

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Verizon Petition for Pricing Flexibility for)	WCB/Pricing 05-11
Special Access)	
_____)	

VERIZON'S REPLY

AT&T, the only collocator that filed comments regarding Verizon's Petition, does not dispute that Verizon satisfies the "triggers" for Phase II pricing flexibility.¹ Instead, AT&T seeks to obtain relief – a moratorium on consideration of further pricing flexibility applications – that the Commission already has denied AT&T when the Commission issued its Order and Notice of Proposed Rulemaking ("NPRM") to address special access pricing issues.² In addition, AT&T uses its Opposition to renew, for the *sixth* time now, its attempt to overturn the Commission's pricing flexibility rules by repeating arguments that have been rejected numerous times by the Wireline Competition Bureau ("Bureau") and by the D.C. Circuit Court of Appeals.³ The FCC has rejected "AT&T's arguments regarding the adequacy of the

¹ See *AT&T Opposition to Verizon Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, WCB/Pricing Docket No. 04-01 (filed Feb. 2, 2004) ("Opposition").

² See *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, WC Docket No. 05-25, ¶¶ 6, 128-30 (Jan. 31, 2005).

³ The Bureau specifically rejected AT&T's collateral attacks on the pricing flexibility rules in the following Orders: *Verizon Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, Memorandum Opinion and Order, 19 FCC Rcd 8689 (2004); *SBC Communications Inc. Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services for Ameritech Operating Companies, Nevada Bell, Pacific Bell Telephone Company, Southern New England Telephone Company and Southwestern Bell Telephone Company*, Memorandum Opinion and Order, 18 FCC Rcd 10167 (2003); *Verizon Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, Memorandum Opinion and Order, 18 FCC Rcd 6237 (2003); *Petition of Ameritech Illinois, Ameritech Indiana,*

Commission's pricing flexibility rules to identify competitive markets ..." and has "stated repeatedly that [it] will not consider collateral challenges to the *Pricing Flexibility Order* when reviewing a pricing flexibility petition."⁴ Instead, the FCC limits its determination to "whether the petition satisfies the requirements for pricing flexibility for special access and dedicated transport services set forth in the Commission's rules."⁵ Therefore, the Bureau should disregard the Opposition, interposed solely to delay the Bureau's resolution of Verizon's Petition, and expeditiously grant the requested pricing flexibility

I. IT IS UNDISPUTED THAT VERIZON'S PETITION MEETS THE STATUTORY REQUIREMENTS FOR PRICING FLEXIBILITY

AT&T attacks the Commission's pricing flexibility rules, not Verizon's factual showing that it has met the requirements of those rules. Verizon served copies of the pricing flexibility petition on each collocator that Verizon identified in the petition as having operational collocation arrangements in Verizon's central offices using non-Verizon provided transport facilities, as required by section 1.774(e)(1)(ii) of the Commission's rules.⁶ No collocator, including AT&T, disputed the facts in Verizon's Petition. Rather, the facts show that Verizon meets the competitive "triggers" for Phase II pricing flexibility in the Dallas metropolitan statistical area ("MSA") for the services requested.

Ameritech Michigan, Ameritech Ohio, and Ameritech Wisconsin for Pricing Flexibility; Petition of Pacific Bell Telephone Company for Pricing Flexibility; Petition of Southwestern Bell Telephone Company for Pricing Flexibility, Memorandum Opinion and Order, 16 FCC Rcd 5889 (2001); *Verizon Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services*, Memorandum Opinion and Order, 16 FCC Rcd 5876 (2001).

⁴ *Verizon Petition for Pricing Flexibility for Special Access and Dedicated Transport*, 19 FCC Rcd 8689, ¶ 11 (2004).

⁵ *Id.*

⁶ *See* 47 C.F.R. § 1.774(e)(1)(ii).

As in its rulemaking petition, AT&T argues that the Commission should revoke the pricing flexibility rules and should prescribe rates for special access services based on rate-of-return ratemaking. AT&T also urges the Commission not to review Verizon's pricing flexibility petition while the NPRM is pending even though the Commission has already rejected AT&T's request for a moratorium on new pricing flexibility petitions while the NPRM is pending.⁷ In contrast, AT&T's silence on the only issue relevant to this proceeding—whether Verizon has met the “triggers” for Phase II pricing flexibility—confirms that Verizon has satisfied the benchmarks for relief in the Dallas MSA. Accordingly, there is no question that the Bureau should grant the Petition.

II. AT&T'S OPPOSITION IS INTERPOSED SOLELY FOR DELAY

The Commission's rules prohibit the submission of pleadings that are interposed solely for delay.⁸ This is the sixth time that AT&T has filed an Opposition to delay the grant of a pricing flexibility petition by forcing the Bureau to draft an order rejecting AT&T's irrelevant arguments.⁹ AT&T's request that the Commission refrain from ruling on Verizon's Petition while the NPRM is open in the face of the Commission's outright rejection of AT&T's request for a moratorium on pricing flexibility petitions is nothing short of frivolous. The Bureau should not tolerate repeated submission of arguments that it has previously found to be irrelevant or, in this instance, already rejected in considering pricing flexibility petitions. The Bureau has consistently stated:

we will not consider collateral challenges to the Pricing Flexibility Order when reviewing a pricing flexibility petition. The only issue here is whether the petition satisfies the

⁷ See n. 2 *supra*.

⁸ See 47 C.F.R. § 1.52.

⁹ See n. 3, *supra* (citing four other Orders in which the Bureau criticized AT&T's collateral attacks on the pricing flexibility rules).

requirements for pricing flexibility for special access and dedicated transport services set forth in the Commission's rules.¹⁰

Thus, AT&T's redundant comments serve no purpose other than to delay the grant of Verizon's pricing flexibility petition.

As the Commission recently stated, "[t]he Commission is not required to entertain redundant pleadings."¹¹ The D.C. Circuit has similarly noted, "the Commission need [not] allow the administrative process to be obstructed or overwhelmed by copious or purely obstructive protests."¹² Moreover, the Commission's Public Notice entitled *Commission Taking Tough Measures Against Frivolous Pleadings* also reminded "parties to our proceedings and their attorneys that our rules prohibit the filing of frivolous pleadings or pleadings filed for the purpose of delay in proceedings before the Commission or its staff" and announced that "[t]he Commission intends to fully utilize its authority to discourage and deter the filing of such pleadings and to impose appropriate sanctions where such pleadings are filed."¹³ Since AT&T repeatedly ignores the

¹⁰ *BellSouth Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, Memorandum Opinion and Order, 17 FCC Rcd 23725, ¶ 11 (2002); see also *Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services for Ameritech Operating Companies, Pacific Bell Telephone Company, Southern England Telephone Company and Southwestern Bell Telephone Company*, 17 FCC Rcd 6462, ¶¶ 11, 12 (2002); *Petition of Ameritech Illinois, Ameritech Indiana, Ameritech Michigan, Ameritech Ohio, and Ameritech Wisconsin for Pricing Flexibility*; *Petition of Pacific Bell Telephone Company for Pricing Flexibility*; *Petition of Southwestern Bell Telephone Company for Pricing Flexibility*, 16 FCC Rcd 5889, ¶ 13 & n.38 (2001); *Verizon Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services*, 16 FCC Rcd 5876, ¶¶ 11, 12 (2001).

¹¹ *Amendment Of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Anniston and Ashland, Alabama, and College Park, Covington, Milledgeville and Social Circle, Georgia)* Memorandum Opinion and Order, 19 FCC Rcd 1603, ¶ 3 (2004).

¹² *Office of Communications of United Church of Christ v. FCC*, 359 F. 2d 994, 1005 (D.C. Cir. 1966).

¹³ See *Commission Taking Tough Measures Against Frivolous Pleadings*, Public Notice, 11 FCC Rcd 3030 (1996) at 1.

Bureau's admonitions that it will not consider collateral attacks to the pricing flexibility rules, the Bureau should order AT&T to stop filing these baseless pleadings.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, hereby certify that on this 24th day of February, 2005 a copy of the foregoing Verizon Reply was served via facsimile and U.S. mail, first class, postage prepaid to Mart Vaarsi, Lawrence J. Lafaro, and Judy Sello, AT&T, One AT&T Way, Room 3A229 Bedminster, New Jersey 07921.


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