

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

In the Matter of)	
)	
)	
Petition for Waiver of the)	WCB/Pricing File No. 05-17
Commission's Price Cap Rules for)	
Services Transferred from VADI to the Verizon)	
Telephone Companies)	

ORDER

Adopted: May 11, 2005

Released: May 11, 2005

By the 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 to exclude advanced services under Tariff FCC No. 20 from price caps in the 2005 annual access tariff filing.³ These services include those that were transferred to Verizon from its former separate advanced services affiliate, Verizon Advanced Data Inc. (VADI).⁴ Due to unique circumstances, as explained below, we extend Verizon's limited waiver of section 61.42(g) for purposes of the 2005 annual access tariff filing.⁵

II. BACKGROUND

2. As a condition of the merger between GTE Corporation and Bell Atlantic Corporation, the Commission ordered Verizon to offer advanced services through a separate advanced services affiliate until such time as provided for in the sunset provisions of the merger order.⁶ On May 1, 2001, Verizon

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

² 47 C.F.R. § 61.42(g).

³ Petition for Waiver of the Commission's Price Cap Rules for Services Transferred from VADI to the Verizon Telephone Companies at 1, 6 (filed Feb. 17, 2005) (Verizon Petition).

⁴ *Id.* at 1-2. In addition to the former VADI services, Verizon includes all new advanced services in Tariff FCC No. 20. *Id.* at 2; see Tariff FCC No. 20, Section 5, Parts I-IV.

⁵ See 47 C.F.R. § 61.43 (annual price cap filing requirements).

⁶ *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, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14038-39, para. 5; 14258, App. D (2000) (*Bell Atlantic-GTE Merger Order*).

sought permission to expedite the sunset of these requirements.⁷ On September 26, 2001, the Common Carrier Bureau granted 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 2002.⁹

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 Section 61.42(g) provides that new services must be included in the first annual price cap tariff filing following completion of the base period in which they are introduced.¹¹ On June 10, 2002, the Wireline Competition Bureau granted Verizon a limited waiver of section 61.42(g) for purposes of its 2002 annual access filing.¹² Subsequently, the Bureau permitted Verizon to extend this temporary waiver for purposes of the 2003 and 2004 access tariff filings.¹³

4. Verizon's present petition, filed on February 17, 2005, seeks to extend the temporary waiver for advanced services for purposes of the 2005 annual access tariff filing.¹⁴ The Pricing Policy Division issued a public notice, seeking comment on Verizon's petition.¹⁵ No parties submitted comments.

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). The Bell Atlantic-GTE merger, which was completed on June 30, 2000, created Verizon Communications.

⁸ *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, 16918, para. 6 (Com. Car. Bur. 2001) (*VADI Accelerated Transfer Order*). The Common Carrier Bureau became the Wireline Competition Bureau in 2002 as part of organizational changes at the Commission. See generally *Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer Governmental Affairs Bureau*, Order, 17 FCC Rcd 4672 (2002).

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

¹⁰ Verizon Petition for Waiver of the Price Cap Rules, WCB/Pricing File No. 02-16 (filed Nov. 30, 2001); see also *Petition for Waiver of the Commission's Price Cap Rules For Services Transferred from VADI to the Verizon Telephone Companies*, WCB/Pricing File No. 04-16, Order, 19 FCC Rcd 7095, 7096, para. 3 (Wireline Comp. Bur. 2004) (*2004 Waiver Order*).

¹¹ 47 C.F.R. § 61.42(g).

¹² *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 (Wireline Comp. Bur. 2002) (*2002 Waiver Order*). The Bureau deferred consideration of the remainder of Verizon's waiver request until a later date. *Id.* at para. 1.

¹³ *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 (Wireline Comp. Bur. 2003) (*2003 Waiver Order*); *2004 Waiver Order*, 19 FCC Rcd at 7095, para. 1; 7098, paras. 9-10.

¹⁴ Verizon Petition at 1, 6.

¹⁵ *Comments Sought on Verizon Petition to Extend Waiver of Section 61.42(g) of the Commission's Rules*, WCB/Pricing File No. 05-17, Public Notice, 20 FCC Rcd 4087 (Wireline Comp. Bur. 2005).

III. DISCUSSION

5. The Commission may waive its regulations for good cause shown.¹⁶ 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.¹⁷ 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 advanced services in Tariff FCC No. 20.

6. Verizon asserts arguments similar to those made in support of previous waivers. First, Verizon contends that a waiver would be in the public interest because it would maintain the status quo until the completion of broadband rulemaking proceedings that may affect the appropriate regulation of advanced services by incumbent local exchange carriers.¹⁸ Second, Verizon asserts that, if advanced services were included in price caps, a reduction in the rates for these services would create “headroom,” allowing Verizon to make offsetting increases to other rates within the same price cap service category.¹⁹ Thus, Verizon argues that a waiver would “prevent changes in the rates for advanced services from having a secondary impact on rates for other services.”²⁰

7. We are persuaded that Verizon has demonstrated good cause to waive section 61.42(g) of the Commission’s rules for advanced services, including the former VADI services, with respect to the 2005 annual access tariff filing requirements only. As we have previously stated, the advanced services formerly held by VADI were not incorporated into the Verizon price cap calculations, and this limited waiver will temporarily allow Verizon to avoid the burden associated with incorporating its advanced services into its price cap indexes and converting the VADI demand data for price cap calculations.²¹ Furthermore, as Verizon points out, if it were to place advanced services into price caps, this could create “headroom” within a service category or band that could result in changes to the rates of other services.²² Moreover, the Commission has recently initiated a rulemaking proceeding that, among other things, seeks comment on the regulatory treatment of advanced services and whether to establish a separate price cap category for these services.²³ The Commission’s new rulemaking proceeding seeks to resolve significant

¹⁶ 47 C.F.R. § 1.3.

¹⁷ 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)).

¹⁸ Verizon Petition at 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)).

¹⁹ Verizon Petition at 5. The ability of a LEC to raise rates for some services as a result of rate reductions for other services within the same price cap category is referred to as “headroom.” *Access Charge Reform*, CC Docket Nos. 96-262 et al., Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14229, para. 13 n.27 (1999) (*Pricing Flexibility Order*), *aff’d sub nom. WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

²⁰ Verizon Petition at 5.

²¹ 2004 Waiver Order, 19 FCC Rcd at 7097-98, para. 8.

²² Price cap rules group services together in different baskets, service categories, and service subcategories. The rules also identify the total permitted revenues for each basket or category of services. Within these baskets or categories, incumbent LECs have some flexibility to change the rate level of a specific service. 47 C.F.R. § 61.42 *et seq.* If, for example, Verizon were to place advanced services within a price cap basket or service category and then lower the prices for these services, Verizon could offset the rate decreases by raising the prices of other services within that basket or service category.

²³ *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25 et al., Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994, 2013, para. 52 (2005).

questions related to the regulatory treatment of Verizon's advanced services and will better enable us to determine whether, or how, the price cap rules should apply to these services.

8. In light of the above, we conclude that Verizon faces special circumstances with respect to its advanced services that warrant a temporary deviation from the Commission's rules. A temporary waiver will serve the public interest by maintaining the status quo while the Commission considers the related issues in the pending proceeding. Furthermore, no party opposes Verizon's petition for a waiver extension.

9. Accordingly, we grant Verizon an extension of the limited waiver of section 61.42(g) to exclude advanced services under Tariff FCC No. 20 from price caps only for purposes of the 2005 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 advanced services in Tariff FCC No. 20, including those transferred from VADI to Verizon, only with respect to Verizon's 2005 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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