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

Verizon Petition for Pricing Flexibility for Special Access and Dedicated Transport Services	WCB/Pricing 02-33

AT&T OPPOSITION TO VERIZON PETITION FOR PRICING FLEXIBILITY FOR SPECIAL ACCESS AND DEDICATED TRANSPORT SERVICES

Pursuant to Section 1.774 of the Commission's Rules and its Public Notice, DA No. 02-3499, released December 19, 2002, AT&T Corp. ("AT&T") opposes the petition for pricing flexibility for special access and dedicated transport services under the *Pricing Flexibility Order*[1] filed by Verizon.

The instant petition encompasses seven metropolitan serving areas ("MSAs") and non-MSAs in Verizon's region. For four of these MSAs/non-MSAs, Verizon contends that it has met the trigger for Phase II relief for special access and dedicated transport. It also seeks Phase II relief for channel terminations in two of those MSAs. Verizon (East and West) has already been granted Phase II relief – removal from price cap regulation and access charge rate structure rules – for *** of its total revenues for interstate special access and dedicated transport services for the territories where it has requested such relief

1 *Access Charge Reform, et al.*, CC Docket Nos. 96-262, 94-1, 98-157 and CCB/CPD File No. 98-63, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14222 (1999) ("*Pricing Flexibility Order*").

previously.[2] If granted relief in the instant petition, Verizon's scope of Phase II relief would grow to *** of its total revenues for interstate special access and dedicated transport services in the combined set of territories where it has sought relief.[3]

Verizon's petition should be rejected. As AT&T demonstrated in detail in its recent petition for rulemaking,[4] price cap ILECs are charging special access rates that are not just and reasonable, and that is especially true in areas in which they have received pricing flexibility. Accordingly, the Commission should institute a moratorium on any further pricing flexibility petitions during the pendency of a rulemaking to re-establish regulation of special access serivces.

As AT&T showed, the Bells' own ARMIS reports demonstrate that the Bells' rates of return on special access services are dramatically higher than 11.25%, the rate of return the Commission found just and reasonable for dominant ILEC services in 1990 (and which is far too high today given the lower inflation and borrowing rates that prevail today). Indeed, Verizon's special access rate of return in 2001 was 37.08% (excluding NYNEX) and has been steadily rising each year since 1996. AT&T Petition at 7-9. Verizon's special access revenues in 2001 exceeded amounts that would have produced an 11.25% rate of return by more than $1 billion (*id.* at 8), a fact which Verizon has conceded. *See* Comments of Verizon, p. 30, RM 10593 (filed December 2, 2002) ("re-pricing special access in Phase

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2 *See Verizon Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD Nos. 00-24, 00-28, DA 01-663, rel. March 14, 2001.

3 *See* Declaration of Charles E. Stock ("Stock Declaration") at ¶ 2.

4 *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Special Access Services*, RM 10593, Petition for Rulemaking (filed October 15, 2002) ("AT&T Petition").

II areas to earn an 11.25 percent rate of return would diminish Verizon's revenues by more than one billion dollars based on 2001 data"). Equally striking, Verizon is charging these rates, and earning these rates of return, even as it increases its sales and offers poor provisioning quality. AT&T Petition at 14-15. These facts dramatically confirm that Verizon's special access services are not subject to meaningful competition.

Verizon's conduct has been even more egregious, if anything, in the areas in which it has received pricing flexibility. As AT&T showed, the Bells' month-to-month special access rates are uniformly higher in areas in which they have received Phase II pricing flexibility than they are in areas still subject to price caps. AT&T Petition at 11-13. Indeed, Verizon has *raised* its special access rates in every area in which it has received Phase II pricing flexibility, *id.* at 12, and there is no reason to believe that Verizon will not do so again if the Commission grants Verizon's current petition.

For these reasons, the Commission should not award Verizon any additional pricing flexibility, and it should immediately institute a moratorium on all further pricing flexibility petitions. As the evidence over the last two years has dramatically shown, the "triggers" for pricing flexibility simply do not measure whether meaningful competition exists for the relevant services. For example, the trigger for deregulation of dedicated transport is inherently flawed, because it focuses only on whether there is *some* fiber deployed in a collocation, and not whether the CLEC's transport facilities fully bypass the Bell's transport facilities. As the Commission itself noted in the *Pricing Flexibility Order* (¶ 81), most transmission facilities in a collocation are trunk-side "facilities leading from the collocated equipment to the IXC POP." As a result, the Commission's dedicated transport trigger deregulates the Bell's transport rates, even though the CLEC has bypassed only one of the transport links included in that service – the Bell's entrance facilities. The triggers for channel terminations are even less representative of the existence of relevant sunk investment, because they rely exclusively on a showing of *transport* deployment as evidence of loop deployment. In short, the collocation trigger identifies only the possibility of competitive facilities between the collocation cage and the competitor; it says nothing about the potential for competition between the collocation cage and the customer – *i.e.*, interoffice transport and loop equivalent facilities.[5]

Moreover, Verizon once again relies exclusively on the Commission's alternative "percentage of revenues" trigger, under which Verizon is awarded pricing flexibility if it shows fiber-based collocations in wire centers representing a certain percentage of the Bell's revenues from the relevant services in that MSA. This trigger is even less indicative of competition, because the "percentage of revenues" test means that Verizon need only demonstrate facilities-based collocations in an even smaller percentage of wire centers (*i.e.*, those in the most urban area of the MSA).

Even without pricing flexibility, the Bells are already charging special access rates that are unjust and unreasonable and are earning astonishing rates of return and multi-billion dollar windfalls. The Commission should not exacerbate this situation any further by granting additional pricing flexibility petitions. The Commission's pricing flexibility triggers create the opportunity – indeed, invite – monopoly pricing and other anticompetitive abuses, as the evidence of the last two years dramatically confirms. As AT&T requested in its rulemaking petition, the Commission should immediately impose a

5 This is especially problematic because entrance facilities represent a relatively small percentage of the overall cost of special access (typically around 15 percent).

moratorium on further pricing flexibility petitions (including Verizon's) and initiate a rulemaking to re-establish regulation of special access services.

CONCLUSION

For the reasons stated above, the Commission should deny Verizon's petition for pricing flexibility for special access and dedicated transport services.

Respectfully submitted,

AT&T CORP.

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December 30, 2002

CERTIFICATE OF SERVICE

I, Patricia Bunyasi, do hereby certify that on this 30th day of December, 2002, a copy of the foregoing "AT&T Opposition to Verizon Pricing Flexibility Petition for Special Access and Dedicated Transport Services" was served by facsimile and U.S. first class mail, postage prepaid, on the party named below.

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/s/ Patricia Bunyasi

Patricia Bunyasi

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DECLARATION OF CHARLES E. STOCK

Pursuant to 28 U.S.C. § 1746, Charles E. Stock deposes and states as follows:

1. My name is Charles E. Stock. I am a Manager for AT&T Corp. and am responsible for reviewing the interstate access filings for price cap local exchange carriers, including Verizon. The purpose of this declaration is to put in context Verizon's request for pricing flexibility for special access and dedicated transport. *See Verizon Petition for Pricing Flexibility For Special Access and Dedicated Transport Services,* filed December 13, 2002, in this proceeding.

2. The Commission should be aware of the scope of the deregulation that Verizon would achieve if its petition were granted. Comparing the MSA-level revenue data provided by Verizon pursuant to the FCC's *Protective Order* (DA 02-3499, released December 19, 2002) with other publicly available data, indicates that if Verizon were granted Phase II pricing flexibility as requested in its petition, an additional **REDACTED** of Verizon's interstate special access and dedicated transport revenues would be removed from price cap regulation, or approximately an additional **REDACTED** of Verizon's total interstate revenues of $3,893 million for these services in the territories where Verizon seeks Phase II pricing flexibility. When added to the relief already granted, Verizon's total Phase II relief would be approximately **REDACTED** of Verizon's interstate special access and dedicated transport revenues, or approximately **REDACTED** of Verizon's total interstate revenues of $3,893 million for these services in the territories where Verizon has obtained or now seeks Phase II pricing flexibility. *Compare* Verizon's April 1, 2002 submission of ARMIS 4301 data, Row 1020, Column S, with total revenue data from Verizon's Transmittal Nos. 206 filed June 17, 2002 and effective July 1, 2002, TRP SUM-1 sum of lines 180, 181, 200, 201, and 340. The difference in revenues between Verizon's ARMIS revenues and TRP revenues results in estimated revenues that have received Phase II pricing flexibility.

I declare under penalty of perjury that the forcgoing is true and correct to the best of my knowledge, information and belief. Executed on this 30th day of December, 2002.

/s/ Charles E. Stock

Charles E. Stock