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

In the Matter of	)	
	)	
Verizon Petition for	)	WCB/Pricing File No. 05-11
Pricing Flexibility for	)	
Special Access Services	)	

MEMORANDUM OPINION AND ORDER

Adopted: May 25, 2005 **Released: May 25, 2005**

By the Acting Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On January 28, 2005, the Verizon Telephone Companies (Verizon) filed a petition[1] seeking Phase II pricing flexibility for special access end user channel termination services in the Dallas-Fort Worth, Texas Metropolitan Statistical Area (MSA) pursuant to sections 1.774 and 69.701 *et seq*. of the Commission's rules.[2] As detailed below, the Commission established the parameters for granting pricing flexibility for special access services in its *Pricing Flexibility Order*.[3] 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 own regulations do not unduly

[1] *See* Verizon Petition for Pricing Flexibility for Special Access Services (filed Jan. 28, 2005) (Verizon Petition); *Pleading Cycle Established for Verizon Petition for Pricing Flexibility for Special Access Services*, WCB/Pricing 05-11, Public Notice, DA 05-307 (rel. Feb. 3, 2005); *see also* Letter from Joseph Mulieri, Vice President, Federal Regulatory Advocacy, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Apr. 19, 2005); *see also* Letter from Joseph Mulieri, Vice President, Federal Regulatory Advocacy, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed May 2, 2005) (Verizon May 2 *Ex Parte* Letter).

[2] 47 C.F.R. §§ 1.774, 69.701 *et seq*.

[3] In the *Pricing Flexibility Order*, the Commission adopted a framework for granting relief from its price cap and tariff rules to price cap local exchange carriers (LECs) that can demonstrate that competitive entry into a particular market is sufficient to warrant relaxation of such rules governing interstate access services. *See Access Charge Reform*, CC Docket No. 96-262, Fifth Report and Order, 14 FCC Rcd 14221 (1999) (*Pricing Flexibility Order*), *aff'd sub nom. WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001). To make such a showing, a price cap LEC may submit information concerning collocation, wire-center revenue data, and wire-center line count information. *See* 47 C.F.R. § 69.701 *et seq*.

interfere with the operation of these markets."[4] For the reasons that follow, we grant Verizon's petition.[5]

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.[6] 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.[7] At that time, the Commission deferred resolution of the specific timing and degree of pricing flexibility to a future order.[8] Subsequently, in the *Pricing Flexibility Order*, the Commission provided detailed rules for implementing the market-based approach.[9]

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.[10] In addition, the reforms

[4] *Id*. at 14224, para. 1.

[5] 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(h)(1).

[6] 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). 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, para. 10.

[7] *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 sub nom. Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998).

[8] *Access Charge Reform First Report and Order*, 12 FCC Rcd at 15989, para. 14.

[9] *Pricing Flexibility Order*, 14 FCC Rcd at 14225, para. 2 (citing *Access Charge Reform First Report and Order*, 12 FCC Rcd at 15989, 16094-95, paras. 262-63).

[10] *Pricing Flexibility Order*, 14 FCC Rcd at 14225, para. 3. The Commission instituted price cap regulation for the Regional Bell Operating Companies (RBOCs) and GTE in 1991, and permitted other LECs to adopt such 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, paras.

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.[11]

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 certain "triggers," to demonstrate that market conditions in a particular area warrant the relief they seek. Pricing flexibility for special access services is available in two phases, based on an analysis of competitive conditions in individual 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 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

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257-78 (1990). The *Pricing Flexibility Order* applies only to LECs that are subject to price cap regulation. *Pricing Flexibility Order*, 14 FCC Rcd at 14224, para. 1 n.1.

[11] *Pricing Flexibility Order*, 14 FCC Rcd at 14225, para. 3.

[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 14287-88, para. 122.

[15] *Id*. at 14234-35, para. 24.

[16] *Id*. at 14274-76, para. 95, 14277-81, para. 98; 47 C.F.R. § 69.709(b).

[17] 47 C.F.R. § 69.709(b).

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 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 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.[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]

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[18] *Pricing Flexibility Order*, 14 FCC Rcd at 14279, para. 103.

[19] *Pricing Flexibility Order*, 14 FCC Rcd at 14299, paras. 148-49; 47 C.F.R. § 69.711(b).

[20] 47 C.F.R. § 69.711(b).

[21] *Pricing Flexibility Order,* 14 FCC Rcd at 14301, para. 153; 47 C.F.R. § 69.727(b)(3).

[22] *Pricing Flexibility Order*, 14 FCC Rcd at 14299, paras. 148-49; 47 C.F.R. § 69.709(c).

[23] *Pricing Flexibility Order*, 14 FCC Rcd at 14235, para. 25; 47 C.F.R. § 69.711(c).

[24] 47 C.F.R. § 69.711(c).

III. DISCUSSION

A. Petitions and Comments

8. Verizon seeks Phase II pricing flexibility for certain special access end user channel termination services listed in its petition and set forth in the Appendix to this order.[25] AT&T was the only party to file comments in opposition to Verizon's petition.[26] AT&T contends that the Commission should not consider Verizon's petition until an interim order is released to ensure that special access price cap rates remain just and reasonable while the special access rulemaking proceeding is pending.[27] AT&T asserts that the dominant incumbent LECs are earning rates of return dramatically higher than the 11.25 percent that was found to be just and reasonable in 1990 and that such rates of return are even more unreasonable in light of the lower inflation and debt interest rates that prevail today.[28] AT&T also contends that the triggers for pricing flexibility fail to measure whether meaningful competition exists for the relevant services.[29] AT&T does not, however, challenge Verizon's showing that it meets the Commission's established requirements for pricing flexibility.

9. 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*

[25] *See supra* para. 1. We note that the Bureau previously granted Verizon Phase I and II pricing flexibility for certain dedicated transport, special access, and channel termination services in various geographic areas across the country. *See* Verizon Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services, WCB/Pricing Nos. 04-01, 02-33, and 00-24, Memorandum Opinion and Order, 19 FCC Rcd 8689 (Wireline Comp. Bur. 2004), 18 FCC Rcd 6237 (Wireline Comp. Bur. 2003), and 16 FCC Rcd 5876 (Com. Car. Bur. 2001), respectively; *see also* 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 Opposition to Verizon Petition for Pricing Flexibility for Special Access Services (filed Feb. 14, 2005) (AT&T Opposition).

[27] *Id*. at 2-3 (citing *Special Access Rates for Price Cap Local Exchange Carriers* WC Docket No. 05-25, *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM 10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 at para. 131 (2005) (*Special Access Order and NPRM*)). In the *Special Access Order and NPRM*, the Commission seeks comment on whether the pricing flexibility rules should be maintained, modified, or repealed.

[28] *AT&T Opposition* at 2 & n.5. AT&T alleges that Verizon's month-to-month special access rates are uniformly higher in areas in which it has received Phase II pricing flexibility than in areas still subject to price caps, in part because carriers that have obtained Phase II pricing flexibility are not required to make an annual X-Factor reduction in rates. *Id*. at 2-3. Using ARMIS data, AT&T calculates that in 2003 the rate of return for Verizon Texas (the study area where the Dallas-Fort Worth, Texas MSA is located) reached 49.3 percent. *Id*. at 2.

[29] *Id.* at 3-4.

and that the only issue relevant to this proceeding is whether it has satisfied the criteria for a grant of pricing flexibility.[30]

B. Evaluation of Verizon's Petition

10. As a threshold matter, we deny AT&T's request that we hold Verizon's petition in abeyance until we issue an interim order in the special access rulemaking proceeding. In its recent order in that proceeding, the Commission found that there was insufficient record data to justify imposing a moratorium on pricing flexibility applications and, accordingly, denied AT&T's request for such a moratorium.[31] The Commission did, however, initiate a rulemaking concerning the pricing flexibility rules. That pending rulemaking is the proper proceeding for AT&T to present additional evidence supporting its arguments for modification of the existing pricing flexibility rules. 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.

11. We also reject AT&T's arguments regarding the adequacy of the Commission's pricing flexibility rules to identify competitive markets.[32] We have stated repeatedly that we will not consider collateral challenges to the *Pricing Flexibility Order* when reviewing a pricing flexibility petition.[33] In this proceeding, we limit our analysis to whether Verizon has made the evidentiary showing required to receive pricing flexibility for special access end user channel termination services as set forth in the Commission's rules.

12. 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.[34] For special access services, the incumbent must identify: (1) the total number of wire centers in the MSA; (2) the number and location of the wire centers in which competitors have collocated; and (3) in each wire center on which the incumbent bases its petition, the name of at least one collocator that uses transport facilities owned by a provider other than the incumbent to transport traffic from that wire center.[35] In addition to these three requirements, the petitioner must show either: (A) that the percentage of wire centers in which competitors have collocated and use competitive transport satisfies the applicable trigger;[36] or (B) that the percentage of total base period[37] revenues generated by the

[30] Reply of Verizon at 1-2 (filed Feb. 24, 2005) (Verizon Reply).

[31] *See Special Access Order and NPRM*, 20 FCC Rcd 1994 at paras. 128-30.

[32] *AT&T Opposition* at 3.

[33] *See*, *e.g.*, *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*, File Nos. CCB/CPD 00-26, 00-23, 00-25, Memorandum Opinion and Order, 16 FCC Rcd 5889 (Com. Car. Bur. 2001).

[34] *Pricing Flexibility Order*, 14 FCC Rcd at 14309, para. 172.

[35] *See* 47 C.F.R. §§ 1.774(a)(3)(i)-(iii).

[36] *See* 47 C.F.R. § 1.774(a)(3)(iv)(A); *see also* 69.711(c)(1).

services for which the incumbent seeks relief attributable to the wire centers upon which the petitioner relies satisfy the applicable pricing flexibility triggers.[38]

13. With respect to the Dallas-Fort Worth, Texas MSA, Verizon chose the latter, revenue-based alternative to demonstrate that it has met the applicable trigger.[39] For its data calculations, Verizon began by attributing revenues to specific wire centers.[40] Verizon extracted the underlying revenue data from its Carrier Access Billing System (CABS).[41] Verizon extracted information from year 2003 billing records, which allowed identification of the end user channel terminations to be associated with the serving wire center.[42]

14. Verizon demonstrates that the subject MSA satisfies the Commission's triggers for pricing flexibility by: (1) assigning wire centers to the Dallas-Fort Worth, Texas MSA; (2) calculating the end user channel termination revenue earned in the MSA; (3) calculating the end user channel termination revenue that was attributable to the collocated wire centers within the MSA; and (4) calculating the percentage of such revenue earned in the collocated wire centers.[43]

15. Finally, Verizon states, pursuant to section 1.774(e)(ii) of the Commission's rules, that it provided the required notice to the relevant collocators on which this application is based.[44] Verizon also states that it inspected the relevant wire centers for collocators and the presence of operational non-Verizon collocation transport facilities.[45]

16. After reviewing Verizon's verification method, as described in the petition and in its *ex parte* letters, 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

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[37] 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 LEC's annual access tariffs. 47 C.F.R. § 61.3(g).

[38] *See* 47 C.F.R. §§ 1.774(a)(3)(iv)(B); *see also* 69.711(c)(2).

[39] Verizon Petition at 3 n.3, Attachment B at 2.

[40] Specifically, Verizon attributed revenue for channel terminations between Verizon's end office and an end user customer to the end office that serves that customer. *Id*., Attachment B at 1.

[41] *Id*.

[42] Verizon supplemented its original petition language to clarify that it uses the terms "end office" and "serving wire center" synonymously so that, for purposes of revenue calculation, both terms refer to the Verizon end office facility that serves the end user. *Id*.; Verizon May 2 *Ex Parte* Letter.

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

[44] Verizon Petition, Attachment E.

[45] *See* Declaration of Lynelle J. Reney, Director – Customer Service for Collocation, Verizon (filed Jan. 28, 2005) (In the Matter of Verizon Petition for Pricing Flexibility for Special Access and Dedicated Transport Services) at 2.

the Commission's rules.[46] Specifically, Verizon has shown: (1) the total number of wire centers in the Dallas-Fort Worth Texas MSA; (2) the number and location of the wire centers in which its competitors collocate; (3) the name in each such wire center of at least one collocator that uses transport facilities not owned by Verizon; and (4) that the percentage of total base period revenue generated by special access end user channel termination services meets or exceeds the 85 percent threshold.[47] 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 Phase II pricing flexibility for the services set forth in the Appendix in the Dallas-Fort Worth, Texas MSA.

IV. ORDERING CLAUSE

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 Company, Inc. IS GRANTED to the extent detailed herein.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Acting Chief, Wireline Competition Bureau

[46] 47 C.F.R. § 1.774.

[47] Verizon Petition, Attachments C and D; *see also* 47 C.F.R. § 1.774(a)(3).

APPENDIX

SERVICES QUALIFYING FOR PRICING FLEXIBILITY

Verizon-West Tariff FCC 14

Special Access Basket

Voiceband – Section 5.2.1
Program Audio – Section 5.2.3
Video Connect – Section 5.2.4
Wideband Analog – Section 5.2.5
Wideband Data – Section 5.2.6
DDS – Section 5.2.9
Fractional T1 (FT1) – Section 5.3.6 (C)
E1 (European) – Section 5.3.6 (G)
MetroLAN – Section 5.6.16
DS1 – Section 5.3.6 (A)
DS3 – Section 5.3.6 (E)
Fiberconnect – Section 5.3.6 (D)
Optical Networking Services – Section 20
TCPIIP – Section 16.5