

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

In the Matter of)	WCB/Pricing No. 03-11
)	
)	
Verizon Petition for Interim Waiver of Section 61.42(g) of the Commission's Rules)	

ORDER

Adopted: April 9, 2003

Released: April 10, 2003

By the Deputy Chief, Pricing Policy Division, Wireline Competition Bureau

1. The Verizon Telephone Companies (“Verizon”)¹ seek a waiver of section 61.42(g) of the Commission’s rules² with respect to services transferred from its separate advanced services affiliate, Verizon Advanced Data Inc. (“VADI”), to Verizon (“the former VADI services”), 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 2003 Annual Access Tariff Filing.⁴

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).

³ See Verizon Petition for Waiver of the Price Cap Rules (Feb. 26, 2003) (“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's rules with respect to the assets transferred from VADI to Verizon.¹⁰ 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 transferred from VADI to Verizon (the "Broadband Proceeding"). One outcome of this proceeding could be the elimination of price cap regulation for advanced services.¹¹

4. On June 10, 2002, the Pricing Policy Division granted Verizon a limited waiver of section 61.42(g) of the Commission's rules only for purposes of its 2002 Annual Access filing.¹² On February 26, 2003, Verizon filed a petition for a temporary extension of the waiver of section 61.42(g) of the Commission's rules it had received pursuant to the *2002 Waiver Order*.¹³ 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.¹⁴

5. On March 14, 2003, the Pricing Policy Division issued a public notice¹⁵ seeking comment on the Petition. No parties opposed the Petition.

Discussion

6. The Commission's rules allow it to waive its regulations for good cause shown.¹⁶ In general, the waiver request must demonstrate special circumstances

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 *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).

¹² *In the Matter of Verizon Petition for Interim Waiver of Sections 61.42(g), 61.38 and 61.49 of the Commission's Rules*, WCB/Pricing No. 02-16, Order, (2002) ("*2002 Waiver Order*").

¹³ See Petition.

¹⁴ See 47 C.F.R. § 61.42(g).

¹⁵ *Comments Sought on Verizon Petition for Interim Waiver of Sections 61.42(g) of the Commission's Rules*, Public Notice, DA 03-789 (rel. March 14, 2003).

¹⁶ 47 C.F.R. § 1.3.

warranting a deviation from the general rule, and that such a deviation will serve the public interest.¹⁷ 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 the former VADI services. Special circumstances warrant a temporary deviation from this rule, and such a limited grant is in the public interest.

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 difficult.¹⁸ 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.¹⁹ Additionally, Verizon notes that a waiver would prevent changes in the rates for advanced services from having a secondary impact on rates for other services.²⁰

8. We are persuaded that Verizon has demonstrated good cause to waive section 61.42(g) of the Commission's rules for the former VADI services, with respect to the June 2003 filing requirements only.²¹ 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 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.

¹⁷ 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)).

¹⁸ Petition at 4.

¹⁹ Petition at 4.

²⁰ Petition at 4.

²¹ See 47 C.F.R. § 61.49(f)(2).

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 2003 Annual Access Tariff Filing requirements under section 61.43 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

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