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

Verizon Petition For Pricing Flexibility For Special Access Services	))))	WCB/Pricing 05-11

AT&T OPPOSITION TO VERIZON PETITION FOR PRICING FLEXIBILITY FOR SPECIAL ACCESS SERVICES

Pursuant to Section 1.774 of the Commission's Rules and its Public Notice, DA No. 05-307, released February 3, 2005, AT&T Corp. ("AT&T") opposes the petition for pricing flexibility for special access services filed by the Verizon telephone companies ("Verizon") pursuant to the *Pricing Flexibility Order.*[1]

The instant petition encompasses one metropolitan serving area ("MSA") in Verizon's region. Specifically, Verizon seeks Phase II relief for end-user channel terminations in its Dallas-Fort Worth, Texas MSA. Verizon has already been granted Phase II relief – removal from price cap regulation and access charge rate structure rules – for more than 55% of its total revenues for interstate special access services in the territory where it has requested such relief.[2] If granted relief in the instant petition, the scope of Phase II relief for Verizon in this territory would grow to **REDACTED**%.

1 *Access Charge Reform, et al.*, CC Docket Nos. 96-262, 94-1, 98-157 and CCB/CPD File No. 98-63, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 14222 (1999) ("*Pricing Flexibility Order*").

2 This is based on the difference between Verizon - Texas Special Access revenues as reported in its 2003 ARMIS 43-01 report and its Special Access revenues reported in its 2004 Annual Price Cap Access Charge Filing (based on 2003 demand). The difference represents Verizon - Texas unregulated Special Access revenues, over $75 million.

The Commission only two weeks ago issued its *Special Access NPRM*, which includes an examination of whether to maintain, modify, or repeal the Commission's current pricing flexibility rules for Special Access Services.[3] While the Commission declined to adopt a moratorium on consideration of pricing flexibility applications pending completion of the rulemaking, the Commission anticipated adopting an order prior to July 1, 2005, that will establish an interim plan to ensure special access prices cap rates remain just and reasonable during the completion of the proceeding.[4] AT&T urges that the Commission *not* consider Verizon's petition until it releases its order on interim relief so that any relevant provisions of that Order can be considered before the Commission acts on Verizon's petition.

As indicated in the *Special Access NPRM*, the BOCs' ARMIS reports demonstrate that their rates of return on special access services are significantly higher than 11.25%, the rate of return the Commission found just and reasonable for dominant ILEC services in 1990 (a return which is far too high today given the lower inflation and borrowing rates that prevail).[5] While rates of return for special access services are unduly high overall, Verizon Texas (the study area where the Dallas-Fort Worth MSA is located) has one of the highest – an astonishing 49.3% rate of return in 2003, which has steadily risen each year since 1996.[6]

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3 *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, RM 10593, Order and Notice of Proposed Rulemaking, FCC 05-18, released January 31, 2005, ¶ 22 ("*Special Access NPRM*").

4 *Id.* ¶ 131.

5 The Commission's *Special Access NPRM* (¶ 27) states that "[t]he overall (*i.e.* not compounded annually) BOC interstate special access accounting rates of return were approximately 38%, 40%, and 44% in 2001, 2002, and 2003, respectively."

6 Annual Rate of Return was calculated using ARMIS data reported for interstate special access services. Specifically, the net return was divided by the average net investment. *See* Verizon 2003 ARMIS 43-01, Table 1, Cost and Revenue, rows 1910, 1915, col. "s".

Verizon Texas' special access net return in 2003 exceeded amounts that would have produced an 11.25% rate of return by more than $43.9 million.[7] Indeed, Verizon's month-to-month special access rates are uniformly higher in areas in which it has received Phase II pricing flexibility than they are in areas still subject to price caps.[8] Among the reasons for this is that there has been no requirement to make a Productivity Factor (X-Factor) reduction to these rates at the time of the annual filing(s), as it is required to for special access rates that are still subject to price caps. This has allowed Verizon to avoid hundreds of millions of dollars of rate decreases to its Special Access services.

For these reasons, the Commission should not award Verizon any additional pricing flexibility at this time, and defer consideration of the petition until its interim order in the *Special Access NPRM* is released. As the evidence over the last three years has dramatically shown, the "triggers" for pricing flexibility simply do not measure whether meaningful competition exists for the relevant services. For example, the trigger for deregulation of channel terminations is inherently flawed, because it focuses only on whether there is *some* fiber deployed in a collocation, and not whether the CLEC's channel terminations fully bypass the Bell's 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 channel termination trigger deregulates the Bell's end-user channel termination rates, even though the CLEC has bypassed only the Bell's entrance facilities.

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7 *Id.* Reducing Verizon Texas' Special Access net return from $56.9 million to $13.0 million would reduce its Special Access rate of return from 49.3% to 11.25%.

8 *See 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 October 15, 2002) ("AT&T Petition"), and Reply Comments (filed January 23, 2003), pp. 11-13.

In short, the triggers for channel terminations are totally non-representative of the existence of relevant sunk investment because they rely exclusively on a showing of *transport* deployment as evidence of loop deployment. Similarly, 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.[9]

Moreover, by its own admission,[10] 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 BOC'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).

Even without pricing flexibility, Verizon is already charging special access rates that are unjust and unreasonable and is earning excessively high rates of return. The Commission should not exacerbate this situation any further. The Commission's pricing flexibility triggers create the opportunity—indeed invite—carriers to charge excessively high rates, as the evidence of the last three years confirms.

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9 This is especially problematic because entrance facilities represent a relatively small percentage of the overall cost of special access (typically around 15 percent).

10 Verizon Petition For Pricing Flexibility For Special Access Services, filed January 28, 2005, p. 5, n3.

CONCLUSION

For the reasons stated above, the Commission should deny Verizon's petition for pricing flexibility for special access end user channel termination services at this time.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Mart Vaarsi, do hereby certify that on this 14th day of February, 2005, a copy of the foregoing "AT&T Opposition to Verizon Petition for Pricing Flexibility For Special Access Services" was served on the parties named below.

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