run around the Commission's TELRIC pricing rules, and that Verizon's cost support underlying its tariff filing is inadequate.

In fact, the PARTS rates submitted by Verizon seem on their face highly inflated. For example, in Maryland, the price Covad pays to obtain access to the unbundled high-frequency portion of the loop (HFPL, or a line shared loop) is roughly \$0.71 on a monthly recurring basis.¹² In establishing line sharing rates, the Maryland Public Service Commission assumed a copper-fiber network, similar to the network architecture on which Verizon's PARTS tariff is based. Under Verizon's tariff, however, Covad estimates that it would pay a recurring rate of approximately \$25 for the NGDLC loop.¹³ Verizon's tariff also requires non-recurring charges for the ATM port (\$880) and the PVC (\$260), a total of \$1140. In addition, Verizon requires the payment of cross-connect charges specified in the relevant interstate access tariff – in the case of Verizon's FCC-1, that amounts to a \$341.31 non-recurring charge for one DS3. These non-recurring charges total to \$1481.31, compared to the roughly \$77.23 Covad currently pays in non-recurring charges for a line shared loop in Maryland.¹⁴ Given the excessive rates Verizon seeks to charge for its PARTS offering, the PARTS tariff constitutes a very real possibility of a price squeeze against competitors.

¹² This price reflects the costs Covad pays, for example, for OSS, to obtain the HFPL, for cross-connects, and for a splitter.

¹³ Covad calculated this rate as follows. Covad would pay a recurring rate of \$21 for a 768kbps/128kbps PVC channel (a similar bitrate to both Covad's and Verizon's consumer line shared services), plus some portion of the recurring rate for an ATM port, in the case of the lower-priced DS3 port \$150. Covad estimates that the per-customer portion of this recurring port charge would amount to approximately \$3. In addition, Verizon requires the payment of cross-connect charges specified in the relevant interstate access tariff – in the case of Verizon's FCC-1, that amounts to \$41.54 per month. Covad estimates that the per-customer portion of this recurring charge would amount to slightly under \$1.

¹⁴ Indeed, Verizon fails to explain why the non-recurring charges in its PARTS tariff are so outrageously inflated compared to TELRIC rates, given that non-recurring charges do not include capital costs.

The Commission should take note of SBC's proposed rates for its similar NGDLC-type offering to competitors.¹⁵ Although these SBC-proposed rates have neither been litigated before nor approved by any relevant regulatory commission, SBC's own proposed rates are remarkably lower than the Verizon PARTS rates. For example, under SBC's rates, the monthly recurring rates for line-shared loops over NGDLC are typically in the \$10 range, while the rates for ATM port terminations and cross-connects are typically a fraction of Verizon's proposed rates.¹⁶ In light of SBC's dramatically lower proposed rates for a similar service offering, Verizon's proposed rates in the PARTS tariffed are almost certainly anti-competitive, and must not be allowed to go into effect.

¹⁵ For a listing of SBC's proposed rates, *see* SBC's "Broadband Service Stand-Alone Generic Pricing Appendix," available at: https://clec.sbc.com/clec/1_common_docs/interconnection/multi/standalone/Services/Broadband%20Service%20Stand-Alone%20Pricing%20Appendix.doc.

¹⁶ Covad believes that SBC's rates may also be excessive. Nonetheless, because these proposed rates are so much lower than Verizon's proposed rates, Covad believes that SBC's proposed rates serve as an indication of the severely anti-competitive effect of the PARTS rates.

Conclusion

In conclusion, Verizon has failed to provide adequate justification as to why its proposed tariff revisions are just and reasonable and do not discriminate unreasonably against Verizon's carrier customers. Accordingly, Covad urges the Commission to conclude that the PARTS tariff is facially unlawful in violation of Sections 201(b) and 202(a) of the Act, or in the alternative, to suspend and set for investigation Verizon's proposed revisions so that their lawfulness and anti-competitive effect can be evaluated more thoroughly.

Respectfully submitted,

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