

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20054**

**In the Matter of** )  
 )  
**Revisions by Verizon Telephone** )  
**Companies to its** )  
**Tariff F.C.C. Nos. 1 and 20** )  
**Transmittal No. 325** )

**PETITION TO REJECT  
OR, ALTERNATIVELY,  
TO SUSPEND AND INVESTIGATE**

The American ISP Association (the “Petitioner”),<sup>1</sup> by its attorneys and pursuant to 47 C.F.R. § 1.773, hereby petitions the Federal Communications Commission (the “Commission”) to reject or, alternatively, to suspend and investigate the tariff revisions in Section 16.10 of Tariff F.C.C. No. 1 and Section 5.4 of Tariff F.C.C. No. 20 filed by Verizon Telephone Companies (“Verizon”) in Transmittal No. 325 on June 9, 2003 with an effective date of June 24, 2003. The Petitioner’s members are Verizon customers under these tariffs, or are potential customers under these tariffs, and therefore, the Petitioner has a direct interest in these tariff revisions.

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<sup>1</sup> American ISP Association (“AISPA”) is a non-profit association which helps State ISP associations and individual ISPs achieve representation before local and national regulatory and legislative entities. With more than 1600 supporters, primarily in the United States, AISPA brings to bear the full voice of thousands of ISPs and their millions of customers throughout the United States and abroad. The Association promotes the development and expansion of affordable Internet technology to the general public through competitive access options.

## I. INTRODUCTION

Less than thirty (30) days after dramatically reducing its retail Digital Subscriber Line (“DSL”) rates for residential customers, Verizon proposes significant increases in wholesale DSL transport rates charged to Internet Service Providers (“ISPs”). In Transmittal No. 325, Verizon proposes to introduce in both Section 16.10 of its Tariff F.C.C. No. 1 and Section 5.4 of its Tariff F.C.C. No. 20, a new DSL service, Verizon Infospeed Premium Digital Subscriber Line Service (“Infospeed Premium DSL”).<sup>2</sup> This new service is “intended primarily for Internet Service Providers (ISPs) to connect their end user for the purpose of providing that end user a retail service that includes a dedicated local loop and high speed, symmetrical DSL service.”<sup>3</sup> As proposed in Transmittal No. 325, the new DSL service would have monthly recurring costs ranging from \$85.00 to \$222.00, depending on the rate of data transmission.<sup>4</sup> Under the same tariff, Verizon offers virtually the same service to its retail customers with monthly recurring costs of \$44.00 and \$68.00, roughly half the price of the wholesale service Verizon proposes here.<sup>5</sup>

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<sup>2</sup> According to Verizon’s Description and Justification (“D&J”), “Infospeed Premium DSL “is a high-speed symmetrical (upstream and downstream data rates are equal) data-only access service. Infospeed Premium DSL also features static IP Addressing, Variable Bit Rate Non-Real Time Quality of Service and support for multiple users. Data traffic generated by a customer-provided modem is transported to the Verizon Infospeed Premium DSL Connection Point. From there, the traffic is transported to the end user’s Information Service Provider or content provider via other Company services.” D&J at ¶ 2

<sup>3</sup> *Id.*

<sup>4</sup> Section 16.10(E)(1) Verizon Tariff F.C.C. No. 1 and Section 5.4.5(A) Verizon Tariff F.C.C. No. 20. Substantial non recurring charges also apply, including a \$150.00 installation charge, \$60.00 service activation charge and \$60.00 ISP/Content Provider change charge. *Id.*

<sup>5</sup> *See, e.g.,* Section 5.1.6 (B) Tariff F.C.C. No. 20 (effective Dec. 1, 2001).

The tariff revisions and the associated new rates proposed in Verizon Transmittal No. 325 should be rejected because they are manifestly unjust, unreasonable and unreasonably discriminatory in violation of Sections 201(b) and 202(a) of the Communications Act of 1934, as amended. The rates proposed for the Infospeed Premium DSL would allow Verizon to disregard its obligations under the Communications Act of 1934, by blatantly discriminating between its retail subscribers and its ISP customers, charging the latter twice as much for what is essentially, the same service. In addition, Verizon discriminates between Asymmetric DSL (“ADSL”) service and symmetrical DSL (“SDSL”) service, charging retail ADSL customers rates as low as \$29.95 per month for DSL service at speeds advertised as providing up to 1.544 Mbps transmissions in the download direction.

Furthermore, the proposed rates are inherently anticompetitive because they enable Verizon to expand its near monopoly status in wireline DSL services by exposing wholesale customers to a price squeeze that all but precludes independent ISPs from competing for wireline DSL customers. The Petitioner urges the Commission to reject, or alternatively, to suspend and investigate the rates associated with the proposed service to ensure that Verizon does not discriminate against a specific class of customers by intentionally over charging it for access to wholesale DSL service.

## **II. THE TARIFF REVISIONS AND ASSOCIATED RATES PROPOSED BY VERIZON DISCRIMINATE BETWEEN WHOLESALE AND RETAIL DSL CUSTOMERS**

The proposed rates associated with the new Infospeed Premium DSL in Transmittal No. 325 would permit Verizon to impose drastically higher rates to ISP customers for its Infospeed Premium DSL than the rates it imposes for retail customers for virtually the same DSL service. The Petitioner urges the Commission to conclude that the rates proposed by

Verizon are facially unlawful violations of Sections 201(b)<sup>6</sup> and 202(a)<sup>7</sup> of the Communications Act of 1934, as amended.

Although Verizon proposes to introduce a “premium” DSL service for ISP customers, it has offered symmetrical DSL services to its retail subscribers for years. Section 5.1 of Tariff F.C.C. No. 20, for example, makes available to retail subscribers Infospeed DSL Solutions at two symmetrical upload/download speeds.<sup>8</sup> These retail services are sold at roughly half the price of the corresponding “premium” DSL service Verizon seeks to introduce. Verizon has failed to present any justification for these rate differences, nor has it attempted to quantify separately the costs allegedly associated with the “premium” elements of its new offering. Indeed, few, if any, costs in Verizon’s work papers appear to be attributable to “premium” elements over and above the cost of SDSL service. Instead, Verizon has loaded its cost justification with exorbitant costs that far exceed what it is charging for comparable retail services. **\*\*\*\*BEGIN VERIZON PROPRIETARY\*\*\*\***

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<sup>6</sup> Section 201(b) provides, in relevant part, that “all charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful.”

<sup>7</sup> Section 202(a) provides that “it shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.”

<sup>8</sup> Infospeed DSL Solutions is available to retail subscribers for \$46.00 and \$80.00 on a month to month basis, for 384K and 768K symmetrical service, respectively. *See* Section 5.1.6 (A) Tariff F.C.C. No. 20 (effective Dec. 1, 2001). Subscribers who commit to a one year term plan – the minimum term required in Transmittal No. 325 – pay only \$44.00 or \$68.00 for 384K and 768K service, respectively. *See* Section 5.1.6 (B) Tariff F.C.C. No. 20 (effective Dec. 1, 2001).

**\*\*\*\*END VERIZON PROPRIETARY\*\*\*\*** The Commission should reject or, in the alternative, suspend and investigate this tariff to determine whether Verizon is unlawfully cross-subsidizing its retail SDSL services, imposing excessive costs on wholesale providers, or both.

Moreover, Verizon's attempt to impose these excessive rates only on ISPs is highly anticompetitive. If it is allowed to impose the proposed rates for the Infospeed Premium DSL, Verizon essentially will be authorized to effect a price squeeze upon its wireline DSL competitors. ISP customers will be forced to increase their retail rates in order to recover the wholesale costs imposed by Verizon while they simultaneously must compete with retail offerings from Verizon at a fraction of the cost for access to the same service. Clearly, Verizon is giving an unreasonable preference to its customers, intentionally violating Section 201(a) of the Communications Act of 1934, as amended. The Commission should not permit Verizon to act in such an obvious discriminatory and anticompetitive manner through these tariff revisions and associated rates.

### **III. THE TARIFF REVISIONS AND ASSOCIATED RATES PROPOSED BY VERIZON UNLAWFULLY FAVOR VERIZON'S ADSL RETAIL CUSTOMERS AT THE EXPENSE OF SDSL SERVICE**

Last month, with much fanfare, Verizon announced significant reductions in its retail ADSL prices. Verizon residential subscribers can obtain Verizon ADSL service, along with MSN 8 content that retails from Microsoft for \$9.95 per month, for as little as \$29.95 per month, without any volume or term commitments from the customer.<sup>9</sup> Infospeed Premium DSL,

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<sup>9</sup> See News Release, "New Verizon Online with MSN8 Debuts to Millions of Broadband Customers," <http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=80220> (May 13, 2003).

on the other hand, is offered at rates four (4) to seven (7) times more expensive compared to comparable 768K or 1.5M SDSL service.

In its extremely brief D&J, Verizon fails to put forth any justification for the disparity between ADSL and SDSL services. Although ADSL and SDSL services require different line cards in DSLAM equipment, Verizon has not offered any explanation how it can offer ADSL services (at speeds up to 1.544 Mbps for some customers) for a little less than \$30.00 per month, yet penalize customers wanting symmetrical upload and download speeds by charging ISPs four (4) to seven (7) times the retail ADSL rate. Indeed, many of Verizon's purported cost justifications merely confirm that Verizon is unlawfully subsidizing its retail ADSL customers. **\*\*\*\*BEGIN VERIZON PROPRIETARY\*\*\*\***

**\*\*\*\*END VERIZON**

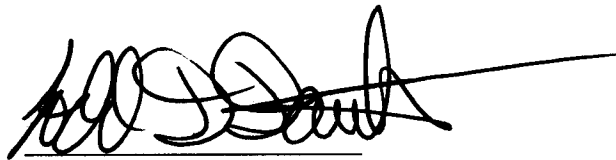
**PROPRIETARY\*\*\*\*** Clearly, Verizon cannot be correct on both counts. Its retail customers cannot receive ADSL service at \$29.95 per month if Verizon's costs are anywhere near the inflated levels it cites in support of Transmittal No. 325.

Therefore, it is imperative that the Commission reject Transmittal No. 325, or at a minimum, suspend the tariff so it may investigate Verizon's DSL cost allocations fully. Toward this end, Petitioner notes that virtually all of Verizon's justification for the rates proposed is based on cost elements supported by a "Company Study." Critically, no further explanation was provided as to how this "Company Study" generated the figures provided or the methodology used. A comprehensive tariff investigation is necessary to determine whether Verizon is allocating DSL costs reasonably among its various services and customers.

#### IV. CONCLUSION

For the foregoing reasons, the Commission should reject the Verizon tariffs and proposed rates revisions as unlawful or, alternatively, exercise its full authority to suspend and investigate those revisions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Steven A. Augustino', written over a horizontal line.

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Dated June 16, 2003.

**CERTIFICATE OF SERVICE**

I, Erin W. Emmott, hereby certify that, on June 16, 2003, a copy of the foregoing ***Petition To Reject Or, Alternatively, To Suspend And Investigate*** was sent, as indicated, to the following individuals:

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