

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

In the Matter of)
)
Revisions by Verizon Telephone) **Transmittal No. 333**
Companies to its)
Tariff F.C.C. Nos. 1 and 20)

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

The American ISP Association (the "Petitioner"),¹ 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. 333 on July 1, 2003, with an effective date of July 16, 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.

I. INTRODUCTION

Less than two months after Verizon dramatically reduced its retail Digital Subscriber Line ("DSL") rates for residential customers, Verizon now proposes a new "premium" wholesale DSL transport service for Internet Service Providers ("ISPs") at a significantly higher rate than

¹ American ISP Association ("AISPA") is a non-profit association that 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.

the rate it charges itself for the DSL transport services that underlie its retail DSL offering for residential customers. Specifically, in Transmittal No. 333, Verizon seeks to modify Section 16.10 of its Tariff F.C.C. No. 1 and Section 5.4 of its Tariff F.C.C. No. 20 in order to introduce its Infospeed Premium Digital Subscriber Line Service (“Infospeed Premium DSL”).² Infospeed Premium DSL is a “premium DSL service that includes a dedicated local loop and high speed, symmetrical DSL service.”³ This new service, like Verizon’s existing DSL services, is to be “purchased primarily by Internet Service Providers (“ISPs”) for resale to retail customers ... [and] can be used by ISPs to connect their end users for the purposes of providing end users a retail service.”⁴

The proposed monthly recurring rates for the new DSL service – which require a minimum one-year commitment – range from \$85.00 to \$222.00 depending on the rate of data transmission.⁵ Verizon currently offers virtually the same service at roughly *half* the price under the same Tariff F.C.C. No. 20.⁶ Significantly, Verizon has failed to explain sufficiently or justify this dramatic disparity of rates in Transmittal No. 333.

² 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

³ *Id.*

⁴ *Id.*

⁵ 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 nonrecurring charges also apply, including a \$150.00 installation charge, \$60.00 service activation charge and \$60.00 ISP/Content Provider change charge.

⁶ *See, e.g.,* Section 5.1.6 (B) Tariff F.C.C. No. 20 (effective Dec. 1, 2001) (establishing monthly recurring rates of \$44.00 and \$68.00 with a one-year commitment).

The disparity between the rates proposed for the new Infospeed Premium DSL and Verizon's existing Infospeed DSL services – which Verizon has neither justified nor explained – is so great that either the proposed rates are too high or Verizon's costs are misallocated, or both. Because Verizon offers Infospeed Premium DSL and Infospeed DSL services as wholesale services to its competitors, there is a significant danger that Verizon will provision or price the services in a manner that discriminates in favor of itself over its competitors. It is crucial that the Commission require Verizon to explain and justify its proposed rates in order to ensure that Verizon does not raise its rivals costs through unjust and unreasonable rates, particularly because the Infospeed Premium DSL and Infospeed DSL services may be the most practical means for Verizon's rivals to provide competitive services, including bundled DSL offerings.

If above-cost rates are allowed to go into effect, Verizon will be able to engage in an anticompetitive “price squeeze” and extend its near monopoly status in wireline DSL services by all but precluding independent ISPs from providing competitive offerings. Similarly, lack of consistency in cost allocation between various DSL services allows Verizon to engage in anticompetitive “price squeezes” that harm competitive ISPs. For example, Verizon and its affiliated ISPs could discount end user rates – but not the associated wholesale rates – for the most popular and competitive services (*e.g.*, non-premium ADSL services) while charging far higher rates for services that are not as popular or competitive (*e.g.*, premium SDSL services). The public interest requires that the Commission investigate this possibility, particularly because Verizon's “most popular and lowest speed existing DSL service” is offered at \$39.95,⁷ which is in some cases above the retail rate offered by Verizon Online, Verizon's affiliated ISP for their service offerings. Therefore, the Petitioner urges the Commission to reject – or, alternatively, to

⁷ *Revisions by Verizon Telephone Companies to its Tariff F.C.C. Nos. 1 and 20, Transmittal No. 325, Reply of Verizon at 5 (filed June 20, 2003) (“Verizon Transmittal No. 325 Reply”).*

suspend and investigate – the rates associated with the proposed service because they are unjust, unreasonable and unreasonably discriminatory in violation of Sections 201(b) and 202(a) of the Communications Act of 1934, as amended.⁸

II. VERIZON HAS FAILED TO JUSTIFY THE UNREASONABLE RATES AND TARIFF REVISIONS IT PROPOSES IN TRANSMITTAL NO. 333

The rates that Verizon has proposed for the new Infospeed Premium DSL in Transmittal No. 333 are drastically higher than the rates it currently charges for virtually the same Infospeed DSL services. Because competitive service providers would use the Premium Infospeed DSL to compete directly against Verizon and its ISP affiliates, “there is a danger that [Verizon] will provision or price the service in a manner that discriminates in favor of itself over its competitor.”⁹ The Commission must therefore ensure that Verizon “offer[s] these services at just and reasonable rates so as not to raise [its] rival[s] costs.”¹⁰ Petitioner urges the Commission to conclude that the rates proposed by Verizon are unjust, unreasonable, and facially unlawful in direct violation of Sections 201(b)¹¹ and 202(a)¹² of the Communications Act of 1934, as amended.

⁸ 47 U.S.C. §§ 201(b) and 202(a).

⁹ See *Verizon Telephone Companies Revision in Tariff FCC Nos. 1 and 11*, WC Docket No. 02-362, Order Designating Issues for Investigation, 17 FCC Rcd 23598, 23599, ¶ 5 (Wireline Competition Bur. 2002) (*Verizon PARTS Designation Order*).

¹⁰ See *Bell Atlantic Telephone Companies Revision in Tariff FCC Nos. 1 and 11*, CC Docket No. 01-140, Order Designating Issues for Investigation, 16 FCC Rcd 12967, 12969-12970, ¶ 5 (Common Carrier Bur. 2001) (*DC Power Designation Order*).

¹¹ 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.”

¹² 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

A. Nonrecurring Costs

With respect to nonrecurring costs, for example, the proposed installation charge of \$150.00 under the nonrecurring costs is unreasonable because it is far higher than the \$99.00 nonrecurring installation costs associated under its current Access Service Tariff.¹³ Yet Verizon provides no justification as to why the nonrecurring installation costs associated with the Infospeed Premium DSL should be so much higher. Nor does Verizon explain why there is an installation cost associated with the new Infospeed Premium DSL service, yet no such cost is in its Communications Tariff where the Infospeed DSL services are offered.¹⁴ This higher cost for the Infospeed Premium DSL, a service “purchased primarily by Internet Service Providers (“ISPs”) for resale to retail customers”¹⁵ is nothing more than an attempt by Verizon to secure its near monopoly status in the wireline DSL market by charging its direct competitors additional costs not charged to retail subscribers of virtually the same service. As a result, 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 retail customers as opposed to its wholesale customers/competitors, intentionally violating Section 201(a) of the Communications Act of 1934, as amended. The Commission should not

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.”

¹³ See Section 16.8.F.2, Tariff F.C.C. No. 1 (eff. Apr. 22, 2003) (explaining that “a nonrecurring rate applies for the installation of each service”) and Section 16.8.G.1, Tariff F.C.C. No. 1 (eff. July 3, 2001) (outlining the actual costs associated with the services).

¹⁴ See Section 5.1.6.D, Verizon F.C.C. Tariff No. 20 (eff. Apr. 29, 2003).

¹⁵ D&J at ¶ 2.

permit Verizon to act in such an obvious discriminatory and anticompetitive manner through these tariff revisions and associated rates.

B. Recurring Monthly Costs

With respect to recurring monthly costs, it is important to note that Verizon has offered an SDSL service for years that is nearly the same as the new “premium” SDSL service Verizon proposes in Transmittal No. 333. Section 5.1 of Tariff F.C.C. No. 20, for example, makes Infospeed DSL Solutions available at two symmetrical upload/download speeds. These SDSL services are sold at roughly half the price of the corresponding “premium” SDSL services Verizon seeks to introduce. Specifically, 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.¹⁶ Subscribers who commit to a Verizon’s Infospeed DSL one-year term plan – the minimum term required in Transmittal No. 333 – pay only \$44.00 or \$68.00 for 384K and 768K services, respectively,¹⁷ while under Transmittal No. 333, subscribers who take Verizon’s Premium Infospeed DSL service must pay \$108.00 or \$125.00 for 384K and 768K services, respectively.¹⁸

Verizon has failed to justify these rate differences, nor has it attempted to quantify separately the costs allegedly associated with the “premium” elements of its new offering. In defense of Transmittal No. 325, which Verizon subsequently withdrew, Verizon identified three differences between its standard and premium Infospeed DSL services: (1) provision of a dedicated loop; (2) static Internet Protocol addressing; and (3) traffic prioritization.¹⁹ However,

¹⁶ See Section 5.1.6 (A) Tariff F.C.C. No. 20 (eff. Dec. 1, 2001).

¹⁷ See Section 5.1.6 (B) Tariff F.C.C. No. 20 (eff. Dec. 1, 2001).

¹⁸ Section 16.10(E)(1) Tariff F.C.C. No. 1 (proposed eff. July 16, 2003) and Section 5.4.5(A) Tariff F.C.C. No. 20 (proposed eff. July 16, 2003).

¹⁹ *Verizon Transmittal No. 325 Reply* at 3-4.

Verizon has not explained why any of these differences can account for the drastically higher Premium rates. For example, the difference between the rate for the 768K premium service and the standard service is \$57.00. The cost of a dedicated loop ranges from \$4.29 in the District of Columbia to \$20.41 in West Virginia, which could account at most for \$20.00 of the difference.²⁰ Static IP addressing is available at no charge for the standard Infospeed DSL offering in many states,²¹ and for only \$15.00 in others, which could account at most for \$15.00 of the difference. At a minimum, this still leaves \$22.00 in costs simply for data prioritization, for which Verizon has not provided any explanation or justification.

Few, if any, of the costs described 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 services. The Commission should reject or, in the alternative, suspend and investigate this tariff to determine whether Verizon is proposing unreasonably high rates or unlawfully misallocated costs between DSL services, or both.

In any event, the Commission should reject or, in the alternative, suspend and investigate this tariff simply because Verizon's workpapers fail adequately to justify the additional costs under the Infospeed Premium DSL. Because Infospeed Premium DSL is a new service,²² Verizon "must price it according to the new services test."²³ According to the Commission's

²⁰ See *Petition for Forbearance from the Current Pricing Rules for Unbundled Network Element Platform, Petition for Expedited Forbearance of the Verizon Telephone Companies*, W.C. Docket No. 03-157, Appendix B at 8, 10 (filed July 1, 2003) ("*Verizon Forbearance Petition*").

²¹ Section 5.1.1(E)(1)(a), Tariff F.C.C. No. 20 (eff. Feb 1, 2003).

²² D&J at ¶ 1 ("Verizon Infospeed Premium Digital Subscriber Lines Service is a new loop-based service").

²³ See *Verizon PARTS Designation Order* 17 FCC Rcd 23958, 23601, ¶ 11.

BOC ONA Proceeding,²⁴ and its *Part 69 ONA Order*,²⁵ the new services test is a cost-based test that establishes the direct cost of providing the new service as a price floor.²⁶ Verizon is permitted to then add a reasonable level of overhead costs to derive the overall price of the new service.²⁷ Petitioner notes that virtually all of Verizon's justifications for the rates proposed are 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 actual methodology used by Verizon to do so. Further, Verizon fails to put forth any explanation as to ensure that the "Company Study" derives accurate estimates of the costs associated with introducing this new loop-based service. As noted by the former Common Carrier Bureau in context of another of Verizon's tariff revision filing, Verizon's methodologies based on unsupported cost factors have "the significant potential ... to yield inflated estimates of the actual monthly costs of providing [the service offered]".²⁸

Because Verizon has failed to provide sufficient justification for the additional costs associated with the Infospeed Premium DSL in light of the costs associated with the almost

²⁴ *Filing and Review of Open Network Architecture Plans*, CC Docket No. 88-2, Memorandum Opinion and Order, 4 FCC Rcd 1 (1988) (BOC ONA Order), *recon.*, *Memorandum Opinion and Order on Reconsideration*, 5 FCC Rcd 3084, *further order*, 5 FCC Rcd 3103, *erratum*, 5 FCC Rcd 4045 (1990), *pets. for review denied*, *California v. FCC*, 4 F.3d 1505 (9th Cir. 1993); *Filing and Review of Open Network Architecture Plans*,. Memorandum Opinion and Order, 6 FCC Rcd 7646 (1991), *Memorandum Opinion and Order on Reconsideration*, 8 FCC Rcd 97 (1993), *pet. for review denied*, *California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (collectively "*BOC ONA Proceeding*").

²⁵ *Amendment of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, CC Docket No. 89-79, Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4524 (1991) (Part 69 ONA Order), *further recon.*, *Memorandum Opinion and Order on Second Further Reconsideration*, 7 FCC Rcd 5235 (1992).

²⁶ *Part 69 ONA Order*, 6 FCC Rcd at 4531, ¶¶ 40-44.

²⁷ *Part 69 ONA Order*, 6 FCC Rcd at 4531, ¶ 44.

²⁸ *DC Power Designation Order* 16 FCC Rcd at 12969-12970, ¶ 16.

identical service offered to its retail customers, the Commission cannot allow Verizon to implement its proposed tariff revisions. A comprehensive tariff investigation is necessary to determine whether Verizon is allocating DSL costs reasonably among its various services and customers or proposing unreasonably high rates in order to gain an unfair and unlawful competitive advantage in the marketplace. Therefore, the Commission should reject, or in the alternative, suspend and investigate, proposed revisions to its Tariff F.C.C. Nos. 1 and 20.

III. VERIZON'S PROPOSED TARIFF REVISIONS AND ASSOCIATED RATES RAISE QUESTIONS REGARDING COST MISALLOCATION AND UNLAWFUL CROSS-SUBSIDIZATION

In May 2003, Verizon announced significant reductions in its retail ADSL prices. Verizon residential subscribers can obtain Verizon ADSL service, along with MSN 8 content at no additional charge (a \$9.95 per month savings),²⁹ for as little as \$29.95 per month, without any volume or term commitments from the customer at speeds up to 1.544 Mbps for some customers.³⁰ Infospeed Premium DSL, on the other hand, is offered at rates four to seven 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 great disparity between the rates for ADSL and SDSL services. Although ADSL and SDSL services require different line cards in Digital Subscriber Line Access Multiplexer ("DSLAM") equipment, Verizon has not offered any explanation about 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

²⁹ See <http://www22.verizon.com/forhomedsl/channels/dsl/msn+8.asp>.

³⁰ 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). See also, "DSL and Internet Access," DSL for Home Package Price, <http://www22.verizon.com/ForHomeDSL/channels/dsl/package+price.asp>. Petitioner understands that the \$29.95 price is a three (3) month offering and the rate becomes \$34.95 per month after the end of the three (3) month term unless the customer signs up for an additional Verizon service, such as Verizon Freedom, in which case the original \$29.95 rate will continue to be applicable.

customers wanting symmetrical upload and download speeds by charging unaffiliated ISPs four to seven times the retail ADSL rate for wholesale SDSL services. Indeed, many of Verizon's purported cost justifications strongly suggest that Verizon is unlawfully subsidizing its retail ADSL customers through the imposition of unreasonably high costs charged to its SDSL customers, or some other mechanism. Clearly, Verizon's retail customers cannot receive ADSL service at \$29.95 per month if Verizon's costs are anywhere near the highly inflated levels it cites in support of Transmittal No. 333 for its Infospeed Premium DSL. Verizon cannot be correct on both counts. The proposed rates in Transmittal No. 333 are unjust and unreasonably discriminatory and should be rejected, or alternatively suspended and investigated.

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,



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Dated July 8, 2003

CERTIFICATE OF SERVICE

I, Erin W. Emmott, hereby certify that, on July 8, 2003, a copy of the foregoing *Petition To Reject Or, Alternatively, To Suspend And Investigate* was sent, as indicated, to the following individuals:

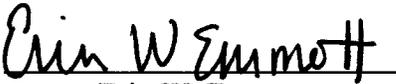
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