

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

)	
In the Matter of)	
)	
The Verizon Telephone Companies)	Transmittal No. 282
Revisions to Tariff F.C.C. No. 1)	
)	

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") petitions the Commission to reject or suspend and investigate the above-captioned tariff revisions filed by The Verizon Telephone Companies on January 17, 2003, under Transmittal No. 282.¹ Verizon's instant filing is a patently unlawful attempt to circumvent price cap regulation by establishing a "pass-through" rate that would be applicable to price cap-regulated special access services. Verizon has not supported its filing under the price cap rules as either: (1) an above-cap filing (47 C.F.R. § 61.49(d)), or (2) a restructure (47 C.F.R. § 61.47(d)), contending instead, without

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).

explanation, that “[s]upport material under the Commission’ Rules is not required for this filing.”²

Specifically, Verizon proposes to add tariff language that states, “In the event that the Telephone Company is assessed charges for the furnishing of space and power from a third party (*e.g.*, building owner), the Telephone Company will pass through to the customer, on a dollar-for-dollar basis, those charges assessed to the Telephone Company which are directly attributed to the provisioning of service to the customer.”³ This new provision is applicable to *Verizon’s side of the network interface* because the access customer is already required to provide to Verizon “at no charge” space and power “at the point of termination” under Verizon’s existing tariff.⁴

It appears Verizon intends to unilaterally extend the “no charge” provision of the tariff to include space and power for *its own network equipment* (such as, fiber MUXes, microwave/antenna equipment, and the like.). Verizon’s customers are not required today to provide space and power for Verizon’s network equipment on top of rates filed pursuant to price caps, nor should they be in the future, because these are part

² Verizon Transmittal No. 282, Letter at 1.

³ Verizon Transmittal No. 282, Tariff F.C.C. No. 1, 1st Revised Page 2-12.

⁴ Verizon’s tariff today requires the customer to “furnish or arrange to have furnished to the Telephone Company, at no charge, equipment space and electrical power required by the Telephone company to provide services under this tariff *at the points of termination of such services.*” Verizon Tariff F.C.C. No. 1, Section 2.3.3, Page 2-12 (emphasis added). AT&T (and presumably other customers) are complying with this requirement by providing Verizon space and power at the point of termination for items such as Network Channel Terminating Equipment (NCTE). Under the instant filing, this obligation would be extended explicitly to *Verizon’s side of the network interface*. See, *e.g.*, Verizon Tariff F.C.C. No. 1, proposed Section 7.2.14(C)(a), 1st Revised Page 7-113; Section 7.2.14(C)(3)(a), 1st Revised Page 7-120; Section 8.2(C)(5), 4th Revised Page 8-10.

of *Verizon's* service costs that are already being recovered through its price-capped special access rates.

Verizon's proposal to impose on access customers a new "pass through" as an additional charge outside of its existing price cap services is flagrantly unlawful. There is no provision in the Commission's price cap regime that would conceivably permit, much less authorize, Verizon to impose a rate increase outside of price caps on services that are subject to price cap regulation.

If Verizon were permitted to impose additional charges to customers for space and power costs of its own services, as it proposes, Verizon would recover more than what it is entitled to recover for these price-capped special access services which are already *at cap*.⁵ In addition, the revenues resulting from this "pass-through" charge would exacerbate the already inflated special access rate-of-return Verizon currently achieves.⁶ Given Verizon's excessive profits, Verizon's assertion that it is not recovering these costs⁷ is ludicrous; it is recovering all its costs and far more.

Verizon has been paying building owners for space and power related to its provision of service for many years, and recovering these same costs through its price cap rates for special access services. Verizon should not be permitted to impose additional charges outside of price caps. However, if for any reason the Commission

⁵ See Verizon 2002 Annual Filing, Transmittal No. 206, filed June 17, 2002, effective July 2, 2002. TRP Chart IND-1 shows Verizon's Special Services Basket API (Actual Price Index) at 45.7324 and its Special Services Basket PCI (Price Cap Index) also at 45.7324.

⁶ See AT&T Petition for Rulemaking to reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM No. 10593, filed October 15, 2002, p. 15.

⁷ Verizon Transmittal No. 282, Description and Justification, p. 2.

were to allow this rate structure and Verizon began recovering certain costs for price-capped services, outside of the price cap process, Verizon, must, at a minimum, be ordered to remove these costs from its special access price cap basket through a downward exogenous cost adjustment. Such an adjustment is necessary to prevent Verizon from double recovering those costs through both its price cap rates, as it currently does, and outside of price caps under the new “pass through” tariff.

Moreover, the impact of this filing would be significant. Although Verizon has not provided any data showing the revenue impact of its proposed pass through and therefore it is impossible for AT&T or the Commission to evaluate the financial impact of this filing, Verizon does show a “sample of the monthly recurring charges being assessed to Verizon by a third party and that will be passed on to the customer....”⁸ Verizon shows these monthly recurring charges to be \$38.92 per DS3, \$117.00 per OC3, with an increase up to \$1,868.00 per OC48.⁹ By passing through these charges to its customers on a monthly basis, Verizon would receive windfall revenues. Also, Verizon indicates in its Description and Justification that it “will be including

⁸ Verizon Transmittal No. 282, Description and Justification, p. 3.

⁹ *Id.* It should also be noted that the space and power requirements for the different services identified in Verizon’s D&J should not vary significantly. For example, the space and power requirements for an OC3 should not be that much different than an OC48. These services take up nearly the same amount of space, though they may draw power at different rates. Therefore, there is no justification for the space and power charge for an OC48 to be sixteen times higher than that for an OC3.

these same provisions in its other Access Services Tariffs 11, 14, and 16....”¹⁰ This means that if Verizon’s Transmittal No. 282 were permitted to become effective, the result will have a much more far reaching effect once such provisions are filed its other access service tariffs.

CONCLUSION

For the reasons stated above, the Commission should reject or, in the alternative, suspend and investigate Verizon’s Transmittal No. 282 for the full five months and impose an accounting order.

Respectfully submitted,

AT&T CORP.

By /s/ Judy Sello
 Mark C. Rosenblum
 Lawrence J. Lafaro
 Judy Sello

 Room 3A229
 One AT&T Way
 Bedminster, New Jersey 07921
 (908) 532-1846 (voice)
 (908) 532-1218 (fax)

Its Attorneys

January 24, 2003

¹⁰ Verizon Transmittal No. 282, Description and Justification, p. 5.

CERTIFICATE OF SERVICE

I, Judy Sello, do hereby certify that on this 24th day of January, 2003, a copy of the foregoing "Petition of AT&T Corp." was served by facsimile and U.S. first class mail, postage prepaid, on the parties named below.

Richard T. Ellis
Director, Federal Regulatory Advocacy
Verizon
1300 I Street, NW, Suite 400 West
Washington, DC 20005
Fax No.: (202) 336-7922

/s/ Judy Sello
Judy Sello