

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

In the Matter of:

**Verizon Telephone Companies
Tariff FCC Nos. 1 & 20**

)
)
)
)
)
)

Transmittal No. 386

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

WorldCom, Inc. d/b/a MCI (MCI), 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 the Verizon Telephone Companies (Verizon) on December 2, 2003.¹

In Transmittal No. 386, Verizon proposes to introduce a new service, "Metro Fractional User to Network Interface (UNI) Port With Access Line Connections." The proposed offering bundles a 128 kb/s or 256 kb/s frame relay "port" with a 128 kb/s or 256 kb/s two-wire HDSL access link.

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

The Commission should reject or, in the alternative, suspend and investigate Verizon Transmittal No. 386 because Verizon's failure to unbundle the two-wire HDSL access circuit from the frame relay port violates the Private Line Guidelines, section 61.40 of the Commission's rules.² Furthermore, Verizon's failure to unbundle the two-wire HDSL access circuit from the frame relay port constitutes an unjust and unreasonable practice in violation of section 201 of the Communications Act (Act).

I. Background

Incumbent LEC interstate frame relay access services consist of two distinct components: (1) the frame relay "port," which provides packet switching and other frame relay functionality; and (2) an access circuit that provides simple transmission between the customer premises and the frame relay port. Consistent with the Commission's rate structure rules, the incumbent LECs have, since the introduction of frame relay access services, tariffed at least the channel termination portion of the access circuit separately from the frame relay port. Indeed, in most cases, ILEC frame relay customers are referred to the incumbent LEC's special access tariff for access circuit prices, terms, and conditions.³

For example, Verizon's frame relay access tariff specifies that "customers may access Port Only Connections via Company-provided digital access facilities" Furthermore, "the regulations, rates and charges for the specific type of access service apply as specified in the other Company Tariff from which the service is ordered."⁴ A

² 47 C.F.R. § 61.40.

³ And even when the LEC tariffs the access circuit in the frame relay portion of its tariff, that access circuit is technologically identical to the incumbent LEC's special access tariff.

⁴ Verizon Tariff FCC No. 20, Section 5.1.2(A)(2), 1st revised page 5-4.

customer of Verizon's 56 kb/s frame relay service would purchase a 56 kb/s "UNI Port Only Connection" from Verizon's frame relay tariff, Verizon Tariff FCC No. 20, Section 5.1.5(A)(2),⁵ and, separately, a corresponding 56 kb/s access circuit from Verizon's special access tariff, Tariff FCC Nos. 1 or 11, section 7. Similarly, customers of Verizon's 1.544 Mb/s frame relay access services would purchase a 1.544 Mb/s port from Verizon's frame relay access tariff⁶ and, separately, a 1.544 Mb/s T1 access circuit from Verizon's special access tariff.

In Transmittal No. 386, Verizon proposes to depart from the established LEC rate structure of offering the access link component of a frame relay access service on an unbundled basis. Under Verizon's proposed tariff, the "Metro Fractional UNI Port With Access Line Connections" service would combine the access link with the frame relay port on a bundled basis at a single price. And not only is Verizon proposing to bundle the two components together at a single price, but the access circuit – the 128 kb/s or 256 kb/s 2-wire HDSL circuit – would be available only if purchased as part of the proposed "Metro UNI Port With Access Line Connections" service. Verizon does not offer fractional T1 special access service in its Tariff FCC Nos. 1 or 11.

II. Verizon's Proposed Bundling of Frame Relay Port and Access Link is an Unjust and Unreasonable Practice in Violation of Section 201

The incumbent LECs' unbundled frame relay rate structure has been an important contributor to competition in the provision of frame relay services. Because access circuits are available on an unbundled basis from the ILECs' special access tariffs, competitors can create a competing frame relay offering by purchasing ILEC special

⁵ Verizon Tariff FCC No. 20, Section 5.1.5(A)(2) "UNI Port Only Connection," 1st revised page 5-11.

access circuits and combining those access circuits with their own frame relay switches. As MCI and others have explained in the Commission's CC Docket No. 01-337 review of regulations governing LEC broadband services,⁷ the continued availability of special access circuits to competitors on a just, reasonable, and nondiscriminatory basis is essential to maintaining whatever competition exists in the frame relay access services market today.

With Transmittal No. 386, however, Verizon is seeking to undermine competition in the frame relay market by providing two-wire HDSL 128 kb/s or 256 kb/s access circuits only to Verizon frame relay customers. The Commission should reject or, in the alternative, suspend and investigate Verizon Transmittal No. 386 because the proposal to provide two-wire HDSL 128 kb/s or 256 kb/s access circuits only to Verizon frame relay customers is anticompetitive and thus unjust and unreasonable in violation of section 201 of the Act.

The transmission technology that Verizon proposes to incorporate into its proposed service – “fractional T1” transmission at 128 kb/s or 256 kb/s using HDSL – is key to the development of the frame relay market. Currently, fractional T1 frame relay services are hampered by the fact that the incumbent LECs do not offer an access circuit with a bandwidth between the 56 kb/s of DS0 circuits and the 1.544 Mb/s of DS1 circuits. Customers of fractional T1 frame relay services, such as the 384 kb/s frame relay port that Verizon currently offers,⁸ must purchase a full DS1 access circuit, even though DS1 circuits are costly and provide far more bandwidth than a fractional T1 frame relay customer requires. Fractional T1 transmission technology based on HDSL promises to

⁶ Verizon Tariff FCC No. 20, Section 5.1.5(A)(2) “UNI Port Only Connection,” 1st revised page 5-11.

⁷ CC Docket No. 01-337, WorldCom Comments at 28.

make fractional T1 frame relay services more attractive by providing customers of 128 kb/s, 256 kb/s, and other fractional T1 frame relay services with a lower-cost alternative to full DS1 circuits.

Verizon's failure to provide the fractional T1 HDSL access circuit on a standalone basis is anticompetitive. Because Verizon is not proposing to offer fractional T1 HDSL access circuits on a standalone basis, a competitor would be unable to develop a competing frame relay service that uses fractional T1 HDSL transmission in conjunction with the competitor's packet switches. Competitors would be at a significant cost disadvantage because only Verizon would be able to offer fractional T1 frame relay services at prices that reflect the cost benefits of fractional T1 HDSL transmission technology; competitors, in contrast, would be forced to continue using far more costly full DS1 links to provide fractional T1 frame relay services.

III. Verizon's Metro Fractional UNI Port With Access Line Connections Rate Structure Violates the Commission's Rate Structure Requirements

The Commission should reject or, in the alternative, suspend and investigate Verizon Transmittal No. 386 because Verizon's proposal to bundle its 128 kb/s and 256 kb/s frame relay ports with 128 kb/s or 256 kb/s two-wire HDSL access circuits violates the Commission's rate structure requirements, as expressed in the Private Line Guidelines, Section 61.40 of the Commission's rules,⁹ and in the Commission's post-divestiture investigation of LEC special access tariffs.¹⁰

⁸ Verizon Tariff FCC No. 20, Section 5.1.5(A)(2) "UNI Port Only Connection," 1st revised page 5-11.

⁹ 47 C.F.R. § 61.40(a).

¹⁰ See, e.g., Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase I, FCC No. 86-52 (released January 24, 1986).

First, Verizon's proposed bundled rate structure for 128 kb/s and 256 kb/s frame relay services is inconsistent with the section 61.40(a)(1) requirement that rate structures should be "integrated," i.e., that the carrier should employ a single rate structure for all its same or comparable services.¹¹ Verizon's proposed offering violates section 61.40(a)(1) because the bundled rate structure for Verizon's 128 kb/s and 256 kb/s frame relay services would differ from the unbundled rate structure that Verizon employs for its 56 kb/s, 384 kb/s, and 1.544 Mb/s frame relay access services.¹²

Second, Verizon's proposed bundled rate structure for 128 kb/s and 256 kb/s frame relay services violates the section 61.40(a)(3) requirements regarding selection of rate elements. As an initial matter, Verizon's failure to conform its 128 kb/s and 256 kb/s frame relay access service rate structure to its rate structure for 56 kb/s, 384 kb/s, and 1.544 Mb/s frame relay access services violates the section 61.40(a)(3) requirement that "a rate element which appears separately in one rate structure should appear separately in all other rate structures."¹³ Because Verizon has tariffed separate port and access circuit rate elements for its 56 kb/s, 384 kb/s, and 1.544 Mb/s frame relay services,¹⁴ section 61.40(a)(3) requires that Verizon also tariff separate port and access circuit rate elements for its 128 kb/s and 256 kb/s frame relay services.

More importantly, Verizon's proposed bundled rate structure for 128 kb/s and 256 kb/s frame relay access services violates the basic section 61.40(a)(3) requirement that rate structures be selected to reflect "market demand, pricing convenience for the carrier

¹¹ 47 C.F.R. § 61.40(a)(1).

¹² Verizon Tariff FCC No. 20, Section 5.1.5(A)(2) "UNI Port Only Connection," 1st revised page 5-11.

¹³ 47 C.F.R. § 61.40(a)(3).

¹⁴ Verizon Tariff FCC No. 20, Section 5.1.5(A)(2) "UNI Port Only Connection," 1st revised page 5-11.

and customers, and cost characteristics.”¹⁵ As the Commission explained in the Private Line Guidelines Order,¹⁶ the purpose of section 61.40(a)(3) is to prevent excessive bundling in LEC rate structures:

- ? Section 61.40(a)(3) precludes carriers from “unnecessarily ‘bundl[ing]’ service functions together under one rate element, thus effectively denying customers the option of, or penalizing them for, using less than all the service functions under that rate element.”¹⁷ Verizon’s proposal violates that requirement because, by bundling the access link with the frame relay port, Verizon is forcing customers to purchase a 128 kb/s or 256 kb/s frame relay port even if they require only the 128 kb/s or 256 kb/s access link and, similarly, is forcing customers to purchase a 128 kb/s or 256 kb/s access link even if they require only the frame relay port.
- ? The Commission explained in the Private Line Guidelines Order that, in order to comply with section 61.40(a)(3), “[t]he availability of, or rates for, . . . a transmission channel should not depend on the type of use or customer”¹⁸ Plainly, Verizon Transmittal No. 386 violates that requirement because it would limit the availability of 2-wire HDSL 128 kb/s or 256 kb/s transmission channels to one type of use and customer -- customers of Verizon’s frame relay service.
- ? Finally, the Commission made clear that the section 61.40(a)(3) rate structure rules preclude rate structures that, like Verizon’s Transmittal No. 386,

¹⁵ Id.

¹⁶ Private Line Rate Structure and Volume Discount Practices, Report and Order, 97 FCC 2d 923 (1984) (Private Line Guidelines Order).

¹⁷ Private Line Guidelines Order, 97 FCC Rcd at 934 ¶ 17.

undermine competition by withholding transmission circuits from competitors. As the Commission explained, “[w]ithholding broadband and other underlying basic transmission channels from certain customers can lessen a customer’s ability to obtain the transmission characteristics it desires, and restrain competition.”¹⁹

IV. Conclusion

For the reasons stated herein, the Commission should reject or, in the alternative, suspend and investigate Verizon Transmittal No. 386.

Respectfully submitted
WORLDCOM, INC. d/b/a MCI

/s/ Alan Buzacott

Alan Buzacott
1133 19th St. NW
Washington, DC 20036
(202) 887-3204
FAX: (202) 736-6460

December 9, 2003

¹⁸ Private Line Guidelines Order, 97 FCC Rcd at 936-937 ¶ 20.

¹⁹ Private Line Guidelines Order, 97 FCC Rcd at 938, ¶ 22.

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 December 9, 2003.

/s/ Alan Buzacott
Alan Buzacott
1133 19th Street, NW
Washington, DC 20036
(202) 887-3204

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 9th Day of December, 2003.

Tamara Preiss**
Chief, Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Judy Nitsche**
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Qualex International**
c/o FCC
445 12th Street, SW
Room CY-B402
Washington, DC 20554

Richard T. Ellis*
Verizon
1300 I Street, NW, Suite 400-W
Washington, DC 20005
(202) 336-7922

/s/ Alan Buzacott

Alan Buzacott