

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

In the Matter of)
)
)
Petition for Waiver of the) WCB/Pricing File No. 04-16
Commission’s Price Cap Rules)
For Services Transferred from VADI to the)
Verizon Telephone Companies)

ORDER

Adopted: April 21, 2004

Released: April 21, 2004

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

I. INTRODUCTION

1. The Verizon telephone companies (Verizon)¹ seek the temporary extension of a waiver of section 61.42(g) of the Commission’s rules² for services transferred from the 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 extend Verizon’s limited waiver of section 61.42(g) of the Commission’s rules only for purposes of the 2004 Annual Access Tariff Filing.⁴

II. 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

¹ Verizon telephone companies are the affiliated local telephone companies of Verizon Communications Corp.

² 47 C.F.R. § 61.42(g).

³ Verizon Petition for Waiver of the Price Cap Rules (March 12, 2004) (2004 Waiver Petition).

⁴ 47 C.F.R. § 61.43 (requiring annual price cap filings).

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*).

for in the sunset provisions of 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 Bureau⁸ granted Verizon's request, explaining that re-integration of these assets from VADI into Verizon on an accelerated basis was in the public interest.⁹ The Bureau also noted that a recent court ruling would, in any event, have caused the separate affiliate condition to terminate automatically in January 2002.¹⁰

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.¹¹ 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.¹² One outcome of this proceeding could be the elimination of price cap regulation for advanced services.¹³

4. On June 10, 2002, the Pricing Policy Division of the Wireline Competition Bureau granted Verizon a limited waiver of section 61.42(g) of the Commission's rules only for purposes of its 2002 Annual Access filing.¹⁴ 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.¹⁵ On February 26, 2003, Verizon filed a petition for a temporary extension of the waiver that it had received.¹⁶ On April 9, 2003,

⁶ *Id.* at 14038-39, para. 5; 14258, App. D.

⁷ 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).

⁸ The Common Carrier Bureau became the Wireline Competition Bureau in 2002 as part of reorganizational changes at the Commission. *See generally Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer Governmental Affairs Bureau*, FCC 02-10, Order, 17 FCC Rcd 4672 (2002).

⁹ *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, 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, 16 FCC Rcd 16915 (2001) (*VADI Accelerated Transfer Order*).

¹⁰ 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*, 15 FCC Rcd at 14288-89, App. D, para. 11(c). The Bureau noted that under the court's ruling in *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001), VADI is a successor or assign of Verizon. *VADI Accelerated Transfer Order*, 16 FCC Rcd at 16916, para. 2, n.5.

¹¹ Verizon Petition for Waiver of the Price Cap Rules (Nov. 30, 2001); *see also Verizon Petition for Interim Waiver of Section 61.42(g) of the Commission's Rules*, WCB/Pricing No. 03-11, Order, 18 FCC Rcd 6498, 6499 at para. 3 (2003).

¹² *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, 16 FCC Rcd. 22745 (2001).

¹³ *Id.*

¹⁴ *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, 17 FCC Rcd 11010 (2002) (*2002 Waiver Order*). The Bureau deferred consideration of the remainder of Verizon's waiver request until a later date. *Id.*

¹⁵ 47 C.F.R. § 61.42(g).

¹⁶ Verizon Petition for Waiver of the Price Cap Rules (Feb. 26, 2003).

the Pricing Policy Division granted Verizon's request to extend the previous waiver for purposes of its 2003 Annual Access Tariff Filing.¹⁷

5. Verizon's present petition, filed on March 12, 2004, seeks to extend the waiver of section 61.42(g) of the Commission's rules for purposes of its 2004 Annual Access Tariff Filing. The Pricing Policy Division on March 25, 2004 issued a public notice seeking comment on Verizon's petition.¹⁸

III. DISCUSSION

6. The Commission's rules allow it to waive its regulations for good cause shown.¹⁹ 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.²⁰ For the reasons discussed below, we find that good cause exists to grant Verizon an extension of the limited waiver of section 61.42(g) for the former VADI services.

7. Verizon essentially asserts that the Commission's stated findings and reasons for previously granting Verizon's requests for a waiver of section 61.42(g) also support the grant of Verizon's request here to extend this waiver.²¹ Verizon argues that it would be more prudent for the Commission to await the conclusion of ongoing broadband proceedings that may obviate the need to include advanced services within the price cap indexes and price cap rates.²² Additionally, Verizon contends that a waiver would prevent changes in the rates for advanced services from having a secondary impact on rates for other services.²³

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 2004 Annual Access Tariff Filing requirements only.²⁴ The factual circumstances presented in Verizon's renewed temporary waiver request and the reasons for extending it remain largely unchanged from last

¹⁷ *Verizon Petition for Interim Waiver of Section 61.42(g) of the Commission's Rules*, WCB/Pricing No. 03-11, Order, 18 FCC Rcd 6498 (2003) (*2003 Waiver Order*).

¹⁸ *Comments Sought on Verizon Petition to Extend Waiver of Section 61.42(g) of the Commission's Rules*, Public Notice, WCB/Pricing File No. 04-16 (March 25, 2004).

¹⁹ 47 C.F.R. § 1.3.

²⁰ *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

²¹ 2004 Waiver Petition at 3-5.

²² 2004 Waiver Petition at 3-4 (citing *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, 16 FCC Rcd. 22745 (2001); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002)).

²³ 2004 Waiver Petition at 5 ([I]f these [advanced] services were included in price caps, a reduction in the rates for these services would create 'headroom,' allowing Verizon to make offsetting increases in other rates within the same price cap service categories. Conversely, if Verizon raised the rates for these advanced services, it would have to reduce rates for other services in the same service categories if there were not enough headroom in those categories to keep the actual price cap indexes below the price cap index limits.").

²⁴ *See also* 47 C.F.R. § 61.49(f)(2).

year when the Bureau decided to grant Verizon's petition. The transfer of advanced services assets from VADI to Verizon, during a period in which the Commission is 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 that warrant a temporary deviation from the price cap rules. The services formerly held by VADI were not incorporated into the Verizon price cap calculations, and a temporary waiver will serve the public interest by maintaining the status quo until we have fully considered the issues related to pending broadband proceedings. As we also previously stated, this limited waiver will temporarily allow Verizon to avoid the burden associated with incorporating the former VADI services into its price cap indexes and converting the VADI demand data for price cap calculations.²⁵ Furthermore, no party opposes Verizon's extension waiver request.

9. Accordingly, we grant Verizon an extension of the limited waiver of section 61.42(g) for services transferred from VADI to Verizon only for purposes of the 2004 Annual Access Tariff Filing.

IV. ORDERING CLAUSES

10. 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 2004 Annual Access Tariff Filing requirements under section 61.43 of the Commission's rules, 47 C.F.R. §§ 61.42(g), 61.43.

FEDERAL COMMUNICATIONS COMMISSION

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²⁵ 2003 Waiver Order, 18 FCC Rcd at 6500, para. 8.