

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

In the Matter of:)	
)	
Verizon Telephone Companies)	Transmittal No. 282
Tariff FCC No. 1)	
)	

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

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 January 17, 2003.¹

In Transmittal No. 282, Verizon proposes to amend its tariff to allow Verizon to pass on to special access customers the costs of space and power in a building in which a third party assesses Verizon for space and power. Verizon claims that the proposed tariff change is necessary because "[o]ver the past several years, Verizon has had to enter into contractual agreements with third parties for the space and power necessary to place its

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);

network in certain buildings.”² Verizon contends that its ordinary rates and charges “do not recover the added costs for Verizon to obtain and pay for the space and power in a building that would normally be the responsibility of the ordering customer.”³

The Commission should reject or, in the alternative, suspend and investigate Verizon Transmittal No. 282 because Verizon has failed to provide price cap support information required by the Commission’s rules and because the proposed tariff language violates sections 61.2 and 61.74 of the Commission’s rules.

I. Verizon Has Failed to Provide Required Cost Support

With Transmittal No. 282, Verizon is seeking an increase in its special access rates that is prohibited by the price cap rules. Because Verizon’s special access rates are already at the maximum permitted by the special access basket PCI, Verizon is seeking to evade price cap restrictions by introducing an additional charge for building space and power.

As an initial matter, it is plain that the new space and power charge is not a form of special construction or other service excluded from price caps in the LEC Price Cap Order. Notably, Verizon neither contends that the proposed building space and power charges are excluded from price cap regulation nor provides the cost support required for excluded services.

In any event, excluding building space and power charges from price cap regulation would be at odds with the purposes of price cap regulation. Building space

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

² D&J at 1.

and power is merely a cost incurred in the provision of special access services, which are indisputably price cap services. Only price cap regulation can ensure that Verizon has the incentive to seek efficiencies in all aspects of the provision of special access services. If Verizon were permitted to create a separate space and power charge outside of price cap regulation, its incentive to bargain forcefully with building owners would be sharply reduced. And, of course, customers would face higher rates.

Verizon attempts to justify its new building space and power charge on the grounds that building space and power costs are a “new” cost for Verizon. But even if that were true, “new” costs cannot be used to justify cost recovery for special access services above and beyond that permitted by the price cap rules. Not only is there no provision for such recovery in the price cap rules but, as the Commission recently explained, “incumbent LECs operating under price caps are normally considered subject to both the benefits and burdens of unconstrained earnings.”⁴ Verizon may have to absorb new costs, such as building space and power costs, that were not anticipated by Verizon, but Verizon also gains the benefits of similarly-unanticipated cost decreases.

Although special access services are subject to price cap regulation, Verizon has failed to provide any of the cost support information that is required by the price cap rules. Certainly, Transmittal No. 282 cannot be characterized as a simple change in terms and conditions for which no cost support is required. As the Commission made clear in the LEC Price Cap Order, a transmittal that changes a term or condition or, like Transmittal No. 282, adds a new rate element, constitutes a restructure filing under the

³ D&J at 2.

⁴ Verizon Petition for Emergency Declaration and Other Relief, Policy Statement, WC Docket No. 02-202, released December 23, 2002, at ¶ 18.

price cap rules.⁵ Transmittal No. 282 would replace the current rate structure for special access channel terminations – under which special access customers pay only monthly recurring channel termination charges – with a new rate structure under which customers would pay two separate charges – a recurring or nonrecurring building space and power charge and a monthly recurring channel termination charge.

Given that Transmittal No. 282 is subject to the Commission’s price cap rules, and is best characterized as a restructure filing, the Commission should reject or, in the alternative, suspend and investigate Transmittal No. 282 because Verizon has failed to provide the cost support information required for restructure filings by sections 61.46(c), 61.47(d), and 61.49(e) of the Commission’s rules.

II. Transmittal No. 282 Violates Sections 61.74 and 61.2 of the Commission’s Rules

The Commission should also reject or, in the alternative, suspend and investigate Verizon Transmittal No. 282 because the proposed tariff language includes an impermissible cross-reference in violation of section 61.74 of the Commission’s rules. The tariff does not specify the actual rates that will be assessed for building space and power; rather, it states only that a “schedule containing the specific rates and charges that the Telephone Company is being assessed” will be provided to the customer on request.⁶ Such references to a schedule outside Verizon’s tariff violate Section 61.74(a)’s

⁵ Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6786, 6824-6825 ¶ 314 (1990) (LEC Price Cap Order). See also NYNEX Telephone Companies Revision to Tariff FCC No. 1, 7 FCC Rcd 820, 820-821 (1992).

⁶ Transmittal No. 282, 1st revised page 2-13.

requirement that “no tariff publication filed with the Commission may make reference . . . to any other document or instrument.”⁷

In addition, the tariff’s statement that Verizon will pass on those space and power costs that are “directly attributed to the provisioning of service to the customer” is vague and ambiguous in violation of section 61.2 of the Commission’s rules. It is unclear whether and how Verizon would assess space and power costs in buildings where Verizon has multiple customers. Under such circumstances, could space and power costs be “directly attributed” to individual customers? Would Verizon allocate costs among multiple customers? If so, how?

III. Conclusion

For the reasons stated herein, the Commission should reject or, in the alternative, suspend and investigate Verizon Transmittal No. 282.

Respectfully submitted
WORLDCOM, INC.

/s/ Alan Buzacott

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January 24, 2003

⁷ 47 C.F.R. § 61.74(a).

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 January 24, 2003.

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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 24rd day of January, 2003.

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