

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

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In the Matter of)	
)	
Verizon Telephone Companies)	Transmittal No. 269
)	

PETITION OF AT&T CORP.

Pursuant to Section 1.773 of the Commission's rules, 47 C.F.R. § 1.773, AT&T Corp. ("AT&T") submits this petition requesting the Commission to reject or suspend and investigate for the full five-month period Verizon's Transmittal No. 269, filed December 10, 2002.¹

Verizon proposes to add new provisions to its interstate access tariffs pertaining to the jurisdictional determination of switched access traffic and a customer's reported percentage interstate usage ("PIU") factors. In particular, Verizon proposes to implement new procedures, whereby Verizon can, at Verizon's sole discretion, force its customers to file "sufficient information to substantiate reported PIU factors." D&J at 7. And, if Verizon is unsatisfied with the additional information provided by its customers, Verizon reserves the right to unilaterally impose an arbitrary default punitive PIU factor

¹ A tariff is subject to rejection when it is *prima facie* unlawful, in that it demonstrably conflicts with the Communications Act or a Commission rule, regulation or order. *See, e.g., American Broadcasting Companies, Inc. v. AT&T*, 663 F.2d 133, 138 (D.C. Cir. 1980); *MCI v. AT&T*, 94 F.C.C.2d 332, 340-41 (1983). Suspension and investigation are appropriate where a tariff raises substantial issues of lawfulness. *See AT&T (Transmittal No. 148)*, Memorandum Opinion and Order, 56 RR2d 1503 (1984); *ITT (Transmittal No. 2191)*, 73 F.C.C.2d 709, 716, n.5 (1979) (*citing AT&T (Wide Area Telecommunications Service)*, 46 F.C.C.2d 81, 86 (1974)).

of 50% on all “unknown” jurisdictional traffic. As demonstrated below, Verizon’s proposal to endow itself with virtually unbounded discretion to implement an arbitrary PIU factor of 50% is unjust and unreasonable in violation of Section 201(b) of the Communications Act, 47 U.S.C. § 201(b). That is doubly true here, where it is beyond legitimate debate that a 50% PIU is clearly punitive, given that it vastly understates the actual amount of interstate traffic.

BACKGROUND

The access rates that IXCs pay to Verizon depend on whether the access traffic is “interstate” or “intrastate” traffic. Historically, Verizon and other incumbent local exchange carriers (“ILECs”) lacked the ability to differentiate between most interstate and intrastate traffic when that traffic originated on an IXC’s network. Accordingly, in the early 1980s, the Commission gave IXCs the responsibility for tracking the portion of the traffic that should be allocated to the interstate jurisdiction. Thus, IXCs track jurisdictional data for their traffic, and report that information to Verizon via PIU factors, which identify the percentage of traffic that should be allocated to the interstate jurisdiction.²

Verizon states that it now has the capability to determine the actual jurisdiction of a large portion of the traffic brought to its network by IXCs without reliance on the IXC’s PIU factors. Specifically, Verizon can identify terminating Feature Group D (“FGD”) traffic “if the originating carrier populates the originating SS7 [Signaling System 7] record with the telephone number information associated with the

² Typically the PIU factors were required for traffic where the destination of the called number was not recorded (*e.g.*, 800) and for terminating access traffic where the originating number was not available in the terminating call records recorded by the LEC. D&J at 3.

calling party and if the access customer maintains the integrity of that information when it terminates the call to Verizon's SS7 network." D&J at 3-4. Thus, where Verizon can identify the jurisdiction of a call using SS7 technology, Verizon does not rely on the customer-reported PIU factors. D&J at 4. However, in instances where insufficient data exist to identify the origin of a call using SS7 technology, Verizon still relies on customer-reported PIU factors to allocate the calls to the correct jurisdiction. It is Verizon's proposed new treatment of this latter category of "unknown" traffic that is unlawful.

Verizon currently is permitted to charge customers much higher rates for terminating intrastate traffic than for terminating interstate traffic. *See* D&J at 3. Therefore, Verizon now alleges that, for the portion of the traffic that still is allocated using PIU factors, Verizon has determined that customer-reported PIU factors under-allocate traffic to the intrastate jurisdiction. *See id.* Verizon claims that it conducted a comparison over the last 18 months of customer-provided PIU factors with actual SS7 terminating FGD traffic records, and that the comparison revealed "irregularities" in a few (Verizon does not say how many) IXC's PIU factors. *See* D&J at 4-5. According to Verizon, some IXCs failed properly to update PIU factors, and some IXCs failed to deliver origination information in the call record for some calls. In addition, Verizon alleges that the PIU factors reported for a few IXCs appear too high given the data for the traffic that can be measured.

To address the supposed irregularities identified in some of Verizon's customers' PIU factors, Verizon states that it sent letters to IXCs whose filed PIU factors varied by more than 10% from those developed by Verizon, requesting an explanation and supporting data. Verizon alleges that these letters were ineffective because one of

the recipients did not respond to the letter, and some of the remaining recipients provided an insufficient response. Verizon apparently has not sought any other legal remedies that are available to it, including the legal right to seek an audit of a customer's records for assessing the accuracy of the customer's PIU factors.

Instead of addressing its concerns about some of its customers' PIU factors using existing legal remedies, Verizon proposes to implement new tariff provisions which would apply to *all* of Verizon's customers regardless of whether Verizon has self-identified "irregularities" in the customers' PIU factors. Verizon proposes to modify its tariffs to include provisions stating that:

- Whenever Verizon has sufficient call detail to permit it to determine the jurisdiction of some or all originating or terminating minutes of use, it will rely on the call detail information to render bills for those minutes and will not rely on customer-provided PIU factors;
- Verizon will apply a default PIU factor of 50% to a customer's traffic with unknown jurisdiction when the customer fails to supply data to substantiate its reported PIU factors within 45 days of Verizon's request; and
- The customer must retain for at least 6 months call detail records to substantiate its PIU factors and, if the customer uses a mechanized system, then a description of the system and the methodology used to determine the PIU. D&J at 6-7.

As demonstrated below, Verizon's proposed remedy for alleged isolated conduct must be rejected because it is overbroad and unduly punitive. And even if a broad-based remedy were appropriate, Verizon's particular proposed remedy must be rejected. Not only are Verizon's newly proposed tariff provisions unduly vague, because Verizon does not even attempt to explain what data would be "sufficient" to satisfy Verizon that a customer's PIU factors are in fact accurate, but they are unjust and unreasonable because the 50% default PIU factor is far below any reasonable level based on prior PIU factor data.

ARGUMENT

As a preliminary matter, Verizon's new tariff provisions should be rejected out of hand because those provisions would endow Verizon with virtually unbounded leverage to arbitrarily discriminate against any of its customers (who also happen to be Verizon's competitors). According to Verizon's proposed tariff provisions, an access customer will be required to provide data to support a PIU factor if the PIU factor reported by the customer exceeds by 10% of Verizon's internal PIU factor estimate; Verizon has not disclosed exactly how it plans to compute that estimate, nor has Verizon offered to provide the Commission or interested parties access to those computations. Even worse, Verizon would act as judge and jury to determine whether any additional PIU factor support information provided by the access customer is "sufficient," and if Verizon unilaterally determines that the information is not sufficient, the customer will automatically be forced to pay the higher intrastate access rates for 50% of its traffic. *See* D&J at 6-7.

Endowing Verizon with such unbounded power can, and likely would, have substantial anticompetitive consequences. For example, a customer may report an 85% PIU factor, but if Verizon's internal calculations estimate a 74% PIU factor, then the customer will be forced to supply Verizon with "sufficient" data to support a 85% PIU factor. If Verizon determines that the data provided by the customer are insufficient to support the 85% PIU factor, Verizon will apply a default 50% PIU factor – a factor that is 35 percentage points below that computed by the customer, and 24 percentage points below even that computed by Verizon's secret calculations. In this situation, there is no question that Verizon's proposed tariff provisions would result in substantial overcharges to the access customer targeted by Verizon.

Verizon does not even attempt to defend the 50% PIU factor. Nor could it. There is no question that a 50% PIU factor is punitively low. For the past five years, AT&T has submitted to Verizon PIU factors ranging from approximately 68% to 71%, and Verizon has never indicated that the factor should be lower.³ Therefore, with respect to AT&T (and likely most other access customers), a 50% default PIU factor is completely out of line with actual jurisdictional traffic patterns, and would create a windfall profit for Verizon by giving it the ability to impose intrastate access rates, that are typically higher than interstate rates, on a much greater percentage of an IXC's traffic. Because the 50% default factor does *not* function as a reasonable surrogate for the actual jurisdictional mix of traffic, it is entirely arbitrary and clearly punitive, and hence unlawful.

Another serious problem with Verizon's proposed 50% default PIU factor is that it would allow Verizon unilaterally to override the default factor contained in other agreements between Verizon and IXCs. For example, the default PIU factor embodied in AT&T's agreements with Verizon is that AT&T will supply a PIU factor to Verizon that applies the jurisdictional split of "known" traffic to the "unknown."⁴ Verizon has not explained whether it will honor existing agreements or whether it will allow the new tariff provisions – which are far more favorable to Verizon – to supercede those existing agreement.

³ If AT&T's factor deviates more than 5% from the PIU factor AT&T previously provided, AT&T provides Verizon with an explanation, and Verizon can ask for additional information. Although Verizon has audit rights under its existing tariffs, *see* Verizon Tariff F.C.C. No.1, Sections 2.3.10(B) and (C), it has never needed to invoke that procedure with AT&T.

⁴ *See* AT&T's Access Billing Supplier Quality Certification Operating Agreements (containing Provisioning of Switched Access Billing Factor Agreements with Verizon (Bell Atlantic/NYNEX and GTE)).

Even aside from the obvious problems associated with Verizon's proposed 50% default PIU factor, Verizon's proposed tariff provisions contain other fatal flaws. Verizon does not even attempt to explain why any discrepancy between the PIU factor reported by the customer and that estimated by Verizon should automatically be resolved in Verizon's favor by requiring the customer to provide additional information and subjecting the customer to the 50% default factor if Verizon deems the additional information to be insufficient. Verizon apparently believes the PIU estimate it computes based on call detail information is inherently more accurate than PIU factors and that, whenever there is a variance between the two, the IXC must be misreporting the jurisdiction of its traffic. This assumption is clearly erroneous. In reality, *any* Verizon-assigned factor is likely to be less accurate than the one reported by the access customer, because the IXC has the ability to examine all call record and billing detail to identify the jurisdiction of terminating traffic using routing code information, type of service codes and other call record data that are not available Verizon. Thus, there is no legitimate reason to automatically punish Verizon's access customers when those customers compute different PIU factors than estimated by Verizon.

There also is no merit to Verizon's implied claim that IXCs are purposefully attempting to allocate traffic to the "unknown" jurisdiction category by omitting calling party number ("CPN") data which forms the basis for what Verizon terms "call detail" for terminating Feature Group D traffic. In fact, there are many legitimate reasons why some traffic does not contain CPN data. For example, nodal customers that connect to IXC networks via MF signaling are not able to pass CPN, resellers may not pass CPN to the underlying IXC because they deem the CPN to be competitively-sensitive information, and PBX customers may not have the capability to

pass CPN or may decline to do so. In short, there are a variety of situations in which the IXC that reports PIU factors does not have CPN available through no failure of its own to pass it on to Verizon. Thus, it is inappropriate for Verizon to assume that the lack of CPN is an attempt by the IXC to mask the jurisdiction of calls, and to implement a punitively low 50% PIU factor for calls that do not contain CPN data.

Finally, Verizon's draconian measures are completely unnecessary. As noted, under the existing process, Verizon already is entitled to ask for information substantiating the PIU factors provided by the access customer and the right to conduct an annual audit, if necessary. Verizon has offered no evidence that it has relied on that remedy, or that such a remedy is insufficient. Verizon should invoke existing procedures if there are serious questions about the accuracy of the PIU factors provided by a particular customer, rather than tariffing a default factor that would simply give Verizon unilateral authority to exact a windfall from customers by over-assigning minutes to the intrastate jurisdiction. Indeed, Verizon's 50% default PIU factor accomplishes for Verizon's benefit exactly what Verizon is accusing its customers of doing—arbitraging the disparity between interstate and intrastate access rates to their own advantage. Of course, Verizon's ability to take advantage of such arbitrage opportunities would be substantially reduced if Verizon lowered its intrastate access rates to the levels in its federal interstate tariffs.

In sum, the Commission should reject Verizon's proposed 50% default PIU factor and require it to accept the customer-reported PIU factors that jurisdictionalize calls by applying the jurisdictional split associated with calls whose jurisdiction can be readily determined (the "known") to calls whose jurisdiction cannot readily be

determined (“the unknown”) and to invoke existing substantiation and audit procedures, if necessary.

CONCLUSION

For the reasons shown above, the Commission should reject Verizon’s tariff filing or, at a minimum, suspend and investigate it for the full five-month period and impose an accounting order.

Respectfully submitted,

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December 17, 2002

CERTIFICATE OF SERVICE

I, Patricia Bunyasi, do hereby certify that on this 17th day of December, 2002, a copy of the foregoing "Petition of AT&T Corp." was served by U.S. first class mail, postage prepaid, and, where noted, by facsimile, on the individuals listed in the attached service list.

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