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

In the Matter of	)	
	)	
	)	
Verizon Petition for Pricing Flexibility for Special Access and Dedicated Transport Services	)	WCB/Pricing No. 02-33
	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: March 31, 2003 Released: March 31, 2003

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On December 13, 2002, the Verizon Telephone Companies (Verizon) filed a petition seeking pricing flexibility for special access and dedicated transport services in various geographic markets throughout the country. Specifically, with respect to end user channel terminations, Verizon applied for Phase I relief in two MSAs and one non-MSA, and for Phase II relief in two MSAs. For all other special access and dedicated transport revenues, Verizon applied for Phase I relief in one non-MSA and for Phase II relief in three MSAs and one non-MSA. [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 local exchange carriers (LECs) as competition develops in the market for interstate access services "to ensure that our regulations do not nduly interfere with the operation of those markets."[3] For the reasons that follow, we grant Verizon's petition.[4]

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[1] *See* Verizon Petition for Pricing Flexibility for Special Access and Dedicated Transport Services (filed Dec. 13, 2002); *Pleading Cycle Established for Verizon Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, WCB/Pricing 02-33, Public Notice, DA 02-3499 (rel. Dec. 19, 2002).

[2] *See Access Charge Reform,* CC Docket No. 96-262, 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) (*WorldCom*). The *Pricing Flexibility Order* also addressed flexibility for switched access services, but those services are not at issue in the Verizon petition.

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

[4] In the *Pricing Flexibility Order*, the Commission amended its rules expressly to delegate authority to the Chief, Common Carrier Bureau (now called the Wireline Competition Bureau) to act on petitions for pricing flexibility involving special access and dedicated transport services. *See* 47 C.F.R. § 0.291(j)(1).

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.[5] In the *Access Charge 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.[6] At that time, the Commission deferred resolution of the specific timing and degree of pricing flexibility to a future order.[7] Subsequently, in the *Pricing Flexibility Order*, the Commission provided detailed rules for implementing the market-based approach.[8]

3. The 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.[9] 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.[10]

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

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[5] 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 id.* § 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 id.* §§ 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.

[6] *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982 (1997) (*Access Charge Reform First Report and Order*), *aff'd, Southwestern Bell v. FCC,* 153 F.3d 523 (8th Cir. 1998).

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

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

[9] *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*, CC Docket No. 87-313, 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.

[10] *Pricing Flexibility Order*, 14 FCC Rcd at 14225.

they make a competitive showing, or satisfy certain "triggers," to demonstrate that market conditions in a particular area warrant the relief they seek. Pricing flexibility for special access and dedicated transport services[11] is available in two phases, based on an analysis of competitive conditions in individual metropolitan statistical areas (MSAs).[12]

5. Phase I Pricing Flexibility. A price cap LEC that obtains Phase I relief is allowed to offer, on one day's notice, contract tariffs[13] and volume and term discounts for qualifying services, so long as the services provided pursuant to contract are removed from price caps.[14] 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.[15] 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.[16] 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 an entity other than the incumbent LEC.[17]

6. Higher thresholds apply for obtaining Phase I pricing flexibility for channel terminations between a LEC's 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.[18] As a result, a price cap LEC must

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[11] 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).

[12] *See* 47 C.F.R. § 22.909(a) (definition of MSA).

[13] A contract tariff is a tariff based on an individually negotiated service contract. *See Competition in the Interstate Interexchange Marketplace,* CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880, 5897 (1991) (*Interexchange Competition Order*); 47 C.F.R. § 61.3(o). *See also* 47 C.F.R. § 61.55 (describing required composition of contract-based tariffs).

[14] *Pricing Flexibility Order,* 14 FCC Rcd at 14287.

[15] *Id.* at 14234-35.

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

[17] 47 C.F.R. § 69.709(b).

[18] *Pricing Flexibility Order*, 14 FCC Rcd at 14279.

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.[19] Again, the LEC also must demonstrate, with respect to each wire center, that at least one collocator is relying on transport facilities provided by an entity other than the incumbent LEC.[20]

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.[21] To obtain Phase II relief, a price cap LEC must meet triggers designed to demonstrate 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.[22] 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 have collocated in wire centers accounting for 85 percent of the LEC's revenues from these services within an MSA.[23] 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 an entity other than the incumbent LEC.[24]

III. DISCUSSION

A. Petitions and Comments

8. Verizon seeks pricing flexibility for certain dedicated transport and special access services listed in its petition and set forth in Appendix A of this order.[25] Appendix B

[19] *Pricing Flexibility Order*, 14 FCC Rcd at 14280-81; 47 C.F.R. § 69.711(b).

[20] 47 C.F.R. § 69.711(b).

[21] *Id.* at 14299-14301; 47 C.F.R. § 69.727(b)(3).

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

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

[24] 47 C.F.R. § 69.711(c).

[25] *See supra* para. 1. We note that the Bureau previously granted Verizon Phase I and II pricing flexibility for certain special access and channel termination services in various geographic areas across the country. *See* (continued….)

sets forth the various forms of pricing flexibility (Phase I or Phase II) requested by Verizon and lists the MSAs and non-MSAs for which the relief is requested.

9. AT&T filed comments in opposition to Verizon's petition. Specifically, AT&T contends that, in its recently filed Petition for Rulemaking,[26] it demonstrates in detail that price cap ILECs are charging unjust and unreasonable rates in areas where they have already received pricing flexibility. In asking the Commission to institute a moratorium on any further grants of pricing flexibility while its rulemaking is pending, AT&T asserts that ARMIS reports for 2001 show that the dominant incumbent LECs are earning rates of return dramatically higher than the 11.25% that was found to be just and reasonable in 1990.[27] AT&T argues that these rates of return are even more unreasonable in light of the lower inflation and debt interest rates that prevail today. AT&T further contends that the triggers for pricing flexibility fail to measure whether meaningful competition exists for the relevant services. Thus, AT&T alleges that the Bells' month-to-month special access rates are uniformly higher in areas in which they have received Phase II pricing flexibility than they are in areas still subject to price caps.[28] AT&T does not, however, challenge Verizon's showing that it meets the Commission's established requirements for pricing flexibility.

10. In response, Verizon contends that the arguments regarding the Commission's pricing flexibility rules and triggers are merely collateral attacks on the *Pricing Flexibility Order* and that the only issue relevant to this proceeding is whether the petitioner has satisfied the criteria for a grant of pricing flexibility.[29] Verizon also contends that AT&T's moratorium request is, in essence, "a request that such petitions be denied regardless of the merits."[30] Verizon further contends that, since its instant petition satisfies the current pricing flexibility rules, "unless and until the Commssion changes it rules…there is no legal basis for the Commission to deny a petition that meets those rules."[31]

(Continued from previous page)
Verizon Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services, CCB/CPD Nos. 00-24 and 00-28, Memorandum Opinion and Order, 16 FCC Rcd 5889 (Com. Car. Bur. 2001) and *Petition of Verizon for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD File No. 01-27, Memorandum Opinion and Order, 17 FCC Rcd 5359 (Com. Car. Bur. 2002).

[26] *AT&T Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM No. 10593, Petition of AT&T (filed Oct. 15, 2002); see also Public Notice, 17 FCC Rcd 21530 (Wire. Comp. Bur. 2002) (seeking comment on AT&T petition).

[27] AT&T Opposition To Verizon Petition For Pricing Flexibility For Special Access and Dedicated Transport Services at 2 (filed Dec. 30, 2002) (AT&T Opposition).

[28] *Id*. at 3.

[29] Reply of Verizon at 1 (filed Jan. 10, 2003) (Verizon Reply).

[30] *Id*. at 4.

[31] *Id.*

B. Adequacy of the Pricing Flexibility Rules

11. As a threshold matter, we reject AT&T's arguments regarding the adequacy of the Commission's pricing flexibility rules to identify competitive markets. We have stated repeatedly that we will not consider collateral challenges to the *Pricing Flexibility Order* when reviewing a pricing flexibility petition.[32] In this proceeding, we restrict ourselves to deciding whether the petition satisfies the requirements for pricing flexibility for special access and dedicated transport services set forth in the Commission's rules.

12. We also reject AT&T's request for a moratorium on all pricing flexibility petitions until we have acted on its petition to reregulate special access services. The Commission's rules in effect at this time provide for a grant of pricing flexibility where the incumbent LEC has made the required evidentiary showing. AT&T's pending challenges to the pricing flexibility framework itself are more appropriately considered in other proceedings and, in any event, fail to demonstrate that continued application of the current rules is unwarranted. AT&T does not offer, nor do we see, any other reason why we should postpone acting on Verizon's petition.

C. Competitive Showing Required for Pricing Flexibility

13. 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.[33] 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 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 and use competitive transport satisfies the trigger the Commission adopted with respect to the pricing flexibility sought by the incumbent LEC.[34] Alternatively, the incumbent

[32] *See Petition of Ameritech Illinois, Ameritech Indiana, Ameritech Michigan, Ameritech Ohio, and Ameritech Wisconsin for Pricing Flexibility, Petition of Pacific Bell Telephone Company for Pricing Flexibility, Petition of Southwestern Bell Telephone Company for Pricing Flexibility*, CCB/CPD Nos. 00-23, 00-25 and 00-26, Memorandum Opinion and Order, 16 FCC Rcd 5889 (Com. Car. Bur. 2001); *Verizon Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD Nos. 00-24, 00-28, Memorandum Opinion and Order, 16 FCC Rcd 5876, 5881 (Com. Car. Bur. 2001). *See also BellSouth Pricing Flexibility Order,* 15 FCC Rcd 24588 (Com. Car. Bur. 2000); *BellSouth Petition for Phase I Pricing Flexibility for Switched Access Services*, CCB/CPD No. 00-21, Memorandum Opinion and Order, 16 FCC Rcd 5040, 5052 (Com. Car. Bur. 2001).

[33] *Pricing Flexibility Order*, 14 FCC Rcd at 14309.

[34] 47 C.F.R. § 1.774(a)(3)(i)-(iv)(A).

must show: (1) the total base period[35] revenues generated by the services for which the 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 for the pricing flexibility sought by the incumbent LEC.[36]

14. With respect to each MSA, Verizon chose the latter, revenue-based alternative to demonstrate that it has met the applicable trigger(s).[37] For its data calculations, Verizon began by attributing revenues to specific wire centers.[38] Verizon extracted the underlying revenue data from its Carrier Access Billing System (CABS).[39] Verizon input data into CABS using two different methodologies. In the former Bell Atlantic areas, Verizon extracted information from year 2001 billing records at the circuit level, apportioning mileage-based revenue between wire centers as appropriate.[40] In the former GTE areas, Verizon extracted information from year 2001 billing records at the product or service level, apportioning revenue by applying the ratio of a particular wire center's mileage revenue to the larger circuit's total mileage revenue.[41] Whenever a wire center was not identifiable in

[35] For price cap LECs, the "base period" is the 12-month period (*i.e.*, the calendar year) ending 6 months before the effective date of the LECs' annual access tariffs. 47 C.F.R. § 61.3(g).

[36] 47 C.F.R. §§ 1.774(a)(3)(i)-(iii), (iv)(B).

[37] Verizon Petition, Attachment B at 1-2.

[38] Verizon's methodology consisted of attributing revenue: (1) 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.*

[39] *Id.*

[40] 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.

[41] 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 2001 mileage revenue (using December 2001 CABS billing data) to derive each particular wire center's year 2001 mileage revenue. *Id.*

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.[42]

15. Finally, Verizon identified those MSAs that qualify for pricing flexibility by: (1) assigning wire centers to individual MSAs; (2) calculating end use channel termination revenue, together with all other special access and dedicated transport revenue earned in each MSA; (3) calculating end user channel termination, together with all other special access and 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.[43]

16. After reviewing Verizon's verification method, as described in the petition, together with the data provided in the public and confidential versions of its petition and in its reply, we find that Verizon has met the applicable triggers in section 1.774 of the Commission's rules.[44] Based upon a review of the information submitted, we conclude that Verizon has satisfied its burden of demonstrating that it has met the applicable requirements for each of the various services and MSAs for which it requests relief.

IV. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that, 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,* the petition filed by Verizon Telephone Companies IS GRANTED to the extent detailed herein.

FEDERAL COMMUNICATIONS COMMISSION

William F. Maher, Jr.
Chief, Wireline Competition Bureau

[42] *Id.*

[43] *Id.* at 4.

[44] 47 C.F.R. § 1.774.

APPENDIX A
SERVICES QUALIFYING FOR PRICING FLEXIBILITY

Verizon-East

Special Access Basket

Metallic
Enterprise Service
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)

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)
European T1 (ET1)
MetroLAN
DS1
DS3
Fiber Connect
Optical Networking Services

Trunking Basket

Metallic
VG
Fractional T1 (FT1)
DS1
DS3
Optical Networking Services

APPENDIX B

PRICING FLEXIBILITY RELIEF FOR DEDICATED TRANSPORT AND SPECIAL ACCESS SERVICES

MSA	Type of Relief Requested
No MSA Virginia	Phase I
Bangor, ME	Phase II
No MSA West Virginia	Phase II
Bloomington-Normal IL	Phase II
Johnstown PA	Phase II

PRICING FLEXIBILITY RELIEF FOR CHANNEL TERMINATIONS TO END USERS

MSA	Type of Relief Requested
Bangor ME	Phase I
No MSA West Virginia	Phase I
Tampa-St. Petersburg FL	Phase I
Erie PA	Phase II
Bloomington-Normal IL	Phase II