

Verizon Petition for Pricing Flexibility For Special Access and Dedicated Transport Services

² *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Special Access Services*, RM 10593, Petition for Rulemaking (filed Oct. 15, 2002) (“AT&T Petition”), and Reply Comments of AT&T Corp. (filed Jan. 23, 2003).

As the Commission itself has recently concluded on an extensive record, the competitive entry that has occurred in the special access market is limited to the very highest capacity services (*i.e.*, OC-n level services).³ As a result, facilities-based entry has not been sufficient to constrain the Bells' special access pricing. As AT&T and others have shown, the Bells have not used their pricing flexibility to lower rates to match those of competitors, as the Commission predicted; rather, the Bells have either held their rates steady or even raised them, even in the densest downtown areas of major cities. Indeed, Verizon has consistently raised rates wherever it has obtained Phase II relief (as it seeks here). *See* AT&T Reply Comments, Stith Declaration. The Bells' own ARMIS reports demonstrate that the Bells' rates of return on special access services are now dramatically higher than 11.25%, the rate of return the Commission found just and reasonable for dominant ILEC services in 1990 (and which is far too high today given the lower inflation and borrowing rates that now prevail). As AT&T showed, all of the Bells' month-to-month special access rates (including Verizon's) are uniformly higher in areas in which they have received Phase II pricing flexibility than they are in areas still subject to price caps. AT&T Petition at 11-13. These facts dramatically confirm that Verizon's special access services are not subject to meaningful competition.

For these reasons, the Commission should not award Verizon any additional pricing flexibility, and it should immediately institute a moratorium on all further pricing flexibility petitions. The Commission's "triggers" for pricing flexibility simply do not measure whether meaningful competition exists for the relevant services. For example, the trigger for deregulation of dedicated transport is inherently flawed, because it focuses only on whether there

³ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket No. 01-338, *et al.*, FCC No. 03-36, ¶¶ 298, 387-88 (rel. Aug. 21, 2003) ("*Triennial*

is *some* fiber deployed in a collocation, and not whether the CLEC's transport facilities fully bypass the Bell's transport facilities. As the Commission itself noted in the *Pricing Flexibility Order* (§ 81), most transmission facilities in a collocation are trunk-side "facilities leading from the collocated equipment to the IXC POP." As a result, the Commission's dedicated transport trigger deregulates the Bell's transport rates, even though the CLEC has bypassed only one of the transport links included in that service – the Bell's entrance facilities. The triggers for channel terminations are even less representative of the existence of relevant sunk investment, because they rely exclusively on a showing of *transport* deployment as evidence of loop deployment. In short, the collocation trigger identifies only the possibility of competitive facilities between the collocation cage and the competitor; it says nothing about the potential for competition between the collocation cage and the customer – *i.e.*, interoffice transport and loop equivalent facilities.

Moreover, Verizon once again relies exclusively on the Commission's alternative "percentage of revenues" trigger, under which Verizon is awarded pricing flexibility if it shows fiber-based collocations in wire centers representing a certain percentage of the Bell's revenues from the relevant services in that MSA. This trigger is even less indicative of competition, because the "percentage of revenues" test means that Verizon need only demonstrate facilities-based collocations in an even smaller percentage of wire centers (*i.e.*, those in the most urban area of the MSA).

The Bells are already charging special access rates that are unjust and unreasonable and are earning astonishing rates of return and multi-billion dollar windfalls. The Commission should not exacerbate this situation any further by granting additional pricing flexibility petitions. The Commission's pricing flexibility triggers create the opportunity – indeed, invite –

Review Order").

monopoly pricing and other anticompetitive abuses, as the evidence of the last three years dramatically confirms. As AT&T requested in its rulemaking petition, the Commission should immediately impose a moratorium on further pricing flexibility petitions (including Verizon's) and initiate a rulemaking to re-establish regulation of special access services.

Respectfully submitted,

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