Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Verizon Telephone Companies	)	**Transmittal No. 232**
Tariff FCC Nos. 1 & 11	)	
	)	

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

I. Introduction and Summary

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 August 9, 2002.[1]

Verizon's proposed PARTS offering is nothing more than regulatory gamesmanship. It is a blatant attempt to make an end-run around the FCC's Triennial Review proceeding, where the question of competitive access to fiber-fed loops is being addressed. Rather than provide competitors with unbundled access to such facilities, as is required by Section 251 of the Act, Verizon proposes to offer competitors only an

[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, 340-341 (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 lawfulness 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);

artificially crippled access "service" at inflated rates that are designed to preclude the development of broadband competition.

Today, competitors are limited to providing facilities-based DSL service out of central offices over all copper loops. As WorldCom has demonstrated in the Triennial Review docket, Verizon and the other three BOCs have made it practically impossible for a competitor to provide facilities-based high-speed data service over fiber-fed loops served by remote terminals.[2] WorldCom and others have demonstrated in that proceeding that the only option for competitors is unbundled access to the full, features and functionality of these "unified" loops. Now, after arguing that competitors should not have access to such loops in the Triennial because it deters investment and deployment in broadband facilities, Verizon is proposing to tariff a service offering over the very same facilities that competitors have argued they are impaired without. The Commission should not permit Verizon to tariff such an offering until competitors have unbundled access to the underlying facilities that are being used to support the service.

II. The Proposed Tariff Language is Vague and Ambiguous in Violation of Section 61.2 and 61.54(j) of the Commission's rules

The Commission should reject or in the alternative, suspend and investigate Verizon Transmittal No. 232 because the proposed tariff language is vague and ambiguous in violation of Sections 61.2 and 61.54(j) of the Commission's rules.[3]

First, it is not clear how Verizon intends to provide DSL service, either on a retail basis or on a wholesale basis to ISPs (including its affiliated ISP), at locations served by

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AT&T, 46 FCC 2d 81, 86 (1974); see also Arrow Transportation Company v. Southern Railway Company, 372 U.S. 658 (1963).

[2] Reply Comments of WorldCom, CC Docket No. 01-338, dated July 17, 2002 at pp. 116-121.

[3] 47 C.F.R. §§ 61.2, 61.54(j).

DSL-equipped remote terminals and serving wire centers. In other words, when Verizon sells its DSL service to unaffiliated ISPs and its affiliated ISP, does it make a distinction between the service it sells over all copper loops and the service it sells at locations served by DSL-equipped remote terminals and serving wire centers? Although not expressly defined, Verizon's PARTS service appears to be a wholesale offering to CLECs limited to locations served by DSL-equipped remote terminals and serving wire centers. The CLECs who purchase the PARTS service would in turn sell the service to end-users or ISPs. In contrast, it appears that Verizon would sell ISPs wholesale DSL services from its Tariff FCC No. 20, not PARTS, even for end users served by remote terminals. However, the prices for Verizon's wholesale DSL service to ISPs included in Verizon Tariff FCC No. 20 are not the same as the prices competitors are expected to pay for PARTS in this tariff. In fact, the nonrecurring charges that competitors are forced to pay for PARTS far exceed the charges in Verizon's Tariff 20 (see section IV, below).

Second, Transmittal No. 232 fails to adequately define the three service configurations and associated charges:

- Service Configuration 1: Verizon describes this configuration as Verizon provided voice service and CLEC provided data service. This appears to be a line-sharing scenario where competitive data service is being provided over a portion of the Verizon voice loop. The tariff states that there is no express rate for the "PARTS Line" (a term that is not defined in the tariff), but that "appropriate end user Local Exchange Access Line Monthly Rates and Nonrecurring Charges apply per the Local Exchange Tariff."[4] That language is unclear in two respects. First, it is not clear whether the "local exchange" charge would be assessed on the PARTS "customer" or on the end user. Second, it is not clear what local exchange rates and charges would be assessed in that situation. Because a simple cross-reference to Verizon's local exchange tariff violates Section 61.74(a) of the Commission's rules, Verizon should be required to specify what rates and charges would be assessed under Configuration 1.

[4] Section 16.9.5 C.

- Service Configuration 2: The tariff describes this configuration as CLEC-provided voice and data service, which is provisioned by Verizon to the CLEC via a voice and data handoff at the CLEC's collocation arrangement. In this instance, the CLEC is providing both the voice and data service to the end user. The tariff does not explain the type of voice service that the CLEC may provide (e.g. UNE-P, unbundled loop, resale). Rather, it merely states that: "Appropriate Voice Grade UNE Monthly Rates and Nonrecurring Charges apply per the local state tariff or Interconnection Agreement."[5] It is not clear what UNE rates and charges would apply in this scenario and whether Verizon is proposing to assess UNE rates on top of the existing service offering, which may or may not include the cost of the underlying facility over which the service is being provided.

- Service Configuration 3: Verizon describes this configuration as a data handoff at the CLEC's collocation arrangement. Unlike Service Configurations 1 & 2, Verizon attempts to impose a monthly charge of $32.[6] Verizon neither defines nor explains this $32 charge, which WorldCom assumes is the rate for the copper subloop between the remote terminal and customer premise.

Third, proposed Section 16.9.1(A)'s final sentence, which states that "[t]his does not include collocation of an affiliated Information Service Provider" is unclear:

- The term "affiliated Information Service Provider" is not defined. It is not clear if that term is meant to refer to an Information Service Provider "affiliated" with Verizon, or if that term is meant to refer to an Information Service Provider "affiliated" with a customer generally.

- The phrase "[t]his does not include" is vague and ambiguous. It is not clear what "this" refers to, i.e., precisely what is not being "include[d]." That language could interpreted as waiving the collocation requirement for affiliated ISPs. Or it could be interpreted as prohibiting affiliated ISPs from ordering PARTS even if they are collocated.

III. Restrictions on the Availability of PARTS Are Unlawful

In the proposed PARTS tariff, Verizon limits access to PARTS to only those customers that collocate in the serving wire center, either pursuant to Verizon's federal tariff, state tariff, or interconnection agreements. The requirement that customers

[5] Section 16.9.5 C.

collocate in order to obtain access to PARTS is unjust and unreasonable in violation of Section 201(b) of the Act and unreasonably discriminatory in violation of Section 202(a) of the Act.

While customers have the right to collocate in Verizon's end offices in order to obtain access to PARTS, there is no basis, technical or otherwise, for Verizon to require that the customer collocate in order to obtain access to PARTS. As Verizon explains in Section 16.9.1(B) of the proposed tariff, PARTS simply delivers a stream of ATM cells at a DS-3 or OC-3 interface at the end office. Instead of requiring that the DS-3 or OC-3 interface be cross-connected to a customer's collocation arrangement, Verizon could just as easily permit the DS-3 or OC-3 interface to be connected directly to Verizon interoffice transport or Verizon ATM access services. The PARTS customer could then use Verizon interoffice transport to backhaul ATM cells from several Verizon end offices to a centralized point of presence. Indeed, Verizon's tariff appears to contemplate that its "affiliated Information Service Provider" will backhaul the stream of ATM cells from Verizon's end offices without collocating any equipment in Verizon's end office.

Given that there is no technical basis for the requirement that a customer collocate, it is clear that the collocation requirement is intended only to impose unnecessary costs on customers who, in most cases, would also be Verizon's competitors. Verizon has embarked on an ambitious program to upgrade thousands of end offices to serve customers through remote terminals. If a competitor had to incur the cost of collocating in all of those end offices in order to obtain access to customers served by remote terminals, the cost barrier would be insurmountable.

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[6] Section 16.9.5 C.

The Commission has consistently rejected "direct or indirect"[7] restrictions on the availability of an interstate access service as unjust and unreasonable in violation of Section 201(a) of the Act, particularly when those restrictions are designed to limit competition. As the Commission has explained, "[t]he LECs are required, because of their obligations as common carriers and because of the provisions of the Commission's access rules, to provide access service free of LEC-initiated restrictions." [8] The Commission's intent has always been to "allow the [customer] to utilize the network in ways which meet the needs of their customers and thereby to encourage a more efficient use of the network."[9] For that reason, the Commission has rejected as unlawful LEC-proposed requirements that would have restricted a customer's use of services to specified purposes[10] or would have restricted the availability of access services to particular types of customers.[11] Because Verizon's proposal to restrict the availability of PARTS to collocated customers represents a similarly unlawful restriction, the Commission should reject or, in the alternative, suspend and investigate Verizon Transmittal No. 232.

The Commission should also reject or, in the alternative, suspend and investigate Verizon Transmittal No. 232 as unreasonably discriminatory in violation of Section 202 of the Act if, as appears to be the case, the collocation restriction applies to unaffiliated customers but not to Information Service Providers affiliated with Verizon. The

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[7] Midyear 1986 Access Tariff Filings, Memorandum Opinion and Order, 1 FCC Rcd 1247, 1250 ¶ 22 (1986 Midyear Order).
[8] Pay Telephone Presubscription, Order, 4 FCC Rcd 2782, 2789-2790.
[9] 1986 Midyear Order at ¶ 17.
[10] Id.
[11] Petition of First Data Resources, Inc. Regarding the Availability of Feature Group B Access Service to End Users, Memorandum Opinion and Order, released May 28, 1986.

Commission has consistently found that unnecessary restrictions on the availability of a service are unreasonably discriminatory in violation of Section 202(a) of the Act.[12]

IV. The Proposed Rates are Unreasonably High

Because CLECs would use PARTS to compete with Verizon's services, the Commission must ensure that Verizon "offer[s] these services at just and reasonable rates so as not to raise [its] rivals' costs."[13] The Commission should reject or, in the alternative, suspend and investigate Verizon Transmittal No. 232 because the proposed rates are unreasonably high and would therefore create an anticompetitive "price squeeze."

As an initial matter, the proposed nonrecurring charge of $220 per PVC is unreasonable because it is far higher than the $60 nonrecurring charge that Verizon assesses when selling DSL services through its Tariff FCC No. 20,[14] even though the task of establishing a PVC is the same or similar for both services. The much higher nonrecurring charge that Verizon is proposing for PARTS is clearly intended to facilitate an anticompetitive price squeeze.

Similarly anticompetitive are the monthly recurring charges for PARTS, which create a price squeeze because they are set only slightly below the level of the monthly recurring DSL rates in Verizon's Tariff FCC No. 20. Whereas the rate in Verizon's Tariff FCC No. 20 for a 768kbps/128kbps configuration can be as low as $29.95 per

[12] U S West Communications, Inc., Tariff FCC No. 1, Transmittal No. 487, Order, 9 FCC Rcd 7834 ¶ 14.
[13] Bell Atlantic Telephone Companies Revisions in Tariff FCC Nos. 1 and 11, Order Designating Issues for Investigation, CC Docket No. 01-140, released June 26, 2001 (DC Power Designation Order) at ¶ 5.
[14] Verizon Tariff FCC No. 20, Section 5.1.6(D)(1).

month,[15] and does not require the customer to incur collocation, transport, or "port" costs, Verizon's PARTS tariff would charge CLECs $21.00 per month for the PVC alone, plus collocation costs and $150 per month for a DS-3 port. Verizon creates this price squeeze by setting the proposed monthly recurring charges well in excess of its (already inflated) estimates of direct costs.[16]

Even if Verizon's proposed rates were not so obviously anticompetitive, the Commission would still have to reject or, in the alternative, suspend and investigate Verizon Transmittal No. 232 because Verizon's cost support is inadequate to justify the proposed charges. First, Verizon's nonrecurring charge cost "study" does little more than disaggregate the claimed cost into four components;[17] Verizon provides no information that would allow the Commission to determine how the "service order," "central office," "provisioning," and "field installation" costs were derived or would allow the Commission to verify the reasonableness of those component costs.

Similarly, Verizon's recurring charge cost study provides no information about how the unit investment costs were derived, and then applies a series of unsupported cost factors to those unit investment costs. As the Bureau observed in the context of an earlier Verizon tariff filing, cost study methodologies that rely on the application of a series of unsupported cost factors have a "significant potential . . . to yield inflated estimates of the actual monthly costs of providing" interstate access services.[18]

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[15] Verizon Tariff FCC No. 20, Section 5.1.6(C)
[16] Workpaper 1, compare lines 12 and 13.
[17] Workpaper 2.
[18] DC Power Designation Order at ¶ 16.

V. Restrictions on the Capabilities of PARTS are Anticompetitive

Verizon's PARTS service is configured in such a way so as to limit the type of broadband access available to end-users. According to the tariff, PARTS supports an unspecified bit rate quality of service[19] at four limited speeds[20] that are not guaranteed.[21] Like Verizon's retail DSL service, PARTS is not sufficient to meet the needs of many customers who demand guaranteed bandwidth and high speeds. For example, WorldCom could not purchase Verizon's PARTS service to serve business customers or ISPs.[22] The limitations associated with this offering prove what competitors continue to demonstrate in the three pending broadband dockets—monopoly providers lack the incentive to offer innovative services at competitive prices.[23]

Even worse, Verizon has artificially limited the capabilities of PARTS to preclude direct competition with the DSL offerings in Verizon Tariff FCC No. 20. Whereas Verizon offers six different upstream/downstream bandwidth combinations to ISPs in Tariff FCC No. 20,[24] the PARTS offering offers only four such combinations. In particular, PARTS does not allow CLECs to compete against the two most capable DSL offerings in Tariff FCC No. 20, the 7.1 Mbps/768kbps configuration and the 768kbps/768kbps offering. Because these artificial limitations on the PARTS capabilities offered to CLECs are anticompetitive, the Commission should reject or, in the alternative, suspend and investigate Verizon Transmittal No. 232.

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[19] Section 16.9.1 B.
[20] Section 16.9.1 D 1-4.
[21] Section 16.9.1 E.
[22] See Declaration of Ian Graham, Attachment C to WorldCom Comments, CC Docket No. 01-338, dated April 4, 2002, at ¶¶ 9-12.
[23] Comments of WorldCom, CC Docket No. 01-338, dated July 17, 2002.
[24] Verizon Tariff FCC No. 20, Section 5.1.1(B).

VI. Conclusion

For the reasons stated herein, the Commission should reject or, in the alternative, suspend and investigate Verizon Transmittal No. 232.

Respectfully submitted
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August 16, 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 August 16, 2002.

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CERTIFICATE OF SERVICE

I, Alan Buzacott, do hereby certify that copies of the foregoing Petition to Suspend and Investigate were sent via first class mail, postage paid, and by facsimile*, to the following on this 16th day of August, 2002.

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