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Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Petition for Waiver of the Commission's Price Cap Rules for Services Transferred from VADI to the Verizon Telephone Companies, WCB/Pricing File No. 06-10

Dear Ms. Dortch:

In 2001, when Verizon transferred advanced services from VADI, Verizon's former separate advanced services affiliate, to Verizon's telephone operating companies, it sought and was granted a limited waiver permitting it to maintain the transferred services outside of price cap regulation. That waiver has been extended in each subsequent year. In the above-captioned petition for waiver, Verizon demonstrated that the Commission should extend that limited waiver so that Verizon can exclude those advanced services (which are offered under Verizon's Tariff FCC No. 20 and are referred to as the "VADI services") from price caps in the 2006 annual access tariff filings.

Verizon recently became aware that Time Warner Telecom filed reply comments on March 10, 2006 opposing Verizon's requested relief.¹ There is no merit to Time Warner Telecom's arguments, and the waiver extension should be granted expeditiously.

Time Warner Telecom first asserts that the special circumstances underlying Verizon's waiver request will no longer be present after March 19, 2006, which was the deadline for acting on Verizon's request for forbearance from common carrier regulation of broadband services.² Time Warner Telecom Reply at 2-3. Verizon has already addressed the continuing need for this relief after the grant of its forbearance petition.³

¹ Reply Comments of Time Warner Telecom, WCB/Pricing File No. 06-10, filed March 10, 2006. To Verizon's knowledge, Time Warner Telecom did not serve its reply on Verizon, and the document does not appear to be available through ECFS.

² See FCC News Release, "Verizon Telephone Companies' Petition for Forbearance from Title II and *Computer Inquiry* Rules with Respect to their Broadband Services Is Granted by Operation of Law," WC Docket No. 04-440 (March 20, 2006).

³ See Letter from Donna Epps, Vice President-Federal Regulatory Advocacy, Verizon, to Marlene H. Dortch, Secretary, FCC, WCB/Pricing File No. 06-10, dated April 18, 2006, at 1-2.

Time Warner Telecom next argues that price cap regulation of the VADI services is necessary because there is no “substantial competition” for “high capacity loops used by business customers” and for “interexchange services offered in Tariff No. 20 that use Verizon loop facilities as inputs.” Time Warner Telecom Reply at 4-6. With respect to the services at issue in Verizon’s limited waiver petition, this argument is a belated petition for reconsideration of the *Wireline Broadband Order* and a restatement of Time Warner Telecom’s opposition to Verizon’s forbearance petition, and is thus both untimely and moot. In any event, the argument is wrong on the merits.

Time Warner Telecom rests its case that Verizon is “dominant” in providing the VADI services on precedent concerning traditional TDM-based DS1 and DS3 loops, which are not covered by Verizon’s waiver request and are not affected by either the *Wireline Broadband Order* or the recent forbearance grant. See Time Warner Telecom Reply at 4-5 (citing the Commission’s *Special Access Pricing Flexibility*, *Qwest Forbearance*, *Triennial Review Remand*, and *MCI/Verizon Merger* orders). Traditional TDM-based DS1 and DS3 loops remain under price cap regulation, except for those areas where Verizon has secured Phase II pricing flexibility relief as a result of the significant presence and broad reach of fiber-based collocators. Time Warner contends (*id.* at 5) that the Commission’s market power analysis with respect to traditional DS1 and DS3 loops applies to packetized loops as well, but it ignores that fact that the Commission repeatedly has drawn distinctions between packet-switched services (such as the VADI services) and TDM-based services (such as DS1 and DS3) and repeatedly has recognized that Title II regulation of broadband and packet-switched services undermines investment and is unnecessary in light of competition.⁴

While Time Warner Telecom further asserts that CLECs are unable “to economically deploy broadband loops in most situations,” Reply at 5, Time Warner Telecom’s own success in the market undermines this unsupported claim. Time Warner Telecom itself has built extensive fiber networks in 44 markets, directly serves more than 5000 buildings, and passes “thousands more.”⁵ Dozens of other intra-modal competitors have deployed similarly far-reaching networks in

⁴ See, e.g., *Wireline Broadband Order*, ¶¶ 8 n.14 (listing numerous proceedings in which the Commission has relaxed or eliminated regulation of broadband and packet-switched services), 44 (acknowledging the adverse effects of Title II regulation on investment), 50 (noting “increasing competition at the retail level for broadband Internet access services as well as growing competition at the wholesale level for network access provided by the wireline providers’ intramodal and intermodal competitors”), 84 (rejecting arguments, like those Time Warner Telecom advances here, that it is “necessary or appropriate” to determine whether incumbent LECs are dominant in providing broadband Internet access transmission); *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 ¶¶ 272 (“[a]lthough we require the unbundling of legacy technology used over hybrid loops, we decline to attach unbundling requirements to the next-generation network capabilities of fiber-based local loops”; such action will result in a “race to build next generation networks and ... increased competition in the delivery of broadband services”), 288 (“[w]e decline to require incumbent LECs to unbundling the next-generation network, packetized capabilities of their hybrid loops”).

⁵ See http://www.twtelecom.com/about_us/networks.html#TWTC (visited April 28, 2006).

hundreds of markets serving many thousands of buildings,⁶ and inter-modal rivals such as the major cable companies and fixed wireless providers are a major competitive force as well.⁷ Moreover, competitors remain free to (and do) use Verizon's traditional TDM-based special access services and/or DS1 and DS3 UNEs in whole or in part to provide packet-switched broadband services to customers.

Given this extensive competition, it is not surprising that Time Warner Telecom has not claimed that Verizon's VADI services are priced at unreasonable levels, even though those services have not been subject to price cap regulation since being reintegrated into the Verizon telephone operating companies. And as Verizon explained in support of its recent forbearance petition, these services are subject to intense competition. This fact provides further evidence that price cap regulation of these offerings would serve no purpose.

Finally, Time Warner Telecom's contention that placing the VADI services under price caps would not be burdensome is incorrect. Reply at 6-7. While Time Warner notes that BellSouth's packet-switched services are included in its price cap tariffs, BellSouth never provided those services through a separate affiliate and thus did not have to go through the substantial work involved in integrating these services into the price cap framework. And the SBC petition cited by Time Warner Telecom is irrelevant to the relief requested here. Verizon has shown that a waiver is warranted, and that waiver request has even greater merit today in light of the relief contained in the *Wireline Broadband Order* and the recent forbearance grant.

For these reasons, and those contained in Verizon's petition and Reply, a continued waiver is in the public interest. Given the approaching deadlines for submitting the 2006 annual access tariff filings, and the substantial work that is involved in preparing those filings, the Commission should grant the requested limited waiver as quickly as possible.

Sincerely,



⁶ See Comments of Verizon, WC Docket No. 05-25, filed June 13, 2005 (Verizon 05-25 Comments), at 25-29, Declaration of Quintin Lew, ¶¶ 9-23.

⁷ See Verizon 05-25 Comments at 29-33, Declaration of Quintin Lew, ¶¶ 24-44.