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

In the Matter of	)	
	)	
	)	
Verizon Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services	)	CCB/CPD Nos. 00-24, 00-28
	)	
	)	
	)	
	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: March 13, 2001 **Released: March 14, 2001**

By the Chief, Common Carrier Bureau:

I. INTRODUCTION.

1. In this order, we grant two Verizon petitions for flexibility in the pricing of access services provided by an incumbent local exchange carrier (LEC). In its first petition, Verizon seeks both Phase I and/or Phase II relief in certain metropolitan service areas (MSAs) and non-MSA areas for access services provided by former Bell Atlantic telephone companies.[1] In its second petition, Verizon seeks similar relief for access services provided by former GTE telephone operating companies.[2]

II. BACKGROUND.

2. To recover the costs of providing interstate access services, incumbent local exchange carriers (LECs) charge interexchange carriers (IXCs) and end users for access services in accordance with our Part 69 access charge rules.[3] The Commission has long recognized that it should allow incumbent

[1] *See* Verizon Petition for Pricing Flexibility for Special Access and Dedicated Transport Services (Nov. 17, 2000) (*November Petition*).

[2] *See* Verizon Petition for Pricing Flexibility for Special Access and Dedicated Transport Services (Dec. 18, 2000) (*December Petition*).

[3] 47 C.F.R. Part 69. Part 69 establishes two basic categories of access services: special access services and switched access services. *See* Access Charge Reform, CC Docket 96-262, Fifth Report and Order and Notice of Proposed Rulemaking, 14 FCC Rcd 14,221, 14226 (1999) (*Access Reform Fifth Report and Order*). Special access services employ dedicated facilities that run directly between the end user and an IXC point of presence (POP) — the physical plant where an IXC connects its network with the LEC network. Charges for special access services generally are divided into channel termination charges and channel mileage charges. Channel termination charges recover the costs of facilities between the customer's premises and the LEC end office and (continued….)

LECs progressively greater flexibility in the pricing of access service as they face increasing competition for the provision of these services.[4] In the *Access Reform First Report and Order*, the Commission adopted a market-based approach to access charge reform, pursuant to which it would relax restrictions on incumbent LEC pricing as competition emerges.[5] At that time, the Commission deferred resolution of the specific timing and degree of pricing flexibility to a future order.[6] Subsequently, in the *Access Reform Fifth Report and Order*, the Commission provided detailed rules for implementing the market-based approach, pursuant to which price cap LECs would receive pricing flexibility in the provision of interstate access services as competition for those services develops.[7]

3. The pricing flexibility framework the Commission adopted in the *Access Reform Fifth Report and Order* grants greater flexibility to price cap LECs as competition develops, while ensuring that: (1) price cap LECs do not use pricing flexibility to deter efficient entry or engage in exclusionary pricing behavior; and (2) price cap LECs do not increase rates to unreasonable levels for customers that lack competitive alternatives. In addition, the reforms were designed to facilitate the removal of services from price cap regulation as competition develops in the marketplace, without imposing undue administrative burdens on the Commission or the industry.[8]

4. In keeping with these goals, the Commission established a framework for granting price cap LECs greater flexibility in the pricing of interstate access services once they make a competitive showing, or satisfy "triggers," to demonstrate that market conditions in a particular area warrant the relief at issue. Relief is granted in two phases and on an MSA basis.[9]

5. <u>Phase I Pricing Flexibility</u>. A price cap LEC that obtains Phase I relief is allowed to offer,

(Continued from previous page)
the costs of facilities between the IXC POP and the LEC serving wire center. *See* 47 C.F.R. § 69.703(a), (c), (d). Channel mileage charges recover the costs of facilities between the LEC serving wire center and the LEC end office serving the end user. *See Access Reform Fifth Report and Order*, 14 FCC Rcd at 14226-27.

[4] *See* Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 858 (1995) (*Price Cap Second FNPRM*); *see also* Access Charge Reform, CC Docket No. 96-262, Notice of Proposed Rulemaking, 11 FCC Rcd 21354, 21428-48 (1996) (*Access Reform NPRM*) (refining and seeking comments on the Commission's pricing flexibility proposals).

[5] Access Charge Reform, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982 (1997) (*Access Reform First Report and Order*).

[6] *Access Reform First Report and Order*, 12 FCC Rcd at 15989.

[7] *Access Reform Fifth Report and Order*, 14 FCC Rcd at 14225 (citing *Access Reform First Report and Order*, 12 FCC Rcd at 15989, 16106). The Commission instituted price cap regulation for the Regional Bell Operating Companies (RBOCs) and GTE in 1991, and permitted other LECs to adopt price cap regulation voluntarily, subject to certain conditions. Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6818-20 (1990) (*LEC Price Cap Order*). Price cap LECs are those LECs that are subject to price cap regulation.

[8] *Access Reform Fifth Report and Order*, 14 FCC Rcd at 14225.

[9] *See* 47 C.F.R. § 22.909(a) of the Commission's rules for a definition of an MSA.

on one day's notice, contract tariffs[10] and volume and term discounts for those services for which it makes a specific competitive showing, so long as the services provided pursuant to contract are removed from price caps.[11] To protect those customers that may lack competitive alternatives, a price cap LEC receiving Phase I flexibility must maintain its generally available price cap constrained tariffed rates for these services.[12] To obtain Phase I relief, a price cap LEC must meet triggers designed to demonstrate that competitors have made irreversible, sunk investments in the facilities needed to provide the services at issue. In particular, to receive pricing flexibility for dedicated transport and special access services other than channel terminations,[13] a price cap LEC must demonstrate that unaffiliated competitors have collocated in at least 15 percent of the LEC's wire centers within an MSA or collocated in wire centers accounting for 30 percent of the LEC's revenues from these services within an MSA.[14] In both cases, the price cap LEC also must show, with respect to each wire center, that at least one collocator is relying on transport facilities provided by a transport provider other than the incumbent LEC.[15]

6. Higher thresholds apply for obtaining Phase I pricing flexibility for channel terminations between a LEC end office and an end user customer. A competitor collocating in a LEC end office continues to rely on the LEC's facilities for the channel termination between the end office and the customer premises, at least initially, and thus is more susceptible to exclusionary pricing behavior by the LEC.[16] In that case, a price cap LEC must demonstrate that unaffiliated competitors have collocated in at least 50 percent of the LEC's wire centers within an MSA or collocated in wire centers accounting for 65 percent of the LEC's revenues from these services within an MSA.[17] Because competition is likely to develop first for those services that carry traffic between points of high traffic concentration, the Commission set a lower threshold for the channel terminations between a LEC serving wire center and an IXC POP. Therefore, a price cap LEC seeking pricing flexibility for channel terminations between a LEC wire center and an IXC POP must demonstrate that unaffiliated competitors have collocated in at least 15 percent of the LEC's wire centers within an MSA or collocated in wire centers accounting for 30 percent of the LEC's revenues from these services within an MSA.[18] In adopting these collocation triggers, the Commission required that the LEC exclude from its calculations both collocation in which transport is provided by the incumbent LEC pursuant to tariff and collocation that relies upon unbundled transport

[10] A contract tariff is a tariff based on an individually negotiated service contract. *See Interexchange Competition Order*, 6 FCC Rcd 5880, 5897 (1991); 47 C.F.R. § 61.3(m). *See also* 47 C.F.R. § 61.55 (describing the required composition of the contract-based tariffs).

[11] *Access Reform Fifth Report and Order,* 14 FCC Rcd at 14287.

[12] *Access Reform Fifth Report and Order*, 14 FCC Rcd at 14234-35.

[13] For purposes of pricing flexibility proceedings, "dedicated transport services" refer to entrance facilities, direct-trunked transport, and the dedicated component of tandem-switched transport. *Access Reform Fifth Report and Order,* 14 FCC Rcd at 14234 n.54.

[14] *Access Reform Fifth Report and Order*, 14 FCC Rcd at 14273-74; 47 C.F.R.§ 69.709(b)(1).

[15] 47 C.F.R. 69.709(b).

[16] *Access Reform Fifth Report and Order*, 14 FCC Rcd at 14278-79.

[17] *Access Reform Fifth Report and Order*, 14 FCC Rcd at 14280-81; 47 C.F.R.§ 69.711(b).

[18] *Access Reform Fifth Report and Order*, 14 FCC Rcd at 14270.

leased from the incumbent LEC.[19]

7. Phase II Pricing Flexibility. A price cap LEC that receives Phase II relief is allowed to offer dedicated transport and special access services free from the Commission's Part 69 rate structure and Part 61 price cap rules. The LEC, however, is required to file, on one day's notice, generally available tariffs for those services for which they receive Phase II relief.[20] To obtain Phase II relief, a price cap LEC must meet triggers designed to demonstrate that competition for the services at issue within the MSA is sufficient to preclude the incumbent from exploiting any individual market power over a sustained period. To obtain Phase II relief for dedicated transport and special access services other than channel terminations, a price cap LEC must demonstrate that unaffiliated competitors have collocated in at least 50 percent of the LEC's wire centers within an MSA or collocated in wire centers accounting for 65 percent of the LEC's revenues from these services within an MSA.[21] Again, higher thresholds apply for obtaining Phase II pricing flexibility relief for channel terminations between a LEC end office and an end user customer. To obtain such relief, a price cap LEC must demonstrate that unaffiliated competitors have collocated in at least 65 percent of the LEC's wire centers within an MSA or collocated in wire centers accounting for 85 percent of the LEC's revenues from these services within an MSA.[22] For the reasons discussed with respect to Phase I pricing flexibility, a price cap LEC seeking pricing flexibility for channel terminations between a LEC serving wire center and an IXC POP must demonstrate that unaffiliated competitors have collocated in at least 50 percent of the LEC's wire centers within an MSA or collocated in wire centers accounting for 65 percent of the LEC's revenues from these services within an MSA.[23]

8. We note that a finding that a carrier has satisfied our pricing flexibility rules, made in the context of our access charge rules, has no bearing on any questions regarding such carrier's compliance with the requirements of section 271 of the Communications Act.[24] We further note that this Order's findings are based solely upon the record before us and that the Commission is not precluded from revisiting any competitive review in a separate 271 proceeding.

III. DISCUSSION

9. In its *November Petition*, Verizon seeks pricing flexibility relief for certain special access

[19] *Access Reform Fifth Report and Order*, 14 FCC Rcd at 14262.

[20] *Access Reform Fifth Report and Order*, 14 FCC Rcd at 14301; 47 C.F.R. § 69.727(b)(3).

[21] *Access Reform Fifth Report and Order*, 14 FCC Rcd at 14299-300; 47 C.F.R. § 69.709(c).

[22] *Access Reform Fifth Report and Order*, 14 FCC Rcd at 14235; 47 C.F.R. § 69.711(c).

[23] *Access Reform Fifth Report and Order*, 14 FCC Rcd at 14299.

[24] 47 U.S.C. § 271. This finding does not control our analysis of whether, for purposes of section 271(c)(1)(A), competitors in Verizon's service area are actually providing service to a sufficient number of business and residential customers. In the *Access Reform Fifth Report and Order*, the Commission explicitly rejected using the section 271 criteria to evaluate petitions for pricing flexibility. The Commission found that competition may have developed to such a degree as to warrant pricing flexibility to a price cap LEC in part of a state, even if the price cap LEC has not satisfied the section 271 checklist. The Commission further determined that granting pricing flexibility on a state-by-state basis, as is required by section 271, is not appropriate because competitors do not generally enter new markets on that basis. *See Access Reform Fifth Report and Order*, 14 FCC Rcd at 14271.

and transport services[25] in numerous MSAs and non-MSAs. It seeks end user channel termination Phase I relief in 12 MSAs and Phase II relief in 11 MSAs.[26] It seeks special access and dedicated transport Phase I relief in four MSAs[27] and the non-MSA study area in the State of Maryland and Phase II relief in 37 MSAs and non-MSA areas.[28]

10. In its *December Petition*, Verizon again seeks pricing flexibility for certain special access and transport services.[29] It seeks end user channel termination Phase I relief in one MSA; special access and dedicated transport Phase I relief in one MSA; and, special access and dedicated transport Phase II relief in three MSAs.[30]

11. AT&T, WorldCom, and OnFiber[31] challenge Verizon's *November Petition* on several

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[25] The services that Verizon submits as qualifying for pricing flexibility are listed in Appendix A.

[26] Verizon seeks end user channel termination Phase I relief for the following 12 MSAs: Philadephia PA-NJ, Washington DC-MD-VA-WV, Baltimore MD, Harrisburg-Lebanon-Carlisle PA, Newport News-Hampton VA, Lancaster PA, Huntington-Ashland WV-KY-OH, Manchester NH, Portland ME, Lynchburg VA, Altoona PA, and State College PA. Verizon seeks end user channel termination Phase II relief for the following 11 MSAs: Norfolk-Virginia Beach-Portsmouth VA/NC, Richmond VA, Wilmington-Newark DE-MD, Reading PA, Charleston WV, Roanoke VA, Parkersburg-Marietta WV-OH, Vineland-Millville Bridgeton NJ, Williamsport PA, and Hagerstown MD. Verizon seeks end user channel termination Phase II relief for the non-MSA area of Delaware. Pricing flexibility is available for the non-MSA sections of a study area -- rural service areas (RSAs) -- provided the price cap LEC satisfies the triggers adopted for MSAs. *Access Reform Fifth Report and Order*, 14 FCC Rcd at 14234. RSAs are listed with MSAs in Common Carrier Public Mobile Services Information, DC 92-109, Public Notice, 7 FCC Rcd 742 (1992).

[27] Verizon seeks special access and dedicated transport Phase I relief for 5 MSAs in its *November Petition*. *See November Petition* at 5. Verizon withdrew one MSA, the Monmouth -NJ MSA, from its petition. Verizon Reply at 5.

[28] Verizon seeks Phase I special access and dedicated transport relief for the following four MSAs: Boston MA-NH, New Brunswick-Perth Amboy-Sayerville NJ, Utica-Rome NY, Atlantic-Cape May NJ and the non-MSA area of Maryland. Verizon seeks Phase II Special Access and Dedicated Transport relief for the following MSAs: New York NY, Philadelphia PA-NJ, Washington DC-MD-VA-WV, Pittsburgh PA, Baltimore MD, Buffalo-Niagara Falls NY, Providence-Fall River-Warwick RI-MA, Norfolk-Virginia Beach-Portsmouth VA/NC, Albany-Schenectady-Troy NY, Syracuse NY, Scranton-Wilkes-Barre-Hazleton PA, Allentown-Bethlehem-Easton PA, Richmond VA, Springfield MA, Wilmington-Newark DE-MD, Harrisburg-Lebanon-Carlisle PA, Newport News Hampton VA, Lancaster PA, Huntington-Ashland WV-KY-OH, Reading PA, Binghamton NY, Manchester NH, Charleston WV, Portland ME, Portsmouth-Rochester NH-ME, Roanoke VA, Parkersburg-Marietta WV-OH, Lynchburg VA, Altoona PA, Vineland-Millville-Bridgeton NJ, Burlington VT, Williamsport PA, Hagerstown MD, State College PA, Elmira NY and the following non-MSAs: Delaware and Vermont.

[29] The services that Verizon submits as qualifying for pricing flexibility are listed in Appendix A.

[30] In its *December Petition*, Verizon seeks Phase I end user channel termination relief in the Sarasota, FL MSA; Phase II special access and dedicated transport relief in the Sarasota, FL, Tampa-St. Petersburg, FL, and Dallas-Fort Worth, TX MSAs, and Phase I special access and dedicated transport relief for Los Angeles-Long Beach.

[31] Comments described as "November Comments," were submitted in response to the November 20, 2000 Public Notice concerning Verizon's *November Petition*. Comments described as "December Comments" were submitted in response to the December 20, 2000 Public Notice concerning Verizon's *December Petition.* OnFiber Communications, Inc. did not submit comments. Rather, it submitted, at the time the Reply Comments (continued….)

grounds. Some of the issues raised by commentators, however, are simply challenges to the pricing flexibility rules as set forth in the *Fifth Access Reform Report and Order*. For example, AT&T argues the rules grant pricing competition without a showing of meaningful competition.[32] As the Commission has previously stated in the *BellSouth Pricing Flexibility Order*, these issues are not properly raised in these proceedings. AT&T and MCI raised these issues on appeal to the D.C. Circuit, which affirmed the Commission's approach to pricing flexibility.[33] We will not reconsider these issues here.

12. Beyond these untimely, collateral attacks on the *Pricing Flexibility Order*, commenters allege that Verizon in its *November Petition* has failed to meet the pricing flexibility requirements set forth in the rules. They argue that Verizon has failed to provide data for the revenue portion of the pricing flexibility test broken down by wire center, as opposed to MSA.[34] Without such a breakdown, they allege it is impossible to determine whether Verizon satisfies the pricing flexibility tests.[35] Further, AT&T alleges that Verizon in its petition erroneously identified AT&T as a collocator that employs non-Verizon entrance facilities.[36] Only the United States Telecom Association supports Verizon's *November Petition*.[37]

13. Verizon, in its Reply, argues that the *Access Reform Fifth Report and Order* only requires identifying revenue percentage broken down by MSA, not wire-center. Verizon concedes that in 13 wire centers cited in the *November Petition* AT&T is not employing non-Verizon entrance facilities. Verizon argues, however, that even granting AT&T's point, it still meets the collocation and revenue requirements, with the exception of one MSA, Monmouth—NJ, which it withdrew from its petition.[38] Verizon also submitted revised data, claiming that it still satisfied our pricing flexibility benchmarks in the other disputed MSAs.[39]

14. Only AT&T filed comments in opposition to the *December Petition*. Again, AT&T challenges the pricing flexibility rules as insufficiently probative of competition, particularly in suburban and rural areas, and argues against our revenue aggregation rules.[40] AT&T also claims that Verizon's petition is unclear on two points: whether the competitive transport facilities it relies upon are entrance facilities or interoffice transport and whether collocators use transport facilities owned by a party other

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were due, comments that it described as "its response in opposition to the Verizon Petition." OnFiber November Reply at 1.

[32] AT&T November Comments at 4.

[33] *See WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

[34] WorldCom November Comments at 3; AT&T November Comments at 9.

[35] WorldCom November Comments at 3.

[36] AT&T November Comments at 8; Declaration of Charles E. Stock at 1 ("Verizon has cited thirteen AT&T collocations at which Verizon erroneously contends AT&T is a collocator with 'non Verizon transport facilities.'")

[37] USTA November Comments at 1-3.

[38] Verizon November Reply at 5.

[39] Verizon November Reply, Attachment B.

[40] AT&T December Comments at 7-9.

than the LEC, (*i.e.*, UNE transport).[41]

15. As noted above, pricing flexibility will be granted upon the satisfaction of certain competitive showings. An incumbent LEC bears the burden of proving that it has satisfied the applicable triggers for the pricing flexibility it seeks for each MSA.[42] In the *Access Reform Fifth Report and Order*, the Commission set forth two means of satisfying this burden. First, the incumbent may show the following: (1) the total number of wire centers in the MSA; (2) the number and location of the wire centers in which competitors have collocated; (3) in each wire center on which the incumbent bases its petition, the name of at least one collocator that uses transport facilities owned by a provider other than the incumbent to transport traffic from that wire center; and (4) that the percentage of wire centers in which competitors have collocated satisfies the trigger the Commission adopted with respect to the pricing flexibility sought by the incumbent LEC.[43] Alternatively, the incumbent may show: (1) the total base period[44] revenues generated by the services for which the incumbent seeks relief in the MSA for which the incumbent seeks relief; (2) in each wire center on which the incumbent bases its petition, the name of at least one collocator that uses transport facilities owned by a provider other than the incumbent to transport traffic from that wire center; and (3) that the wire centers in which competitors have collocated account for a sufficient percentage of the incumbent's base period revenues generated by the services at issue within the relevant MSA or non-MSA area to satisfy the trigger the Commission adopted with respect to the pricing flexibility sought by the incumbent LEC.

16. In both of its petitions, Verizon chose the latter alternative for identifying MSAs that qualify for pricing flexibility relief. In both petitions, Verizon identified wire centers having at least one collocator that uses a non-Verizon transport provider in the following manner: (i) billing records were consulted to identify collocators currently billed for cable space and cable support structure—services required for parties using their own or a third party's fiber for transport and (ii) if billing records did not indicate collocation, but collocators were known to be present, Verizon conducted a physical inspection.[45]

17. In its *November Petition*, Verizon divided its revenue, as extracted from its billing system, between dedicated transport/special access revenue and end user channel termination revenue.[46] Once revenue had been so divided, each wire center was assigned to an MSA or non-MSA area. In New York and New England, billing records were available at the circuit level. This allowed identification of the yearly revenue data relevant to the pricing flexibility rules, *i.e.* revenue from channel terminations to a serving wire center as well as channel mileage.[47]

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[41] AT&T December Comments at 9.

[42] *Access Reform Fifth Report and Order*, 14 FCC Rcd at 14309.

[43] 47 C.F.R. §§ 1.774(a)(3)(i)-(iv)(A).

[44] For price cap LECs, the "base period" is the 12-month period (*i.e.*, the calendar year) ending six months before the effective date of the LECs' annual access tariffs. *See* 47 C.F.R. § 61.3(g).

[45] Verizon November Petition at 3.

[46] Verizon November Petition at 4.

[47] Verizon November Petition, Attachment B, at 2.

18. In the mid-Atlantic states, such data was not readily available. Verizon, therefore, relied upon two databases: the CABIS (Carrier Access Billing Inquiry System) and CARD (Carrier Access Revenue Data) to calculate the relevant revenue data.[48] The CABIS databases covers September 1999 through November 1999.[49] Its data provided ratios for each particular wire center that compared end-user channel termination revenue to total channel termination revenue for each wire center. These ratios were then multiplied by the yearly revenue data from the CARD database to calculate yearly end user channel termination revenue figures for each wire center.[50] This was repeated for channel terminations going to a POP, and a similar approach was used to allocate channel mileage revenue.[51] Unidentified revenue was allocated to wire centers in the same proportion as the identifiable revenue.[52] Verizon lists the MSAs and non-MSA areas that satisfy the revenue requirements, and the wire centers that satisfy the collocation requirements.[53]

19. In its *December Petition*, Verizon employed similar methods to demonstrate compliance with our pricing flexibility rules. It obtained billing information from actual 1999 billing details for all circuits.[54] Verizon could assign the individual revenue elements of its channel terminations so that it could determine the revenue allocations for channel termination associated with the carrier POP serving a wire center and/or end user's wire center.[55] In order to allocate mileage revenue, however, Verizon relied upon October 2000 billing data from its Carrier Access Billing System (CABS) from which it extracted a ratio comparing the mileage revenue for a particular wire center to the total mileage for all wire centers. These ratios were then applied to total mileage revenue from CABS to obtain 1999 mileage revenue for a particular wire center.[56] Unidentified revenue was allocated to wire centers in the same proportions as the identifiable revenue.[57] As with the *November Petition*, Verizon lists the MSAs and non-MSA areas that

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[48] Verizon November Petition, Attachment B, at 2-3.

[49] Verizon November Petition, Attachment B, at 3.

[50] Verizon November Petition, Attachment B, at 3.

[51] Verizon November Petition, Attachment B, at 3-4.

[52] Verizon November Petition, Attachment B, at 4. Verizon has stated that for this filing, it could not identify 2.5% ($45.5 million out of $1.963 billion) of its revenue. Letter from Kenneth Rust, Verizon, to Magalie R. Salas, FCC (Mar. 8, 2001). We find this to be a de minimis deviation from our pricing flexibility rules, and Verizon's method of assignment to be reasonable.

[53] Verizon November Petition, Attachments B & C.

[54] Verizon December Petition, Attachment B, at 2.

[55] Verizon December Petition, Attachment B, at 2.

[56] Verizon December Petition, Attachment B, at 2-3.

[57] Verizon December Petition, Attachment B, at 3. Verizon has stated that for this filing, it could not identify 0.54% ($1.3 million out of $235.7 million) of its revenue. Letter from Kenneth Rust, Verizon, to Magalie R. Salas, FCC (Mar. 8, 2001). We find this to be a de minimis deviation from our pricing flexibility rules, and Verizon's method of assignment to be reasonable.

satisfy the revenue requirements, and the wire centers that satisfy the collocation requirements.[58]

20. Based upon a review of the information submitted we conclude that Verizon has satisfied its *prima facie* burden of demonstrating that it has met the applicable triggers for each of the various services and MSAs for which it requests relief. Specifically, we find that Verizon's revenue methods adequately demonstrate adherence to the pricing flexibility rules.

21. Commenters argue that Verizon has failed to satisfy the tests that these rules mandate. In both the *November* and *December Petitions*, commenters claim Verizon has failed to provide data for the revenue portion of the pricing flexibility test broken down by wire center, as opposed to MSA.[59] They allege that, without such a breakdown, it is impossible to determine whether Verizon satisfies the pricing flexibility tests.[60] Further, AT&T alleges that Verizon erroneously identified AT&T as a collocator with non-LEC transport for selected wire centers cited in their petition.[61]

22. AT&T also argues that Verizon failed to meet the pricing flexibility tests in two ways in the *December Petition*. First, AT&T argues that it is unclear whether the competitive transport facilities Verizon relies upon in meeting the pricing flexibility triggers are entrance facilities or interoffice transport. AT&T also argues that it is not clear whether Verizon has properly adhered to the pricing flexibility rules that at least one collocator in each cited wire center must be using transport that is owned by a party other than the LEC.[62] Further, AT&T again complains that Verizon submitted data aggregated by MSA, not wire center.[63]

23. We have reviewed Verizon's revenue allocation methodology and the data provided by Verizon in both the public and confidential versions of its petition and find that Verizon has met the requirements stated in Section 1.774 of the Commission's rules.[64] As we concluded in the *BellSouth Petition Order*, the Commission's rules do not require that Verizon report revenue data at the wire center level.[65] We, however, repeat the caution stated in the *BellSouth Petition Order* directed to future filers of pricing flexibility petitions that lack of data aggregated at the wire center level could provide a potential problem, if the Commission were to determine that one of the wire centers did not meet the collocation requirements. If the data is aggregated above the wire center level, and the Commission rejects non-revenue evidence with respect to a particular wire center, the Commission would not have the data necessary to determine whether the remaining wire centers in the MSA provide the necessary revenue to

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[58] Verizon December Petition, Attachments B & C.

[59] WorldCom November Comments at 3; AT&T November Comments at 9; AT&T December Comments at 5.

[60] WorldCom November Comments at 3.

[61] AT&T Comments at 8; Declaration of Charles E. Stock at 1 ("Verizon has cited thirteen AT&T collocations at which Verizon erroneously contends AT&T is a collocator with 'Non Verizon Transport Facilities.'")

[62] AT&T December Comments at 9.

[63] AT&T December Comments at 10.

[64] 47 C.F.R. § 1.774; *see, supra,* at Section III.A.

[65] *See* BellSouth Petition for Pricing Flexibility for Special Access and Dedicated Transport Services, CCB/CPD No. 00-20, Memorandum Opinion and Order, 15 FCC __,__ (Dec. 15, 2000).

meet the trigger.[66] Accordingly, by aggregating the data at a level above the wire center level, the incumbent LEC runs the risk that it would have its petition rejected if, upon examination by the Commission, it was determined that it had relied on a wire center that does not qualify under the Commission's rules.

24. AT&T also faults Verizon for erroneously identifying AT&T as a collocator with non-LEC transport for selected wire centers cited in its *November Petition*.[67] Verizon concedes that it had misidentified AT&T as a collocator in 13 sites.[68] Verizon concedes that these 13 wire centers did not satisfy our rules. In its reply, however, it submitted revised data on an MSA-level, showing that removing these wire centers from the petition only affects the qualifications of one MSA, Monmouth—NJ, but that all other MSAs continue to meet the pricing flexibility benchmarks. Verizon then withdrew its petition for Monmouth—NJ from its petition.[69] By filing adjusted MSA-level data, Verizon has met its burden.

25. Finally, we do not find "ambigu[ous]" Verizon's *December Petition.*[70] We find it clear the Verizon relies upon entrance facilities as its competitive transport facilities and that its stated collocators use transport owned by a party other than a LEC. As Verizon made clear in its reply, "the only collocators that were counted [as using transport owned by a party other than a LEC] used a non-Verizon transport provider."[71]

[66] For example, if a petition using data aggregated at the MSA level purported to show that competitors were collocated in ten wire centers providing 35 percent of the revenues for a particular service but it included a wire center that it should not have, the Commission would be unable to determine what percentage of the revenues was attributable to the remaining wire centers and the Commission would be forced to reject the petition for that MSA. If, on the other hand, that same petition provided data aggregated at the wire center level, the Bureau would be able to review the revenue data for the remaining wire centers to determine whether the incumbent LEC had still satisfied a competitive trigger for that particular MSA. Thus, the LEC would not risk the Commission denying the petition for the entire MSA because one wire center in the MSA failed the trigger.

[67] AT&T December Comments at 8; Declaration of Charles E. Stock at 1 ("Verizon has cited thirteen AT&T collocations at which Verizon erroneously contends AT&T is a collocator with 'Non Verizon Transport Facilities.'")

[68] Verizon November Reply at 4.

[69] Verizon November Reply, at 4-5, Attachment B.

[70] AT&T December Reply at 9.

[71] Verizon December Reply at 3.

IV. ORDERING CLAUSES.

25. Accordingly, IT IS ORDERED, pursuant to Section 1.774 of the Commission's Rules, 47 C.F.R. § 1.774, and the authority delegated by Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, and the *Access Reform Fifth Report and Order,* that the two (2) petitions filed by Verizon ARE GRANTED to the extent detailed herein.

FEDERAL COMMUNICATIONS COMMISSION

Dorothy T. Attwood
Chief, Common Carrier Bureau

APPENDIX A

SERVICES QUALIFYING FOR PRICING FLEXIBILITY[72]

Verizon-East

Special Access Basket
Metallic
Telegraph
Voice Grade
WATS Access Line
Program Audio
Video
Wideband Analog
Wideband Data
DDS
DS1
DS3
SONET Services
Fiber Distributed Data Interface (FDDI)
Internet Protocol Routing Service (IPRS)
Facilities Management Service (FMS)
Enterprise Service

Trunking Basket
Metallic
VG
DS1
DS3
SONET Services
Facilities Management Services (FMS)

Verizon-West

Special Access Basket
Metallic
Telegraph
Voice Grade
WATS Access Line
Program Audio
Video Connect
Wideband Analog
Wideband Data
DDS
Fractional T1 (FT1)

[72] Verizon furnished the information in this appendix after it filed its petitions. *See* Letter from Kenneth Rust, Verizon, to Magalie R. Salas, FCC (Mar. 2, 2001).

APPENDIX A

QUALIFYING SERVICES SEEKING PRICING FLEXIBILITY

(Continued)

European T1 (ET1)
MetroLAN
DS1
DS3
FiberConnect
SONET Services

Trunking Basket
Metallic
VG
Fractional T1 (FT1)
DS1
DS3
SONET Services