

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Petition for Waiver of the Commission's
Price Cap Rules For Services Transferred
from VADI to the Verizon telephone
companies

**VERIZON'S¹ PETITION FOR WAIVER
OF THE PRICE CAP RULES**

Verizon hereby requests a temporary extension of the waiver of the Commission's price cap rules that the Wireline Competition Bureau previously granted to permit Verizon to exclude from price caps in the 2006 annual access tariff filings advanced services offered under Tariff FCC No. 20, pending further proceedings concerning the regulatory status of these services. The Bureau has repeatedly found that this waiver is in the public interest given the unsettled questions concerning how these services should be regulated going forward.² Because the proceedings to determine such regulatory treatment remain pending, this waiver remains in the public interest.

¹ The Verizon telephone companies ("Verizon") are the affiliated local telephone companies of Verizon Communications Corp. These companies are listed in Attachment A.

² See *Verizon Petition for Interim Waiver of Sections 61.42(g), 61.38, and 61.49 of the Commission's Rules*, Order, 17 FCC Rcd 11010 (2002) ("Sections 61.42(g), 61.38, 61.49 Waiver Petitions"); *Verizon Petition for Interim Waiver of Section 61.42(g) of the Commission's Rules*, Order, 18 FCC Rcd 6498 (2003) ("Verizon Section 61.42(g) Waiver Petition"); *Petition for Waiver of the Commission's Price Cap Rules for Services Transferred from VADI to the Verizon Telephone Companies*, Order, 19 FCC Rcd 7095 (2004) ("2004 VADI Waiver Order"); *Petition for Waiver of the Commission's Price Cap Rules for Services Transferred from VADI to the Verizon Telephone Companies*, Order, 20 FCC Rcd 8900 (2005) ("2005 VADI Waiver Order").

The services that would be subject to this waiver include the advanced services that were transferred to Verizon from its separate advanced services affiliate, Verizon Advanced Data Inc. (“VADI”).³ In pending proceedings, the Commission is currently considering whether to deregulate broadband services, including the advanced services transferred from VADI. Among other things, the Commission could decide to remove advanced services from price cap regulation. Renewal of this limited waiver would avoid unnecessary impacts on the price cap indexes for other services and maintain the *status quo* while the Commission conducts its broadband proceedings.

VADI offered advanced services on a non-dominant basis pursuant to the terms of the *GTE and Bell Atlantic Consent for Transfer of Control*, Order, 15 FCC Rcd 14032, Appendix D, ¶ 8 (2000). On September 16, 2001, the Common Carrier Bureau granted Verizon’s request to accelerate the sunset of the requirement that Verizon provide advanced services through VADI as a result of the court’s decision in *Ass’n of Communications Enter. v. FCC*, 235 F.3d 662 (D.C. Cir. 2001). See *GTE and Bell Atlantic Consent for Transfer of Control*, Order, 16 FCC Rcd 16915 (2001). Verizon subsequently filed a series of interstate tariff filings to transfer the VADI services to the Verizon telephone companies’ FCC Tariff No. 20.⁴ Verizon also included all new advanced services in FCC Tariff No. 20.

On November 30, 2001, Verizon filed a petition for a waiver of 47 C.F.R. § 61.42(g) of the Commission’s rules to permit Verizon to exclude the advanced services from the price cap indexes pending the completion of the Commission’s planned rulemaking proceeding to

³ A complete list of the current services that are the subject of this petition is included in Attachment B.

⁴ See, e.g., Verizon telephone companies’ FCC Tariff No. 1, Transmittal Nos. 123, 142, 281, 341.

determine whether advanced services, such as those that would be transferred back to the Verizon telephone companies, should be given non-dominant treatment based on the status of the services rather than on the identity of the carrier offering them. Absent a waiver, Section 61.42(g) might have required Verizon to include the advanced service in the price cap indexes in the first annual access tariff filing following the base period in which they were incorporated into Verizon's FCC Tariff No. 20. Verizon explained that a waiver would allow Verizon to avoid the burden of including the rates in price caps and converting the VADI demand data for the price cap calculations. Verizon also pointed out that a waiver would avoid unnecessary impacts on other price cap rates while the Commission decides whether these services should be treated as a common carrier service and, if so, as "dominant" when offered by an incumbent local exchange carrier.

On June 10, 2002, the Bureau granted Verizon's waiver request, in part, to allow Verizon to exclude the advanced services from price caps in the 2002 annual access tariff filing. *See Verizon Sections 61.42(g), 61.38 61.49 Waiver Petitions*. The Bureau noted that the Commission had initiated a rulemaking proceeding to evaluate whether incumbent local exchange carriers should be considered "dominant" with respect to broadband telecommunications services, such as those being transferred from VADI, and that one of the possible outcomes of this proceeding could be the elimination of price cap regulation for advanced services. *See id.*, ¶ 5 (*citing Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, 16 FCC Rcd 22745 (2001)) ("*Broadband Proceeding*"). The Bureau found that a temporary waiver would allow Verizon to avoid the burden of incorporating the advanced services into price caps and that it would maintain the *status quo* until the Commission has fully considered the issues related to the *Broadband Proceeding*. *Verizon Sections 61.42(g), 61.38 61.49 Waiver Petitions*,

¶ 9. The Bureau reserved action on the remainder of Verizon's waiver request until a later date. *See id.*, n. 20. Each year since, the Bureau has extended this limited waiver to permit Verizon to exclude the advanced services from price caps in the annual access tariff filings. *See Verizon Section 61.42(g) Waiver Petition; 2004 VADI Waiver Order; 2005 VADI Waiver Order.*

A temporary extension of the waiver of § 61.42(g) for the 2006 annual access tariff filing would be in the public interest because it would maintain the *status quo* pending the completion of the proceedings that addresses the appropriate regulation of advanced services provided by incumbent local exchange carriers. The appropriate regulatory treatment for these advanced services is still an open issue that the Commission is actively considering, and the bases for the Bureau's waivers in previous years still apply. Therefore, it remains in the public interest to keep these services out of price caps until the Commission determines how these broadband services should be treated for regulatory purposes.

Since last year's waiver, the Commission has continued the process of determining the appropriate regulatory treatment for various types of broadband services, including the advanced services at issue here. Most notably, the Commission concluded in the *Title I Broadband Order* that wireline Internet access services may be regulated as Title I information services, and that wholesale broadband transmission services sold as input to such services may be sold on a private carriage basis also under Title I.⁵ While the Commission declined in that order to settle the ultimate regulatory treatment that should apply to other advanced services when not sold in connection with Internet access services,⁶ it noted that "the Commission is currently considering

⁵ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853 (2005) ("*Title I Broadband Order*").

⁶ Verizon filed a limited petition for reconsideration of the *Title I Broadband Order* asking the Commission to recognize that all broadband transition services, and not just those used in

changes to [the regulatory] framework [for such services] in a number of related proceedings.”

Id. ¶ 9 n. 24. For example, the Commission noted that it is still considering whether incumbent local exchange carriers’ broadband services are nondominant. *See also Broadband Proceeding; Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 17 FCC Rcd 3019 (2002).⁷ Thus, the appropriate regulatory approach to these services is still a matter of considerable uncertainty that is currently being reviewed by the Commission.⁸

Because price cap regulation is only for Title II telecommunications services, a reclassification of these services as Title I would take them out of the price cap regime. As the Bureau stated in granting the previous waivers, “[t]he transfer of the advanced services assets from VADI to Verizon, during a period in which the Commission is considering a modification of our rules that would obviate the need to include advanced services within the price cap indexes and rates, constitutes special circumstances that warrant a temporary deviation from the price cap rules.” *2004 VADI Waiver Order* ¶ 8. The Bureau also found that a waiver would

connection with Internet access, may be sold on a private carriage basis. *See Verizon’s Petition for Limited Reconsideration of the Title I Broadband Order*, CC Docket Nos. 02-33, 95-20, 98-10 (filed Nov. 16, 2005). That petition remains pending.

⁷ In addition, Verizon’s forbearance petition seeking forbearance of all common carrier regulations for all broadband services, including those at issue here, is still pending before the Commission. *See, e.g., Petition of the Verizon Telephone Companies for Forbearance*, WC Docket No. 04-440 (filed Dec. 20, 2004). On December 19, 2005, the Commission extended by 90 days its consideration of this petition, and it is due to rule on petition by March 19, 2006. *Petition of the Verizon Telephone Companies for Forbearance*, Order, WC Docket No. 04-440, DA 05-3217 (2005).

⁸ In 2005, the Commission also waived certain of its price cap rules in order to permit Verizon to exercise Phase I pricing flexibility with respect to certain fast-packet advanced services in locations where it had satisfied the triggers for pricing flexibility with respect to other special access services. *Petition for Waiver of Pricing Flexibility Rules for Fast Packet Services*, Memorandum Opinion and Order, 20 FCC Rcd 16840 (2005). That limited order did not resolve the appropriate regulatory treatment for these services, nor did it affect the propriety of granting this petition. In fact, the Commission noted in that order that these advanced services had been

allow Verizon to avoid the burden of converting the advanced services demand data into the price cap format in the event that the Commission ultimately decides to keep them out of price caps. *See id.* The Bureau noted that “[t]he services formerly held by VADI were not incorporated into the Verizon price cap calculations, and a temporary waiver will serve the public interest by maintaining the status quo until we have fully considered the issues related to pending broadband proceedings.” *Id.*

In addition, the temporary waiver is warranted because, as Verizon has previously explained, if these services were included in price caps, a reduction in the rates for these services would create “headroom,” allowing Verizon to make offsetting increases in other rates within the same price cap service categories. Thus, a waiver is appropriate to prevent changes in the rates for advanced services from having a secondary impact on rates for other services.

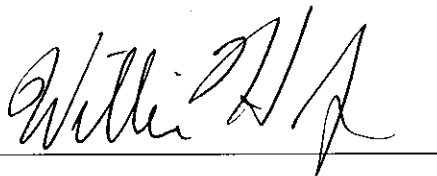
For these reasons, the Bureau should grant Verizon an extension of the temporary waiver of § 61.42(g) of the price cap rules to exclude the advanced services in FCC Tariff No. 20 from the price cap baskets in the 2006 annual access tariff filing. The waiver would be subject to the Commission’s final decision on the status of advanced services in the pending proceedings concerning the regulation of broadband services.

kept out of price cap as a result of the previous’ years waivers. *Id.* ¶ 6. Therefore, if anything, that order supports extending the limited waiver as Verizon requests here.

Conclusion

For the foregoing reasons, the Commission should extend its previous waiver of § 61.42(g) of the price cap rules to permit Verizon to exclude advanced services in FCC Tariff No. 20 from the price cap indexes in the 2006 annual access tariff filings.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'William H. Johnson', is written over a horizontal line.

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ATTACHMENT A

THE VERIZON TELEPHONE COMPANIES

For the purposes of this filing, the Verizon telephone companies are local exchange carriers affiliated with Verizon Communications Inc.:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.

ATTACHMENT B

Verizon Petition for Waiver of the Price Cap Rules
FCC 20 List of Services

N = New Service

X = Outside waiver/price caps

W = Removed from tariff

New Services (N)

Direct PVC Premium Service For Infospeed DSL Solutions	TML212	7/12/02	N
Add AZ to Frame Relay Service (FRS)	TML219	7/31/02	N
Customer Service Management for Frame Relay Service (South)	TML241	9/24/02	N
OC12c for ATM Cell Relay Service (East)	TML242	9/26/02	N
Subrate DS3 for Frame Relay Service (South)	TML264	11/30/02	N
Subrate DS3 for Frame Relay Service (North)	TML274	1/02/03	N
ATM Consolidation (West)	TML295	2/25/03	N
DSL for Micronesia	TML311	4/29/03	N
5N-TVDP for DSL	TML311	4/29/03	N
Infospeed Premium DSL	TML343	8/6/03	N
Transparent LAN Service (TLS) NY/NJ Corridor	TML345	8/12/03	N
FRS Port Only and Bundled DS3 (South)	TML360	10/2/03	N

Introduce new port provisions and Term plans (North and South)	TML353	9/12/03	N
ATM Admin NRC (West)	TML362	10/4/03	N
New States and Customer Service Management for TLS (West)	TML366	10/17/03	N
Network-to-Network Interface for TLS	TML390	12/20/03	N
Inverse Multiplexing ATM (West)	TML419	3/19/04	N
Internet Protocol-Virtual Private Network (IP-VPN) (East and West)	TML426	4/20/04	N
ATM/FRS Adding Southern Corridor	TML442	6/1/04	N
Inverse Multiplexing ATM (East)	TML446	6/5/04	N
IP-VPN offer in New States	TML447	6/5/04	N
National TLS	TML448	6/8/04	N
FRS Realignment (North)	TML470	7/29/04	N
New DSL & DRL Speed 3M/768K	TML472	7/31/04	N
National TLS Add New State	TML473	7/31/04	N
FRS New Port Only Speeds	TML482	8/31/04	N
Introduce new provisions for Sub-rate DS3 features (West)	TML488	9/22/04	N
Ethernet TLS Ethernet Virtual Circuits and new speeds	TML495	10/19/04	N
ATM – Add New State	TML503	11/2/04	N
“FRASI” PVC CIR (FRS North)	TML531	1/14/05	N

National TLS (West)	TML535	1/22/05	N
“FRASI” PVC CIR for Frame Relay Service (South)	TML564	5/12/05	N
Frame Relay Service (North) Additional Discounts for 3YR And 5 YR TPPs	TML569	5/19/05	N
2YR TPP for ATM (West)	TML596	7/29/05	N
IP-VPN Dedicated UNI Port with Access and UNI Port Only and new i-VC Speeds	TML602	7/28/05	N
Introduce OC192 IP Port	TML630	10/26/05	N
Introduce Phase II Ethernet EVCs for TLS (East)	TML634	11/11/05	N
Expand IP-VPN to include DE	TML650	12/21/05	N
Introduce Phase I and Phase II Ethernet EVCs for TLS (West)	TML660	1/5/06	N

Outside Price Cap (X)

High Capacity Broadband Access Cloud (HiBAC) Promotion	TML174	4/24/02	X
Add OH to HiBac Promotion	TML219	7/31/02	X
Washington Interagency Telecommunications Service (WITS)	TML246	10/17/02	X
	TML387	12/18/03	X
	TML489	10/1/04	X
Virtual ATM Promotion	TML376	11/14/03	X
Micronesia DSL Promotion	TML512	12/4/04	X

Add VT and WA Wholesale Discounts to DSL Over Resold	TML620	9/30/05	X
WITS Yearly Update	TML622	10/1/05	X

Services Removed from Tariff (W)

Remove TCP/IP Data Aggregation	TML432	5/1/04	W
Withdraw Hawaii	TML628	10/18/05	W
Remove Expired Promos (outside PC)	TML631	10/28/05	W
Withdraw Micronesia (outside PC)	TML643	12/1/05	W

The following list includes services reintegrated from VADI on December 1, 2001, and services reintegrated later:

Part I –

5.1	Frame Relay Service	TML123	12/1/01
5.2	Infospeed DSL Service	TML123	12/1/01
5.3	Transparent LAN Service	TML123	12/1/01
5.4	SMDSI	TML164	4/2/02
5.5	ATM Cell Relay Service	TML123	12/1/01
5.6	Enterprise ATM Cell Relay Service	TML123	12/1/01
5.7	Exchange Access SMDS II	TML123	12/1/01
5.8	Exchange Access Frame Relay Svc	TML123	12/1/01
5.9	Exchange Access ATM I	TML123	12/1/01
5.10	Exchange Access ATM II	TML123	12/1/01
5.11	Federal Government Services	TML123	12/1/01

Part II –

5.1	TCP/IP Data Aggregation	TML123	12/1/01
5.2	Frame Relay I	TML123	12/1/01
5.3	Frame Relay II	TML123	12/1/01
5.4	HiBAC	TML123	12/1/01
5.5	ATM I	TML123	12/1/01
5.6	ATM II	TML123	12/1/01
5.7	DSL Solutions I	TML123	12/1/01
5.8	DSL Solutions II	TML123	12/1/01

Part III –

5.1	Verizon Infospeed DSL Solutions	TML123	12/1/01
5.2	Verizon DSL Over Resold Lines	TML123	12/1/01
6.	Promotions		
	- ATM Credit (ATM CRS II)	TML123	12/1/01
	- FRS Credit (FRS or XA FRS)	TML123	12/1/01
	- HiBAC Credit	TML123	12/1/01
	- Verizon Infospeed DSL Solutions and DSL Over Resold Lines Waivers	TML123	12/1/01