

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

In the Matter of)
)
Petition of Verizon for Pricing Flexibility for) CCB/CPD File No. 01-27
Special Access and Dedicated Transport Services)

MEMORANDUM OPINION AND ORDER

Adopted: March 22, 2002

Released: March 22, 2002

By the Senior Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On November 29, 2001, the Verizon telephone companies (Verizon) filed a petition seeking pricing flexibility in the provision of certain interstate access services.¹ As detailed below, the Commission established the parameters for granting pricing flexibility for special access and dedicated transport services in its *Pricing Flexibility Order*.² In doing so, the Commission recognized the importance of granting pricing flexibility to incumbent LECs as competition develops in the market for interstate access services “to ensure that our regulations do not unduly interfere with the operation of those markets.”³ For the reasons that follow, we now grant Verizon’s petition.

II. BACKGROUND

2. To recover the costs of providing interstate access services, incumbent LECs charge interexchange carriers (IXCs) and end users for access services in accordance with the Commission’s Part 69 access charge rules.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

¹ See Pleading Cycle Established for Verizon Petition for Pricing Flexibility for Special Access and Dedicated Transport Services, *Public Notice*, CCB/CPD No. 01-27, DA 01-2788 (Dec. 3, 2001).

² See Access Charge Reform, *Fifth Report and Order*, 14 FCC Rcd. 14221 (1999) (“*Pricing Flexibility Order*”), *aff’d*, *WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001). The *Pricing Flexibility Order* also addressed flexibility for switched services, but those services are not at issue in the Verizon petition.

³ *Pricing Flexibility Order*, 14 FCC Rcd. at 14224.

⁴ 47 C.F.R. Part 69. Part 69 establishes two basic categories of access services: special access services and switched access services. Compare 47 C.F.R. § 69.106 with 47 C.F.R. § 69.114. 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 the costs of facilities between the IXC POP and the LEC serving wire center. See 47 C.F.R. §§ 69.703(a)-(b). Channel mileage charges recover the costs of facilities (also known as interoffice facilities) between the LEC serving wire center and the LEC end office serving the end user. See *Pricing Flexibility Order*, 14 FCC Rcd. at 14226-27.

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 *Pricing Flexibility Order*, the Commission provided detailed rules for implementing the market-based approach.⁷

3. The pricing flexibility framework the Commission adopted in the *Pricing Flexibility Order* grants progressively greater flexibility to LECs subject to price cap regulation 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.⁸ In addition, the reforms are 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.⁹

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 they seek. Pricing flexibility for special access and dedicated transport services¹⁰ is available in two phases, based on an analysis of competitive conditions in individual metropolitan statistical areas (MSAs).¹¹

5. Phase I Pricing Flexibility. A price cap LEC that obtains Phase I relief is allowed to offer, on one day’s notice, contract tariffs¹² and volume and term discounts for qualifying services, so

⁵ Access Charge Reform, *First Report and Order*, 12 FCC Rcd. 15982 (1997) (*Access Reform First Report and Order*).

⁶ *Id.* at 15989.

⁷ *Pricing Flexibility Order*, 14 FCC Rcd. at 14225 (citing *Access Reform First Report and Order*, 12 FCC Rcd. at 15989, 16094-95).

⁸ *Pricing Flexibility Order*, 14 FCC Rcd. at 14225. 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, *Second Report and Order*, 5 FCC Rcd. 6786, 6818-20 (1990). The *Pricing Flexibility Order* applies only to LECs that are subject to price cap regulation. Access reform for LECs that are subject to rate-of-return regulation will be addressed in a separate proceeding. See Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, *Notice of Proposed Rulemaking*, 13 FCC Rcd. 14238 (1998); Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, *Notice of Proposed Rulemaking*, 16 FCC Rcd. 460 (2001); MAG Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, *Second Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd. 19613 (2001).

⁹ *Pricing Flexibility Order*, 14 FCC Rcd. at 14225.

¹⁰ For purposes of pricing flexibility proceedings, “dedicated transport services” refer to services associated with entrance facilities, direct-trunked transport, and the dedicated component of tandem-switched transport. *Pricing Flexibility Order*, 14 FCC Rcd. at 14234. These services are defined in 47 C.F.R. § 69.2(qq) (entrance facilities), § 69.2(oo) (direct-trunked transport) and § 69.2(ss) (tandem-switched transport).

¹¹ See 47 C.F.R. § 22.909(a) (definition of MSA).

¹² 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(o). See also 47 C.F.R. § 61.55 (describing required composition of contract-based tariffs).

long as the services provided pursuant to contract are removed from price caps.¹³ 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.¹⁴ 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 to end users), 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 have collocated in wire centers accounting for 30 percent of the LEC's revenues from these services within an MSA.¹⁵ In both cases, the price cap LEC also must show, with respect to *each* wire center, that at least one collocater is relying on transport facilities provided by a transport provider other than the incumbent LEC.¹⁶

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.¹⁷ As a result, 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 have collocated in wire centers accounting for 65 percent of the LEC's revenues from these services within an MSA.¹⁸ Again, the LEC also must demonstrate, with respect to each wire center, that at least one collocater is relying on transport facilities provided by a transport provider other than 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 it receives 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 to end users), 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 have collocated in wire centers accounting for 65 percent of the LEC's revenues from these services within an MSA.²¹ 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

¹³ *Pricing Flexibility Order*, 14 FCC Rcd. at 14287.

¹⁴ *Id.* at 14234-35.

¹⁵ *Id.* at 14274, 14277-81; 47 C.F.R. § 69.709(b).

¹⁶ 47 C.F.R. § 69.709(b).

¹⁷ *Pricing Flexibility Order*, 14 FCC Rcd. at 14279.

¹⁸ *Id.* at 14280-81; 47 C.F.R. § 69.711(b).

¹⁹ 47 C.F.R. § 69.711(b).

²⁰ *Pricing Flexibility Order*, 14 FCC Rcd. at 14299-14301; 47 C.F.R. § 69.727(b)(3).

²¹ *Pricing Flexibility Order*, 14 FCC Rcd. at 14299; 47 C.F.R. § 69.709(c).

unaffiliated competitors have collocated in at least 65 percent of the LEC's wire centers within an MSA, or have collocated in wire centers accounting for 85 percent of the LEC's revenues from these services within an MSA.²² Once again, the LEC also must demonstrate, 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.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 the carrier's compliance with the requirements of section 271 of the Communications Act, as amended.²⁴ We further note that this Order's findings are solely based upon the record before us, and that the Commission is not precluded from revisiting any competitive review in a separate 271 proceeding.

9. Petition. Verizon seeks flexibility for certain dedicated transport and special access services listed in Appendix A of this order.²⁵ In the petition,²⁶ Verizon seeks Phase I relief for dedicated transport and special access services (not including channel terminations to end users) in 5 MSAs as well as 1 non-MSA²⁷ and Phase II relief in 15 MSAs as well as 1 non-MSA.²⁸ In addition, Verizon seeks Phase I relief for channel terminations to end users in 14 MSAs as well as 1 non-MSA²⁹ and Phase II relief in 12 MSAs.³⁰

²² *Pricing Flexibility Order*, 14 FCC Rcd. at 14235; 47 C.F.R. § 69.711(c).

²³ 47 C.F.R. §69.711(c).

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 areas are actually providing service to a sufficient number of business and residential customers. In the *Pricing Flexibility Order*, the Commission explicitly rejected using the section 271 criteria to evaluate petitions for pricing flexibility. The Commission found that competition can develop in part of a state to such a degree that warrants pricing flexibility for a price cap LEC, 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, like section 271, is not appropriate because competitors do not generally enter new markets on that basis. See *Pricing Flexibility Order*, 14 FCC Rcd. at 14271.

²⁵ In a subsequent *ex parte* filing, Verizon specified the services for which it seeks pricing flexibility. See Letter from W. Scott Randolph, Verizon to William F. Caton, FCC (filed Mar. 4, 2002) ("Verizon March 4 *ex parte*"); see also *infra* Appendix A.

²⁶ See Verizon Petition for Pricing Flexibility for Special Access and Dedicated Transport Services (filed Nov. 29, 2001) ("Verizon Petition").

²⁷ Verizon seeks Phase I relief for dedicated transport and special access services (not including channel terminations between its end offices and customer premises) for the following MSAs: Wheeling, WV/OH; Oxnard/Simi Valley/Ventura, CA; York, PA; Johnstown, PA; Elkhart/Goshen, IN; and Washington.

²⁸ Verizon seeks Phase II relief for dedicated transport and special access services (not including channel terminations between its end offices and customer premises) for the following MSAs: Boston, MA/NH; Stamford/Norwalk, CT; Worcester, MA/CT; Sharon, PA; Los Angeles/Long Beach/Anaheim/Santa Ana/Garden Grove/Riverside/San Bernardino/Ontario, CA; San Francisco/Oakland, CA; Seattle/Everett, WA; Portland, OR/WA; Honolulu, HI; Akron, OH; Raleigh/Durham, NC; Fort Wayne, IN; Lakeland/Winter Haven, FL; Santa Barbara/Santa Maria/Lompoc, CA; Erie, PA; and Idaho.

²⁹ Verizon seeks Phase I relief for channel terminations between its end offices and customer premises for the following MSAs: New York, NY; Boston, MA/NH; Buffalo/Niagara Falls, NY; Providence/Warwick, RI; Albany/Schenectady/Troy, NY; Syracuse, NY; Worcester, MA/CT; Allentown/Bethlehem/Easton, PA; Springfield,

III. DISCUSSION

A. Adequacy of the Pricing Flexibility Rules

10. Focal Communications Corporation/Pac-West Telecomm, Inc./US LEC Corp. (the “Joint Commenters”) make several arguments that are no more than collateral attacks on the adequacy of the pricing flexibility rules adopted by the Commission in the *Pricing Flexibility Order*.³¹ The only issue before the Bureau in these proceedings, however, is whether the petitions satisfy the requirements for pricing flexibility for special access and dedicated transport services set forth in the Commission’s rules. AT&T and WorldCom sought review of the *Pricing Flexibility Order* in the Court of Appeals for the District of Columbia Circuit. That proceeding was the appropriate forum in which to litigate the merits of the pricing flexibility rules, and the court affirmed those rules in their entirety.³² Thus, to the extent that the Joint Commenters merely attack the pricing flexibility rules, we reject these arguments.

B. Operational Status of Competitive Collocations

11. The evidentiary requirements established by the *Pricing Flexibility Order* reflect a multi-phased approach. The Commission found that, as an initial matter, the petitioning incumbent LEC can rely on billing records to make its initial showing that one collocater per qualifying wire center is using non-Verizon-provided transport.³³ Secondly, the petitioner must serve each collocater that it relies on

MA; Seattle/Everett, WA; Raleigh/Durham, NC; Portland, OR/WA; Lakeland/Winter Haven, FL; Erie, PA; and Idaho.

³⁰ Verizon seeks Phase II relief for channel terminations between its end offices and customer premises for the following MSAs: Pittsburgh, PA; Stamford/Norwalk, CT; Scranton/Wilkes-Barre/Hazleton, PA; Harrisburg/Lebanon/Carlisle, PA; Lancaster, PA; Huntington/Ashland, WV/KY/OH; Binghamton, NY; Sharon, PA; State College, PA; San Francisco/Oakland, CA; Fort Wayne, IN; and Akron, OH.

³¹ The Joint Commenters argue that the Commission’s triggers for pricing flexibility are not a meaningful assessment of present competitive market conditions. Joint Comments of Focal Communications Corporation, Pac-West Telecomm, Inc. and US LEC Corp. at 2 (filed Dec. 14, 2001) (“Joint Comments”). They note that, since 1999 when the rules were created, numerous competitive carriers have left many market locations, or have left the market entirely. *Id.* at 3. Other carriers are maintaining non-operational collocations on a short-term basis in order to avoid decommissioning charges. *Id.* In sum, the Joint Commenters argue that the existence of collocation neither demonstrates irreversible sunk investment, nor an absence of exclusionary pricing by the incumbent. *Id.* at 4. They note that certain Bell Operating Companies are raising prices for special access in those areas where pricing flexibility has been granted, which demonstrates that the Commission’s pricing flexibility rules are not working. *Id.* at 8-9. In its reply comments, Verizon argues that such facial attacks on the Commission’s rules are irrelevant to this proceeding, noting that a petition for rulemaking is the appropriate forum for the Joint Commenters to attack the pricing flexibility rules. Reply Comments of Verizon at 7 (filed Dec. 26, 2001) (“Verizon Reply Comments”).

³² See *WorldCom, Inc. v. FCC*, *supra* note 2; see also BellSouth Petition for Pricing Flexibility for Special Access and Dedicated Transport Services, *Memorandum Opinion and Order*, 16 FCC Rcd. 18174, 18179-80 ¶ 13 (2001); Petitions of Ameritech Illinois, Ameritech Indiana, Ameritech Michigan, Ameritech Ohio, Ameritech Wisconsin, Pacific Bell Telephone Company, and Southwestern Bell Telephone Company for Pricing Flexibility, *Memorandum Opinion and Order*, 16 FCC Rcd. 5889, 5894 ¶ 13 (2001); Verizon Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services, *Memorandum Opinion and Order*, 16 FCC Rcd. 5876, 5880-81 ¶ 11 (2001); BellSouth Petition for Pricing Flexibility for Special Access and Dedicated Transport Services, *Memorandum Opinion and Order*, 15 FCC Rcd. 24588, 24597-98 ¶¶ 22-23 (2000).

³³ *Pricing Flexibility Order*, 14 FCC Rcd. at 14221 ¶ 86.

with a copy of its petition and the associated collocation information used to make its showing.³⁴ The second prong acts as a check on the first prong.

12. Verizon petitioned for, and received, pricing flexibility in various MSAs last year.³⁵ For the instant petition, Verizon prepared data from many of the same MSAs, both updating and filing new data as appropriate.³⁶ Pursuant to the requirement that qualifying wire centers have at least one collocator using non-Verizon-provided transport, Verizon validated its data to ensure that the collocators are still in operation. Verizon's methodology consisted of extracting from its billing records monthly recurring charges for cable space and cable support structure in order to demonstrate use of non-Verizon-provided transport.³⁷ In addition, where billing records could not confirm whether collocators were using non-Verizon-provided transport, Verizon physically inspected collocation facilities to confirm that: (1) powered equipment was in place; (2) fiber optic cable was terminated in the collocation node; and (3) fiber optic cable facilities were connected to non-Verizon facilities, or extended out to the street, within each wire center's cable vault.³⁸

13. The commenters allege that many of the collocations and associated competitive transport cited in Verizon's data are inoperative. Specifically, AT&T argues that Verizon's methodology is flawed, since Verizon assumes that mere application for a qualifying collocation arrangement demonstrates operative use, when in fact much of the competitive LEC industry has withdrawn as collocators using non-Verizon transport, or has ceased operation entirely.³⁹ WorldCom similarly contends that Verizon's methodology is flawed because Verizon's data suggests a significant growth of competitive LEC fiber networks in certain MSAs, when in fact the competitive LEC industry has spent significantly less capital, or even gone out of business, over the past year.⁴⁰ Furthermore, AT&T and WorldCom argue that the mere fact that Verizon bills for cable space and support structures does not demonstrate an actual presence of competitive LEC interoffice fiber, since installation of the cable may be in-progress or delayed indefinitely.⁴¹ The Joint Commenters add that the mere fact that a collocator has

³⁴ *Id.* at 14311 ¶ 177.

³⁵ See Verizon Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services, CCB/CPD File Nos. 00-24, 00-28 (filed Nov. 17, 2000 and Dec. 18, 2000); *Verizon Pricing Flexibility Order*, *supra* note 32.

³⁶ Verizon Petition at 3. To the extent that Verizon receives relief today in the same MSAs where relief was granted in March 2001, advanced relief is sought and granted according to the various incremental Phase I and II thresholds of our rules.

³⁷ *Id.*

³⁸ *Id.* at 3 n.3.

³⁹ AT&T Opposition to Verizon Petition for Pricing Flexibility for Special Access and Dedicated Transport Services at 3 (filed Dec. 13, 2001) ("AT&T Comments"). AT&T notes that bankrupt competitive LECs (CLECs) are not in a position to comment on this proceeding. *Id.*

⁴⁰ WorldCom Opposition at 2-3 (filed Dec. 14, 2001) ("WorldCom Comments"). WorldCom asserts that many of the CLECs listed by Verizon are "either bankrupt or virtually bankrupt, and thus in no position to dispute Verizon's claims regarding specific offices," though WorldCom does not itself name any specific CLEC. *Id.* at 3. However, WorldCom refers separately to the service list attached to Verizon's petition, in which every CLEC cited by the petition is revealed. Letter from Alan Buzacott, WorldCom to William F. Caton, FCC at 2 (filed Mar. 15, 2002) ("WorldCom *ex parte*").

⁴¹ WorldCom *ex parte* at 1-2; Letter from Judy Sello, AT&T to William F. Caton, FCC at 1 (filed Mar. 15, 2002) ("AT&T *ex parte*").

not terminated its arrangement with Verizon, and is simply being billed for cable space and support structures, fails to validate operational status.⁴² They assert that Verizon's further physical inspections were conducted by no clear standard whenever billing records failed to show collocation in Verizon's favor, and merely continue to demonstrate that competitive fiber may or may not have been installed, rather than whether or not collocations as a whole are actively serving customers.⁴³

14. Verizon replies that, after reporting orders for collocation arrangements, it checked them against orders for decommissioning.⁴⁴ Furthermore, Verizon notes that although it served a copy of its petition on every cited competitive LEC, only AT&T and WorldCom contested specific collocations.⁴⁵ As for the requirement that one collocater per wire center use non-Verizon-provided transport, Verizon argues that the operational status of a collocation cannot under the Commission's rules be tested by entering a collocation arrangement or testing a competitor's equipment—instead, billing records are a sufficient measure.⁴⁶ According to Verizon, a carrier would have no reason to order cable racking, conduit space and cable space in a central office's cable vault unless the carrier intended to use non-Verizon-provided transport.⁴⁷ Verizon acknowledges that its inspections of the 53 collocations challenged by AT&T and WorldCom revealed that competitive transport was not being used in 41 locations.⁴⁸ Verizon recalculated its data to reflect this concession and asserts that it still meets the applicable triggers for pricing flexibility. Moreover, Verizon contends that these disputes do not undermine the reliability of its methodology.⁴⁹

15. As an initial matter, we reject the Joint Commenters' argument that the petition must fail because it fails to demonstrate that the relied-upon collocations are actively serving customers. In an

⁴² Joint Comments at 5-6 (citing Verizon Petition at 3).

⁴³ *Id.* at 7.

⁴⁴ Verizon Reply Comments at 6.

⁴⁵ *Id.* at 5-6.

⁴⁶ *Id.* In support of this argument, Verizon cites to the *Pricing Flexibility Order* which states: "Competitors typically must hire the incumbent to install cable from the competitors' networks to their collocated equipment. Thus, incumbent LECs should be able to identify those collocators providing their own transmission facilities on the basis of their billing records." *Pricing Flexibility Order*, 14 FCC Rcd. at 14221 ¶ 86. WorldCom argues that this language strictly recognizes the use of billing records to ascertain actual installation of competitive transport cable, whereas Verizon's methodology only goes so far as to suggest it by demonstrating mere lease of pertaining cable space and support structures. WorldCom *ex parte* at 1. WorldCom also notes that, in another proceeding, Ameritech physically inspected every qualifying collocation arrangement to ensure that placement of non-Ameritech cable had been completed. *Id.* at 2-3 (citing Petition of Ameritech Illinois, Ameritech Indiana, Ameritech Michigan, Ameritech Ohio, and Ameritech Wisconsin for Pricing Flexibility, Appendix D at 2 (filed Nov. 17, 2000)).

⁴⁷ Letter from W. Scott Randolph, Verizon to William F. Caton, FCC at 1 (filed Mar. 13, 2002) ("Verizon March 13 *ex parte*"). According to Verizon, "[t]he fact that only AT&T and WorldCom filed challenges may reflect their tendency to order space and cable racking far in advance of their efforts to install equipment and transport facilities." Verizon Reply Comments at 6. Verizon argues, however, "There is no economic incentive for CLECs, particularly for small CLECs and wholesale fiber providers, not to install their fiber as the cable space is made available since billing for these elements commences one the space is turned over." Verizon March 13 *ex parte* at 2.

⁴⁸ Verizon March 13 *ex parte* at 2.

⁴⁹ Verizon Reply Comments at 5-6.

earlier pricing flexibility proceeding involving BellSouth, commenters argued that the incumbent LEC failed to demonstrate that the collocation arrangements listed in its petition were operational (*i.e.*, serving at least one customer).⁵⁰ BellSouth contended that after turning over collocation space to a competitor, it could not know for certain whether customers were actually served through the arrangement, and there was no reason to believe that competitive LECs would be forthcoming in providing such information to their competitor.⁵¹ Thus, to determine whether its collocation arrangements were operational, BellSouth used its internal records, conducted site examinations, and provided copies of data to each competitive LEC that it included in its petition.⁵² We found that the efforts undertaken by BellSouth were sufficient to demonstrate that its collocation arrangements were operational.⁵³ Consistent with the decision in the *BellSouth Pricing Flexibility Order*, we find that the effort undertaken by Verizon is sufficient to demonstrate not only which competitive LECs are collocated, but also whether the collocation arrangements are, in fact, operational. Moreover, if Verizon has reason to believe that collocation arrangements upon which it relies are not operational, despite employing the measures described above, Verizon is obligated to disclose that information.⁵⁴

16. We also find that Verizon's methodology is reasonably capable of demonstrating that a collocation arrangement with non-Verizon-provided transport is operational. Verizon made a *prima facie* showing by relying on billing records, notice to the relied-upon parties, physical inspections, and supplemental evidence and recalculations sufficient to address the concerns raised over the course of the proceeding. Specifically, Verizon's use of billing records is consistent with the Commission's *Pricing Flexibility Order*, where the Commission recognized a likelihood of sunk investment in competitive transport whenever the incumbent bills a competitor for installation of non-Verizon-provided transport facilities.⁵⁵ Verizon's monthly recurring charges for cable space and support structures are within the *Order*'s scope of "installation" costs, reflected by Verizon's billing records.⁵⁶ Although AT&T and WorldCom established that several of its collocations were not using competitive transport, they do not contest that they were in fact purchasing and paying for cable space and support structures that have no other purpose than the provision of non-Verizon-provided transport. We note that every competitive LEC cited by the petition was served with notice pursuant to our rules.⁵⁷ Verizon establishes the operational status of non-Verizon-provided transport by relying on accurate billing records that evidence the use of non-Verizon-provided transport, combined with the effectiveness of the check on that evidence. Competitive LECs that purchase these services have been timely notified of Verizon's reliance in this proceeding and have in fact notified us that the evidence is not reliable in certain circumstances. Verizon has responded to such information by undertaking physical inspections of premises, and by placing further evidence in the record. As noted earlier, these physical inspections consisted of checking to see that powered equipment was in place, that fiber optic cable was terminated in the collocation node, and

⁵⁰ *BellSouth Pricing Flexibility Order*, 15 FCC Rcd at 24595-96 ¶ 16.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at 24596 ¶ 17.

⁵⁴ See 47 C.F.R. §§ 1.17, 1.65(a).

⁵⁵ See *Pricing Flexibility Order*, 14 FCC Rcd. at 14221 ¶ 86.

⁵⁶ See *id.* at 14266-67 ¶ 81 n.221 (examples of various charges associated with collocation arrangements, both recurring and non-recurring).

⁵⁷ See 47 C.F.R. § 1.774(e)(1)(ii).

that fiber optic cable facilities were connected to non-Verizon facilities or extended out to the street.⁵⁸ Because our rules provide an effective check—notification to carriers with strong incentives to inform the Commission if such evidence is unreliable—the potential evidentiary weakness that AT&T and WorldCom allege exists is sufficiently mitigated. The fact that some carriers may choose to order cable space and support structures that they do not need should not undermine the reasonable inference that carriers order and pay for these structures and services because they are using them. Accordingly, we find Verizon’s methodology here reasonable.

17. To the extent that commenters have alleged, without any specificity, that industry trends bring into doubt the operational status of many collocations cited in the petition, Verizon took steps to provide further evidence that the collocations it relied upon were in business. Verizon certified that it checked its data filed in this proceeding against discontinuance filings under Section 214 of the Communications Act of 1934⁵⁹ together with termination notices received directly by Verizon, and provided additional confirmation that certain collocations remain operational.⁶⁰ We find that these measures were sufficient to demonstrate the operational status of the collocations cited by the petition.

C. Competitive Showing Required for Pricing Flexibility

18. As noted above, pricing flexibility may 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.⁶¹ For special access and dedicated transport services, the Commission established two means of satisfying this requirement. In the first, the incumbent must show: (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) the name, in each wire center on which the incumbent bases its petition, of at least one collocater 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 and use competitive transport satisfies the trigger the Commission adopted with respect to the pricing flexibility sought by the incumbent LEC.⁶² Alternatively, the incumbent must show: (1) the total base period⁶³ revenues generated by the services for which the

⁵⁸ See *supra* note 38 and accompanying text.

⁵⁹ 47 U.S.C. § 214.

⁶⁰ In response to inquiries by Bureau staff, Verizon filed an *ex parte* on March 13, 2002 to clarify its methodology, and to explain a specific concern regarding two carriers that had filed Section 214 applications before Verizon filed its petition. Verizon certified that one of the carriers had successfully sold its collocation facilities to carriers listed in Verizon’s confidential attachment to its March 13 *ex parte*. Verizon March 13 *ex parte* at 2 and Attachment. On March 15, 2002, Verizon also certified that the acquiring carriers are receiving bills for the discontinued carrier’s collocation arrangements. Letter from W. Scott Randolph, Verizon to William F. Caton, FCC, Attachment (filed Mar. 15, 2002). As for the second of the two discontinued carriers, Verizon stated that no termination notice had been received, and further, that the Bureau’s analysis should not change whether or not the carrier is operational since its previously associated wire center has at least one other active collocation using non-Verizon-provided transport, thereby qualifying the wire center for revenue aggregation within its respective MSA. Verizon March 13 *ex parte* at 2.

⁶¹ *Pricing Flexibility Order*, 14 FCC Rcd. at 14309 ¶ 172.

⁶² 47 C.F.R. §§ 1.774(a)(3)(i)-(iv)(A).

⁶³ For price cap LECs, the “base period” is the 12-month calendar year ending 6 months before the mid-year effective date of the LECs’ annual access tariffs. 47 C.F.R. § 61.3(g).

incumbent seeks relief in the MSA for which the incumbent seeks relief; (2) the name, in each wire center on which the incumbent bases its petition, 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 and use competitive transport account for a sufficient percentage of the incumbent's base period revenues generated by the services at issue within the relevant MSA to satisfy the trigger the Commission adopted with respect to the pricing flexibility sought by the incumbent LEC.⁶⁴

19. With respect to each MSA, Verizon chose the latter revenue-based alternative to demonstrate that it has met the applicable trigger(s).⁶⁵ For its data calculations, Verizon began by attributing revenues to specific wire centers.⁶⁶ Verizon extracted the underlying revenue data from its Carrier Access Billing System (CABS).⁶⁷ Verizon input data into CABS using two different methodologies. In the former Bell Atlantic areas, Verizon extracted information from year 2000 billing records at the circuit level, apportioning mileage-based revenue between wire centers as appropriate.⁶⁸ In the former GTE areas, Verizon extracted information from year 2000 billing records at the product/service level, apportioning revenue by applying the ratio of a particular wire center's mileage revenue to the larger circuit's total mileage revenue.⁶⁹ Whenever a wire center was not identifiable in Verizon's billing databases, Verizon apportioned the revenue to its wire centers in the same proportion suggested by the majority of the data, including wire center information.⁷⁰

20. Finally, Verizon identified those MSAs that qualify for pricing flexibility by: (1) assigning wire centers to individual MSAs; (2) calculating end user channel termination revenue, together with all other special access and dedicated transport revenue, that were earned in each MSA; (3) calculating end user channel termination revenue, together with all other special access and

⁶⁴ 47 C.F.R. §§ 1.774(a)(3)(i)-(iii), (iv)(B).

⁶⁵ Verizon Petition, Attachment B at 5.

⁶⁶ Verizon's methodology consisted of attributing revenue to: (a) to the serving wire center, for entrance facilities and channel terminations between an IXC's POP and Verizon's serving wire center; (2) to the end office, for channel terminations between Verizon's end office and an end user customer; (3) 50 percent to each wire center on either end of dedicated services between Verizon wire centers; or (4) to the wire center where any other equipment and facilities providing service other than the above are located. *Id.* at 1.

⁶⁷ *Id.*

⁶⁸ Verizon's methodology for the former Bell Atlantic areas consisted of apportioning mileage revenue between specific ends of transmission paths: (1) 50 percent to each office, when both wire centers are Verizon offices; or (2) 100 percent to the Verizon office, when the other wire center is for another LEC's office. *Id.* at 2.

⁶⁹ Because the end points of mileage circuits could not be identified, Verizon's methodology for the former GTE areas consisted of apportioning mileage revenue between circuits: (1) 50 percent to each office, when both wire centers are Verizon offices; or (2) 100 percent to the Verizon office, when the other wire center is for another LEC's office. *Id.* at 3. Verizon then calculated a ratio in which the numerator was the particular wire center's mileage revenue, and the denominator was the total mileage revenue for all wire centers. *Id.* Finally, this ratio was applied to the total year 2000 mileage revenue (using October 2000 CABS billing data) to derive each particular wire center's year 2000 mileage revenue. *Id.*

⁷⁰ *Id.* at 3-4. Verizon asserts that it could not identify 1 percent (\$10 million out of \$885 million) of its revenue for purposes of this filing. Verizon March 4 *ex parte*, *supra* note 25. We find this to be a *de minimis* deviation from our pricing flexibility requirements and Verizon's method of assignment to be reasonable. See *Verizon Pricing Flexibility Order*, 16 FCC Rcd. at 5883 ¶ 18 n.52, ¶ 19 n.57.

dedicated transport revenue, that were attributable to each collocated wire center within the MSA; and (4) calculating the percentage of such revenue earned in the collocated wire centers against the total revenues earned in the MSA.⁷¹

21. According to AT&T, Verizon incorrectly identifies 39 wire centers where AT&T uses competitive transport.⁷² AT&T argues that, in these 39 wire centers, it uses Verizon-provided transport.⁷³ Likewise, WorldCom alleges that Verizon incorrectly identifies 14 WorldCom collocations.⁷⁴ According to WorldCom, it is (a) not collocated at all in 8 wire centers, (b) using Verizon-provided transport in 3 wire centers, and (c) not yet operational (*i.e.*, empty cages and no fiber constructed) in 3 wire centers.⁷⁵

22. In response to AT&T's allegations, Verizon physically inspected each of the disputed collocations.⁷⁶ Verizon confirmed that 31 of AT&T's 39 disputed collocation arrangements are using Verizon transport.⁷⁷ According to Verizon, the remaining 8 are connected to non-Verizon-provided transport, contrary to AT&T's comments.⁷⁸ Verizon also notes that of the 31 AT&T collocations that are not using competitive transport, 14 are at wire centers where other collocations are using competitive transport. Verizon thereby asserts that 22⁷⁹ of the 39 wire centers disputed by AT&T should still qualify for this analysis. Consequently, Verizon agrees that 17 of the 39 wire centers disputed by AT&T should be excluded from this analysis.⁸⁰

23. In response to WorldCom's allegations described above, Verizon physically inspected each of the disputed collocations.⁸¹ Verizon agrees that the 8 collocations where WorldCom asserts there is no collocation at all should be excluded from this analysis on the basis that they do not use competitive transport. Verizon contends, and WorldCom does not dispute, that in 7 of those wire centers WorldCom

⁷¹ *Id.* at 4.

⁷² AT&T Comments at 2.

⁷³ *Id.*

⁷⁴ WorldCom Comments at 1. We note that WorldCom alleges in its comments that 15 collocations were incorrectly relied upon, while WorldCom only identifies 14 collocations in its enumeration of the collocation arrangements at issue.

⁷⁵ *Id.* at 1-2. AT&T and WorldCom argue that these inaccuracies reflect serious flaws in Verizon's methodology, to such an extent that Verizon's petition should be denied. AT&T Comments at 3; WorldCom Comments at 2-3. We discuss Verizon's methodology on this issue in *supra* ¶¶ 11-17.

⁷⁶ Verizon Reply Comments at 2.

⁷⁷ *Id.* at 2-3. This misunderstanding was due to the fact that AT&T had leased cable rack and conduit space for *future* installation of AT&T's own fiber. Verizon excluded 10 of these last year in its previous petition, but accidentally included them here. *Id.* at 3.

⁷⁸ *Id.* at 2-3. Verizon confirmed that AT&T had equipment installed in these eight collocation spaces, with Verizon-provided fiber optic cable leaving the space to the cable vault and beyond the building. *Id.*

⁷⁹ These 22 wire centers consist of the 8 wire centers where AT&T is using non-Verizon-provided transport, plus the 14 wire centers where other collocators are using non-Verizon-provided transport.

⁸⁰ Verizon Reply Comments at 3.

⁸¹ *Id.* at 2.

has acquired the collocation spaces from Rhythms.⁸² In the other wire center, Verizon contends, and WorldCom does not dispute, that the disputed WorldCom collocation space has been decommissioned.⁸³ Regarding the collocations that WorldCom alleged do not use competitive transport, Verizon contends that only 1 of the 3 collocations should be excluded.⁸⁴ Finally, regarding the collocations where WorldCom asserted it had not installed any equipment or fiber, Verizon contends that only 1 of the 3 collocations should be excluded.⁸⁵ Accordingly, based on its physical inspections, Verizon agrees that 10 of the 14 collocations challenged by WorldCom should be excluded from the petition. Of the 10 respective wire centers, Verizon asserts that 6 wire centers still qualify for this analysis, because there are other collocations in the same wire centers using competitive transport. Verizon thereby asserts that 10⁸⁶ of the 14 wire centers disputed by WorldCom should still qualify for this analysis. Consequently, Verizon agrees that 4 of the 14 wire centers disputed by WorldCom should be excluded from this analysis.⁸⁷

24. Upon these physical inspections, Verizon prepared two updates of its collocation data. For the first update, Verizon removed the 20 wire centers that it agreed to exclude,⁸⁸ and found that each MSA/non-MSA continued to qualify for the same relief.⁸⁹ For the second update, Verizon removed all 53 collocations that AT&T and WorldCom challenged, and again found that each MSA/non-MSA still qualified.⁹⁰ Verizon thereby demonstrated that it met the pricing flexibility triggers for the relief sought in its petition, even assuming that every allegation by AT&T and WorldCom was correct.

25. Based upon a review of the information submitted, we conclude that Verizon has satisfied its burden of demonstrating that it has met the applicable triggers for each of the various services and MSAs for which it requests relief. As noted earlier, each competitive LEC cited by the petition was served with notice pursuant to our pricing flexibility rules.⁹¹ For every collocation challenged by commenters, Verizon conducted a site inspection to confirm whether or not competitive transport was in place. Verizon also showed that even if every AT&T and WorldCom allegation were correct, Verizon would still qualify for relief. Only AT&T and WorldCom challenged any of their respective collocations

⁸² *Id.* at 3.

⁸³ Verizon notes that this wire center was decommissioned after September 2001, which was also after the date when Verizon performed its analysis of decommissioned collocation arrangements for its filing of the petition. *Id.* at 3 n.3.

⁸⁴ *Id.* at 3-4.

⁸⁵ *Id.* at 4.

⁸⁶ These 10 wire centers consist of the 14 wire centers challenged by WorldCom, minus the 10 wire centers where Verizon agrees WorldCom is not using competitive transport, plus the 6 wire centers where Verizon has established that other collocators are using competitive transport.

⁸⁷ Verizon Reply Comments at 4.

⁸⁸ Verizon agreed to remove 17 wire centers disputed by AT&T and 4 wire centers disputed by WorldCom. Of these 21 wire centers, there is 1 wire center where both AT&T and WorldCom are the only collocators and are not using competitive transport. Therefore, the number of discrete wire centers that Verizon agrees to exclude is 20. See Verizon Reply Comments at 4 n.4.

⁸⁹ See Verizon Reply Comments, Exhibit 1.

⁹⁰ See Verizon Reply Comments, Exhibit 2.

⁹¹ See *supra* note 34 and accompanying text.

cited by the petition, and they do not challenge the accuracy of the billing data relied upon by Verizon.⁹² Based on our determination that Verizon's evidence is sufficient, we grant its petition.

26. As a separate issue, we note that Verizon once again aggregated its data at the MSA level.⁹³ We continue to caution that the lack of data aggregated at the wire center level could lead to the disqualification of an entire MSA if a particular wire center does not qualify.⁹⁴ If an individual wire center were disqualified, the Bureau would not have the data necessary to determine whether the remaining wire centers in the MSA provide the necessary revenue to meet the threshold sought. Accordingly, by aggregating their data above the wire center level, incumbent LECs run the risk that their petitions may be denied in whole or in part. Although Verizon here aggregated its data at the MSA level, it had the opportunity through notice and comment to recalculate its data to meet its evidentiary requirements. Accordingly, its petition is granted.

IV. ORDERING CLAUSES

27. 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 *Pricing Flexibility Order*, that the petition filed by Verizon IS GRANTED to the extent detailed herein.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey Carlisle
Senior Deputy Chief, Common Carrier Bureau

⁹² See *supra* note 45 and accompanying text.

⁹³ See also *Verizon Pricing Flexibility Order*, 16 FCC Rcd. at 5884-85 ¶ 23.

⁹⁴ See, e.g., *SBC Pricing Flexibility Order*, 16 FCC Rcd. at 5897 ¶ 21; *Verizon Pricing Flexibility Order*, 16 FCC Rcd. at 5884-85 ¶ 23; *BellSouth Pricing Flexibility Order*, 15 FCC Rcd. at 24597 ¶ 19.

APPENDIX A

SERVICES QUALIFYING FOR PRICING FLEXIBILITY

Verizon-East:Special Access Basket

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

Trunking Basket

Metallic
Voice Grade
DS1
DS3
Intelligent 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)
European T1 (ET1)
MetroLAN
DS1
DS3
FiberConnect
Optical Networking Services

Trunking Basket

Metallic
Voice Grade
FT1
DS1
DS3
Optical Networking Services