

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

In the Matter of)	WCB/Pricing No. 02-16
)	
)	
Verizon Petition for Interim Waiver of)	
Sections 61.42(g), 61.38 and 61.49)	
of the Commission's Rules)	

ORDER

Adopted: June 10, 2002

Released: June 12, 2002

By the Chief, Pricing Policy Division, Wireline Competition Bureau

1. The Verizon Telephone Companies (“Verizon”)¹ seek a waiver of sections 61.42(g), 61.38, and 61.49 of the Commission’s rules² with respect to services transferred from its separate advanced services affiliate, Verizon Advanced Data Inc. (“VADI”), to Verizon, pending further rulemakings concerning the regulatory status of these services.³ Due to unique circumstances, we grant Verizon a limited waiver of section 61.42(g) of the Commission’s rules only for purposes of its 2002 Annual Access Tariff Filing,⁴ and defer consideration of the full waiver request until a later date.

Background

2. VADI was created as a separate advanced services affiliate as a condition of the merger between GTE Corporation and Bell Atlantic Corporation.⁵ This condition required Bell Atlantic/GTE to offer advanced services through a separate affiliate until such time as provided for in the sunset provisions contained in the *Bell Atlantic-GTE Merger Order*.⁶ On May 1, 2001, Verizon sought permission to expedite the sunset of these requirements.⁷ On September 26, 2001, the Common Carrier Bureau granted

¹ The Verizon Telephone Companies are the affiliated local telephone companies of Verizon Communications Corporation.

² 47 C.F.R. §§ 61.42(g), 61.38, and 61.49.

³ See Verizon Petition for Waiver of the Price Cap Rules (Nov. 30, 2001) (“Petition”).

⁴ See 47 C.F.R. § 61.43.

⁵ *Application of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer Control of Domestic and International Section 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032 (2000) (“*Bell Atlantic-GTE Merger Order*”).

⁶ *Id.* at 14038-9 ¶ 5, and at 14258, Appendix D.

⁷ See Letter from Gordon R. Evans, Vice President, Federal Regulatory, Verizon, to Dorothy Attwood, Chief, Common Carrier Bureau, CC Docket No. 98-184 (filed May 1, 2001).

Verizon's request, explaining that re-integration of these assets from VADI into Verizon on an accelerated basis was in the public interest.⁸ The Bureau also noted that a recent court ruling would, in any event, have caused the separate affiliate condition to terminate automatically in January 2001.⁹

3. On November 30, 2001, Verizon filed a petition for an interim waiver of sections 61.42(g), 61.38, and 61.49 of the Commission rules with respect to the assets transferred from VADI to Verizon.¹⁰ Section 61.42(g) of the Commission's rules provides that new services must be included in the first annual price cap tariff filing following completion of the base period in which they are introduced.¹¹ Sections 61.38 and 61.49 of the Commission's rules require the filing of certain supporting information with tariff modifications.¹² The Competitive Pricing Division of the Commission's Common Carrier Bureau previously granted special permission to waive sections 61.38 and 61.49 of the Commission's rules with respect to the services transferred from VADI back into Verizon, under limited circumstances.¹³

4. On December 20, 2001, the Competitive Pricing Division issued a public notice¹⁴ seeking comment on the Petition. Four parties filed oppositions to the Petition,¹⁵ and Verizon filed a reply.¹⁶

5. Also on December 20, 2001, the Commission initiated a rulemaking proceeding to evaluate whether dominant local exchange carriers should be considered "dominant" with respect to broadband telecommunications services, such as those being

⁸ *Application of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer Control of Domestic and International Section 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Order, DA 01-2203, 16 F.C.C. Rcd 16915 (2001) ("*VADI Accelerated Transfer Order*").

⁹ The separate affiliate condition automatically terminated nine months after the date of a final and non-appealable judicial decision determining that the separate advanced services affiliate is deemed a "successor or assign" of the incumbent. Bell Atlantic-GTE Merger Order at Appendix D, ¶11(c). The Bureau noted that, under the court's ruling in *Association of Communications Enterprises v. Federal Communications Commission*, 235 F.3d 662 (D.C. Cir. 2001), VADI is a successor or assign of Verizon. *VADI Accelerated Transfer Order* at ¶2, note 5.

¹⁰ See Petition at 4.

¹¹ See 47 C.F.R. § 61.42(g).

¹² See 47 C.F.R. §§ 61.38 and 61.49.

¹³ See letters from Tamara Preiss, Chief, Competitive Pricing Division, Common Carrier Bureau, to Verizon, dated December 17, 2001 (Special Permission No. 01-122); January 15, 2002 (Special Permission Nos. 02-036 and 02-009); and February 4, 2002 (Special Permission No. 02-028). See also letters from Jane E. Jackson, Chief, Competitive Pricing Division, Common Carrier Bureau, to VADI, waiving 47 C.F.R. § 61.38, dated August 31, 2001 (Special Permission No. 01-193) and July 19, 2001 (Special Permission No. 01-064). Pursuant to a Commission reorganization in March 2002, the Competitive Pricing Division was re-named the Pricing Policy Division, and the Common Carrier Bureau was re-named the Wireline Competition Bureau.

¹⁴ *Comments Sought on Verizon Petition for Interim Waiver of Sections 61.42(g), 61.38 and 61.49 of the Commission's Rules*, Public Notice, DA 01-2950 (rel. December 20, 2001).

¹⁵ The Oppositions were filed on January 22, 2002, by AT&T Corporation ("AT&T"), the Association of Communications Enterprises ("ASCENT"), Focal Communications Corporation and Pac-West Telecomm, Inc. (together, "Focal"), and Sprint Corporation ("Sprint").

¹⁶ See Verizon Reply Petition (Feb. 4, 2002) ("Reply").

transferred from VADI to Verizon (the “Broadband Proceeding”). One outcome of this proceeding could be the elimination of price cap regulation for advanced services.¹⁷

Discussion

6. The Commission’s rules allow it to waive its regulations for good cause shown.¹⁸ In general, the waiver request must demonstrate special circumstances warranting a deviation from the general rule, and that such a deviation will serve the public interest.¹⁹ For the reasons discussed below, we find that good cause exists for us to grant a limited waiver of section 61.42(g) of the Commission’s rules for services transferred from VADI to Verizon. Special circumstances warrant a temporary deviation from this rule, and such a limited grant is in the public interest.²⁰

7. Verizon states that it would be burdensome to incorporate the VADI advanced services into its price cap indexes because the demand data for these services are not in the Verizon company databases, and the conversion of VADI billing data for price cap calculations would be extremely difficult.²¹ Verizon also argues that it would be more prudent to await the conclusion of the ongoing Broadband Proceeding, which may obviate the need to include advanced services within the price cap indexes and price cap rates.²²

8. ASCENT, Sprint, Focal, and AT&T challenge Verizon’s claims that incorporating the VADI advanced services into Verizon’s price cap indexes would be burdensome, and they argue that the potential harm to competition outweighs any purported burden on Verizon.²³ They also contend that it is inappropriate to seek a waiver based on the mere possibility that advanced services will eventually be excluded from price caps.²⁴

9. We are persuaded that Verizon has demonstrated good cause to waive section 61.42(g) of the Commission’s rules for services transferred from VADI to Verizon, with respect to the June 2002 filing requirements only.²⁵ Those services formerly held by VADI were not incorporated into the Verizon price cap calculations, and a temporary waiver will allow maintenance of the *status quo* until we have fully considered the issues related to the Broadband Proceeding. This limited waiver will temporarily allow Verizon to avoid the burden associated with incorporating the VADI advanced services into its

¹⁷ See *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, 16 FCC Rcd. 22,745 (2001).

¹⁸ 47 C.F.R. § 1.3.

¹⁹ See *Northeast Cellular Telephone Co. v. F.C.C.*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. F.C.C.*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

²⁰ We will act on Verizon’s full waiver request at a later date.

²¹ Petition at 3; Reply at 4.

²² Petition at 3; Reply at 4-5.

²³ ASCENT Opposition at 3-5; Focal Opposition at 2-3; and AT&T Opposition at 5-6.

²⁴ ASCENT Opposition at 7-8; Sprint Comments at 2-4; Focal Opposition at 4-5; and AT&T Opposition at 3-5.

²⁵ See 47 C.F.R. § 61.49(f)(2).

price cap indexes and converting the VADI demand data for price cap calculations. We conclude that the transfer of the advanced services assets, during a period in which we are 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, and such circumstances outweigh any harm to competition.

Ordering Clauses

10. Accordingly, IT IS ORDERED that, pursuant to section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), and the authority delegated pursuant to sections 0.91, 0.291 and 1.3 of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, section 61.42(g) of the Commission's rules IS WAIVED for services transferred from VADI to Verizon, only with respect to Verizon's 2002 Annual Access Tariff Filing requirements under section 61.43 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

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