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FEDERAL COMMUNICATIONS COMMISSION  
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March 6, 2001

EX PARTE

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Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Room TW-A325  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

EX PARTE OR LATE FILED

Re: Deployment of Wireline Services Offering Advanced Telecommunications  
Capability, CC Dkt. No. 98-147, *Second Further Notice of Proposed Rulemaking*

Dear Ms. Salas:

Section 251(c)(6) of the Telecommunications Act of 1996 ("Act") requires incumbent LECs to provide physical collocation of equipment necessary for interconnection or access to unbundled network elements on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. 47 U.S.C. § 251(c)(6). In the Local Competition Order and subsequent orders, the Commission established specific minimum national requirements to implement the collocation requirements of Section 251(c)(6).<sup>1</sup> These rules govern state and federal collocation offerings.<sup>2</sup> In response to the Commission's Second Further Notice of Proposed Rulemaking in the above-captioned docket, several parties have argued that certain incumbent LECs are refusing to comply with their statutory obligation to provide physical collocation on just, reasonable, and nondiscriminatory terms and conditions.<sup>3</sup> Specifically, commenters have requested that the Commission clarify that Verizon's power charges for collocated CLEC equipment are unreasonable and in violation of the Act. In this *ex parte* letter, Conversent Communications ("Conversent") explains in detail why its experience demonstrates that

<sup>1</sup> 47 C.F.R. §§ 51.321, 51.323; see also Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 15499, ¶¶ 555-617 (1996) ("Local Competition Order"). These rules were specifically upheld by the Eighth Circuit in Iowa Utilities Board v. FCC, 120 F.3d 753, 818 (8<sup>th</sup> Cir. 1997), *aff'd on other grounds sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999). CLECs can pursue remedies for violations of the Commission's collocation requirements before the Commission and the appropriate state commission. Deployment of Wireline Services Offering Advanced Telecommunications Capability, 13 FCC Rcd 24012, ¶ 125 (1998).

<sup>2</sup> States can adopt additional collocation requirements that are otherwise consistent with the Act and the Commission's regulations. Local Competition Order ¶ 558.

<sup>3</sup> See Comments of Covad Communications Company at 42-46; Joint Reply Comments of Arbros Communications, ALTS, CTA, e.spire Communications, Inc., FairPoint Communications Solutions, Intermedia Communications Inc., KMC Telecom, Inc., NewSouth Communications, Inc., and Pathnet ("Joint Comments") at 28-29; Declaration of Theresa M. Landers on behalf of Digital Broadband Communications, Inc. (attachment 1 to Joint Comments) ¶¶ 16-17.

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Verizon's rates for collocation, most importantly its power charges, are discriminatory, unjust, and unreasonable.

Conversent is a competitive local exchange carrier providing service to small and medium business customers in the Verizon region. Conversent deploys its own switches and uses ILEC dark fiber interoffice transport, multiplexing equipment collocated in ILEC wire centers and unbundled loops to provide service. It has entered into 100 central office collocation arrangements with Verizon in six states.<sup>4</sup> The charges Conversent pays for collocation represent a substantial percentage of Conversent's overall costs of providing service. As explained in detail below, Verizon employs a battery of patently unreasonable practices to raise Conversent's collocation costs far above what is lawful. First, Verizon's state-tariffed charges for DC power are not cost-based, they far exceed charges assessed by other incumbents, and they even exceed comparable DC power charges contained in Verizon's federal tariff. Second, Verizon overcharges CLECs for power under its state tariffs by charging for "fused" amps rather than the number of amps actually ordered and used, typically resulting in Conversent being billed for at least 50% more power than it ordered or used. Third, Verizon charges CLECs for power on a "per feed" basis, resulting in CLECs paying for power that is never actually used. Fourth, lest any CLEC attempt to lower its costs by purchasing collocation under Verizon's federal tariff, Verizon charges exorbitant prices for the installation of collocation equipment in its federal tariff, charges that far exceed the equivalent state tariff charges. Fifth, under both its state and federal tariffs, Verizon assesses CLECs power charges prior to the point at which they have access to an activated power source.

Conversent urges the Commission to confirm that Verizon's collocation practices at the state and federal levels are discriminatory, unjust, unreasonable and that they violate Sections 251(c)(6) and 252(d)(1) of the Act. Conversent further requests that the Commission clarify that, to the extent that Verizon has engaged in these unlawful practices in the past, it must true-up CLECs' charges to nullify the effect of those practices.

#### **I. Verizon's State-Tariffed Power Costs Are Excessive.**

In the Verizon states in which Conversent purchases collocation, Maine, Massachusetts, New Hampshire, New Jersey, New York, and Rhode Island, Verizon's state-tariffed rates for DC power are excessive and fail to comport with the Commission's requirement that collocation charges be based on forward-looking costs. As demonstrated below, Verizon's state rates are 3-6 times higher than its federal rates. Not only do Verizon's state rates greatly exceed its federal charges for DC power, but they also greatly exceed comparable rates charged by other ILECs in their federal and state tariffs. It is inconceivable that Verizon's state costs for DC power, a completely fungible collocation input, could be 3-6 times what its federal costs are.

The following chart summarizes Verizon's power charges in those states in which Conversent is collocated:

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<sup>4</sup> Of those collocation arrangements, 62 are physical, 37 are SCOPE (Secured Collocation Open Physical Environment), and one is virtual.

State	Per amp, Per Feed	
	60 or fewer amps	greater than 60 amps
Maine <sup>5</sup>	\$25.16	\$24.32
Massachusetts <sup>6</sup>	\$18.66	\$17.78
New Hampshire <sup>7</sup>	\$20.39	\$19.65
New Jersey <sup>8</sup>	\$14.18	
New York <sup>9</sup>	\$19.64	\$19.56
Rhode Island <sup>10</sup>	\$22.14	\$21.22

In comparison to these state rates, Verizon's federal tariff charges \$4.88 per amp in all of its states, with the exceptions of Connecticut and New York, where power is \$6.44 per amp.<sup>11</sup> Other incumbent LECs also charge far less for DC power than Verizon. For example, in Connecticut, SNET charges CLECs \$9.37 per amp.<sup>12</sup> Similarly, Ameritech (now SBC) assesses a substantially lower charge for DC power in both its federal and state tariffs. Under its federal tariff, Ameritech charges \$7.99 per amp in Illinois, Indiana, Michigan, and Ohio, and \$6.43 per

<sup>5</sup> PUC Maine Tariff No. 20, Part M, § 5.2.3 at page 2.

<sup>6</sup> Massachusetts rates range from \$18.66-\$31.82 per amp for CLECs ordering fewer than 60 amps, and from \$17.78-\$30.94 for CLECs ordering more than 60 amps, depending on the density zone. See DTE Massachusetts Tariff No. 17, Part M, § 5.2.3 at pages 3-4 (\$20.24 per amp in the metro area, \$18.66 in urban areas, \$20.99 in suburban areas, and \$31.82 in rural areas for 60 or fewer amps; \$19.36 in metro, \$17.78 in urban, \$20.11 in suburban, and \$30.94 in rural areas for 60 or more amps). *Id.* The chart reflects the urban area rate.

<sup>7</sup> PUC New Hampshire Tariff No. 80, Part M, § 5.2.3 at page 3.

<sup>8</sup> BPU New Jersey Tariff No. 4, § II.J.1.d. at page 55.

<sup>9</sup> PSC New York Tariff No. 914, § 10.5.1(B)(3) at page 9.5.

<sup>10</sup> PUC Rhode Island Tariff No. 18, Part M, § 5.2.3 at page 2.

<sup>11</sup> FCC Tariff No. 11, § 31.28.1(B)(3) at page 31-308. Moreover, this charge is assessed "per amp," not "per fused amp," and not "per fused amp, per feed," as Verizon's state charges are. As explained below, this distinction can result in an increase in rates of 300% or more. See *infra* Sections II, V. As noted, Verizon also assesses wildly disparate installation fees under its federal (approximately \$55,000) and state tariffs (around \$15,000 for a 100 square foot cage). To the extent that Verizon attempts to argue that the difference in a nonrecurring charge (installation fees) is somehow related to its recurring fees (DC power), Conversent urges the Commission to confirm that it is improper to recover nonrecurring collocation charges via recurring fees and that, further, it is a *prima facie* violation of the Act's pricing principles to assess such disparate charges for essentially the same service.

<sup>12</sup> SNET FCC Tariff No. 39, § 18.6(D) at page 18-16.

amp in Wisconsin.<sup>13</sup> Under its Michigan state tariff, Ameritech charges \$5.95 per amp for DC power.<sup>14</sup> BellSouth also charges far less under its state and federal tariffs. For example, BellSouth charges \$8.86 per amp for DC power under its Florida tariff, and \$3.48 under its federal tariff.<sup>15</sup> Similarly, SBC charges \$5.25 per amp under its Texas state tariff, while its affiliate, Pacific Bell, charges \$7.40 per amp under its federal tariff.<sup>16</sup> U S West's (now Qwest) charge for DC power in Minnesota, \$4.43 per amp, is also in line with these other rates.<sup>17</sup>

The Commission has previously concluded that rates for collocation, like those for interconnection and unbundled network elements, must be based on the total long run incremental cost ("TELRIC") of providing that element. See Local Competition Order ¶ 629. The Commission has further concluded that, because many of the collocation elements that are available under Section 251(c)(6) are likely to involve the same facilities as existing interstate expanded interconnection services, which are available pursuant to Verizon's federal tariff, the Section 251(c)(6) elements should generally have the same cost characteristics as the interstate elements. Id. ¶ 826.<sup>18</sup> Yet, here, Verizon's interstate rates are a fraction of its state rates. Nor can Verizon claim that the cost of delivering DC power -- a fungible commodity -- for interstate services somehow differs from the cost of delivering DC power for local services. Given that Verizon's state rates are 3-6 times higher than its federal rates, it is implausible that Verizon's state charges for DC power are cost-based.

## **II. Verizon Unreasonably Charges Conversent For Power That It Never Ordered And That It Does Not Use.**

Conversent orders -48V DC power to operate its collocated equipment, which includes a DSLAM, a digital loop concentrator, and other supporting equipment. As the diagram

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<sup>13</sup> Ameritech FCC Tariff No. 2, § 16.5 at page 617.

<sup>14</sup> Ameritech Michigan State Tariff No. 20R, Part 23, § 21.5 at page 89.

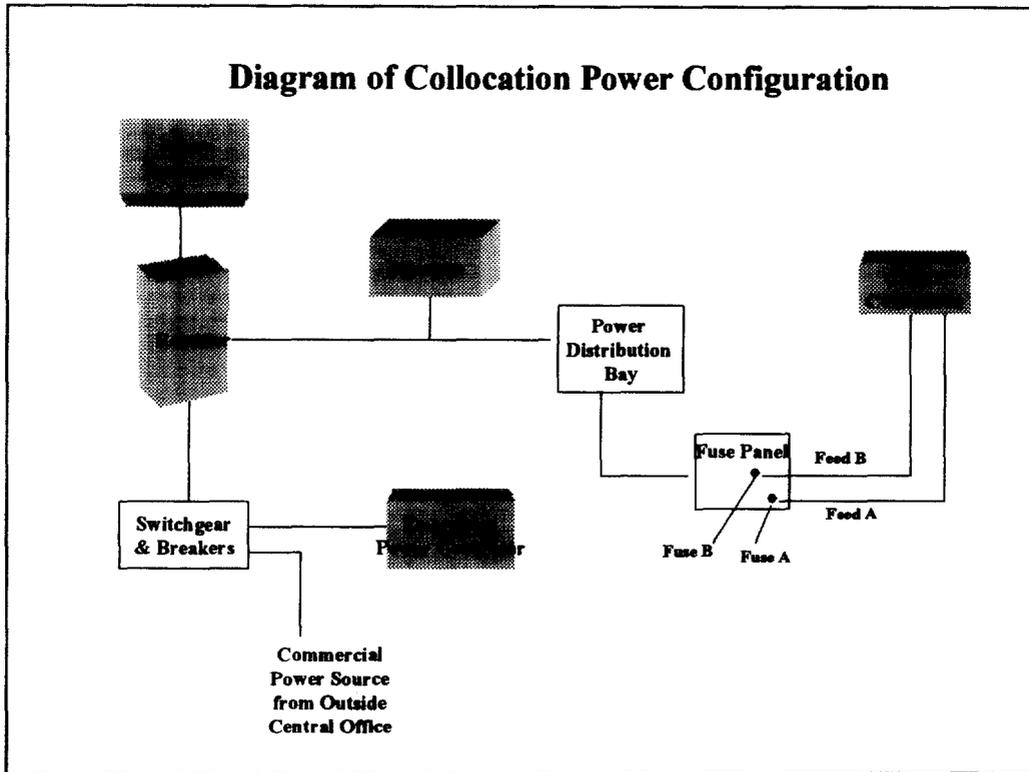
<sup>15</sup> BST Florida Access Services Tariff, § E20.2.22(A)(8) at page 34; BST FCC Tariff No. 1, § 20.31(E) at page 20-39 ("per ampere" element); id., § 20.30.1(F) at page 20-38 (describing "per ampere" element as "consist[ing] of two separate -48 volts direct current feeds (A&B) with battery back-up and appl[ying] per ampere for the equipment maximum power requirement").

<sup>16</sup> SWBT Texas Access Service Tariff, § 26.13.3(F)(1) at page 15; Pacific Bell FCC Tariff No. 1, § 16.7.1(B)(1) at page 16-96 (monthly rate of \$296 per 40 amp increment, or \$7.40 per amp per month). SWBT's Texas tariff also provides for a "D.C. Transmission Energy Charge" for "AC Power Usage to provide redundant D.C. power to the virtually collocated equipment." See SWBT Texas Access Service Tariff, § 26.13.1(F)(2) at page 9. The charge for this "sub-element" is \$2.03 per month. Id. § 26.13.3(F)(2) at page 15. It is not clear whether this is a supplemental fee for DC power, which would make the effective monthly charge slightly higher (\$7.28). Regardless, these rates are a fraction of those assessed by Verizon.

<sup>17</sup> U S West Generic Cost Docket, MN PUC Dkt. No. P442,5321,3167,466,421/CI-96-1540, Compliance Prices Agreed on by ATT and USW (DC Consumption recurring charge).

<sup>18</sup> The Commission found that use of its Expanded Interconnection pricing structure rules was appropriate for setting ceilings on proxy collocation rates because expanded interconnection services were subject to the "new services test," which, like TELRIC, uses a forward-looking methodology. Local Competition Order ¶ 826.

below illustrates, like most other CLECs, Conversent requests two electric conduits, or “power feeds,” to deliver power from the fuse panel to the collocated equipment.



One feed is known as the primary, or A-feed, and the other as the back-up, or B-feed. The purpose of ordering two feeds is to ensure a continuous flow of power if a fuse “blows” or one of the feeds otherwise becomes inoperable.<sup>19</sup> Each feed is able to carry a maximum capacity equal to the amount of power that the attached collocated equipment is expected to use, or “drain.”<sup>20</sup> Power drainage is measured in amps and Conversent has in the past ordered power from Verizon on a “drained amp” basis.<sup>21</sup> The A- and B-feeds are in turn connected to fuses on the fuse panel. Conversent needs two fuse panels (each with an A- and a B-feed) in each of its collocation arrangements in order to have access to sufficient power to run its collocated equipment. For each of its 100 collocation arrangements during the time frame at issue, Conversent ordered 40

<sup>19</sup> Moreover, Verizon’s collocation application requires CLECs to order power in increments of two feeds, which it identifies as an “A&B feed pair.” See Verizon Collocation Application § IV (12/01/00). The same application dictates that “[w]hen indicating the number of amps drain per feed, a quantity of ‘30’ equals 30 amps on A and 30 amps on B. DO NOT ADD TOGETHER.” *Id.*

<sup>20</sup> “Drain” refers to the amount of power that a piece of equipment can actually use.

<sup>21</sup> See Verizon Collocation Application § IV (12/01/00). Verizon recently modified its application to require CLECs to indicate the “number of Amps Load” rather than the “number of Amps Drain” required per feed. See Verizon Collocation Application § IV (revised 2/01/01) <<http://www.bell-atl.com/wholesale/html/resources.htm#collocation>>.

amps of power for the A-feed and 40 amps for the B-feed for each of the two fuse panels, or 160 amps in total.<sup>22</sup>

**A. Verizon Charges Conversent Based Upon "Fused" Amps, Thus Inflating Its Power Costs By At Least 50%.**

Under its state tariffs, when Verizon bills Conversent for power for one of the two fuse panels in a collocation arrangement, Verizon charges Conversent for 60 amps (instead of the 40 ordered) for the A-feed and 60 amps (instead of the 40 ordered) for the B-feed. This is due to Verizon's practice of charging on a "fused," rather than a drained, amps basis.<sup>23</sup> Fused amps refer to the practice of installing fuses at the Verizon fuse panel between Verizon's power source and the CLEC's fuse panel in order to protect both Verizon's and the CLEC's equipment from electrical surges. Consistent with established engineering principles, collocated equipment is typically fused at 1.25 to 1.5 times the drain rate.<sup>24</sup> Thus, Conversent's equipment, which drains a maximum of 40 amps, would be fused at 60 amps.<sup>25</sup> As with the presence of the redundant B-feed, the size of the fuse attached to the feed does not increase the amount of power that Conversent's equipment can draw.

Nevertheless, Verizon billed Conversent for 120 amps of power per month for each of the two fuse panels located in its 100 collocation arrangements, even though Conversent ordered only 80 amps of power for each panel. This practice results in Verizon billing Conversent nearly \$2 million annually for *power it never ordered and never used*.<sup>26</sup> Verizon's

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<sup>22</sup> Power charges account for the majority of Conversent's monthly recurring costs for collocation. In an effort to cut costs, Conversent tested its collocated equipment to determine how much power it was actually drawing. Based on those results, Conversent recently augmented its collocation applications in Verizon's states to order only 20 amps of power per feed per fuse panel.

<sup>23</sup> Verizon's federal tariff charges "per amp" (not fused amp) for collocation arrangements. FCC Tariff No. 11, § 31.28.1(B)(3) at page 31-308. The only exception to Verizon's practice of charging per fused amp at the state tariff level is in Massachusetts, where Verizon recently filed modified tariff language to charge CLECs on a "per load amp requested" basis. While Conversent agrees that this change clarifies Verizon's prior ambiguous language regarding its billing practices, it does not correct Verizon's other unreasonable practices, as detailed below, nor does it alleviate Verizon's other excessive charges, as discussed above. Moreover, Verizon incorporated new and detailed inspection and auditing procedures along with penalties for noncompliance (as apparently unilaterally determined by Verizon) in its Massachusetts tariff, thus adding another anticompetitive weapon to its arsenal.

<sup>24</sup> Fuses will not operate reliably as power levels exceed two-thirds of the fuse's maximum-rated power capability; thus, it is standard engineering practice to fuse at a rate higher than the drain rate. Although Verizon has argued elsewhere that charging for fused amps allows it to ensure that CLECs do not siphon off additional power, any savings from such a plan would quickly be outweighed by the CLEC's additional repair costs and damage to reputation as a result of frequent service outages due to blown fuses. Verizon's purported justification is therefore implausible and easily rejected.

<sup>25</sup> Because fuses come in increments of 10 amps, the total fused amps is often greater than 1.5 times the required amps. For example, for 50 amps of drained power, Verizon would install an 80 amp fuse (1.5 times the 50 requested amps, rounded up to the next 10 amps).

<sup>26</sup> Maine (5 collos)(\$25.16)(40 amps)(2 fuse panels)(12 months) + Massachusetts (54 collos)(\$18.66)(40 amps)(2 fuse panels)(12 months) + New Hampshire (8 collos)(\$20.39)(40 amps)(2 fuse panels)(12 months) + New Jersey (11 collos)(\$14.18)(40 amps)(2 fuse panels)(12 months) + New York (12 collos)(\$19.64)(40 amps)(2 fuse

practice of charging CLECs for power that they never order or use is unreasonable and artificially raises CLECs' costs of doing business in Verizon's territory.

**B. Verizon's Practice Of Charging For Power Per Feed Results In CLECs Paying For Power That They Never Use.**

As noted, although both the A- and the B-feed on a given fuse panel have the *capacity* to each draw 40 amps, this additional capacity is simply a redundancy feature designed to ensure that, should one of the feeds fail, the other feed will be able to deliver 40 amps to the collocated equipment, thus preventing a service interruption for Conversent's end user customers. Depending on the type of equipment, the feeds will either each "load share," *i.e.*, carry only half the power used (in this case, 20 amps on each feed), or the A-feed will carry 100% of the power used, while the B-feed carries 0% (pending a problem with the A-feed). Regardless of the particular configuration, to ensure that 40 amps of power will be available if one of the feeds malfunctions, Conversent must order 40 amps for each feed. Under no circumstances, however, will the equipment draw more than 40 amps of power. Despite this fact, Verizon charges Conversent for power *per feed*, resulting in Conversent paying for 80 amps per fuse panel even though it never draws more than 40 amps. This practice results in an annual overcharge to Conversent of more than \$1.8 million over six states.<sup>27</sup> The Commission should clarify that incumbent LECs are prohibited from billing CLECs for power until and unless they actually draw such power.

**III. Verizon's Federally Tariffed Charges For The Installation Of Collocation Cages Are Excessive.**

If a CLEC attempts to obtain Verizon's lower monthly power rates by applying for collocation under Verizon's federal tariff, that CLEC will incur federal installation fees that are over four times higher than the comparable rate in state tariffs. Specifically, the federal installation fees amount to approximately \$55,000. In comparison, if the CLEC is willing to pay Verizon's excessive state-tariffed power charges, it can apply for collocation under the state tariff where it will pay approximately \$15,000 for collocation installation fees. These unexplained and substantial differences between Verizon's federal and state rates for the same collocation element underscore the inherent unreasonableness of Verizon's ostensibly cost-based rates. Moreover, they also highlight the "catch-22" of Verizon's collocation offerings: CLECs can "choose" to overpay up front (under Verizon's federal tariff) or later on (under its state tariffs). Under either scenario, Verizon successfully raises its rivals' costs and harms competition.

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panels)(12 months) + Rhode Island (10 collos)(\$22.14)(40 amps)(2 fuse panels)(12 months) = \$1,833,235.20. This calculation assumes Verizon's average rate for power charges for less than or equal to 60 amps for each state.

<sup>27</sup> As with the prior calculation, the total reflects Verizon's state rates for 60 or fewer amps multiplied by 40 amps of unused power multiplied by the number of central office collocations in that state multiplied by 12 months multiplied by 2 fuse panels. To avoid double-counting, it also assumes that Verizon is charging based on drained, not fused, amps.

#### **IV. Under Both Its State And Federal Tariffs, Verizon Charges CLECs For Power Before Their Equipment Is Attached To Verizon's Power Source.**

Verizon also inflates Conversent's cost of doing business by billing it for DC power under its state and federal tariffs even before Verizon supplies DC power to Conversent's collocation space. It does so by commencing the imposition of power charges immediately after it has completed the construction work associated with physical collocation.<sup>28</sup> But once Verizon has completed the construction work and turned over the collocation space to Conversent, there are at least three additional steps that must be completed before Conversent is able to access the power. First, Conversent must install its equipment. Second, after installation, Verizon's practice is to inspect the collocated equipment to make sure that it complies with Verizon's standards. Third, only after Verizon has successfully completed its inspection will it issue a work order to fuse the power feeds so that power can be drawn. These activities typically take several months. Indeed, one CLEC recently filed suit because Verizon began charging it for power eight months prior to fusing power to the collocation space.<sup>29</sup>

It is unreasonable and anticompetitive for Verizon to begin charging for power before a CLEC is able to access or draw upon that power. This is especially so since Verizon has complete control over the timing of two of the three steps that must be taken before Conversent can begin actually using collocated equipment to provide service. Moreover, since Verizon is not supplying any power in this interim period, it is not incurring any costs that must be recovered from Conversent. Verizon's current practice of charging for power that cannot be used runs afoul of the Act's requirement that collocation terms and conditions be just and reasonable, and that collocation charges be cost-based.

#### **V. Other CLECs Have Experienced Similar Problems With Verizon.**

As mentioned, Conversent is not alone in experiencing the harmful effects of non-cost-based overcharges due to Verizon's excessive, unreasonable, and duplicative charges and practices with regard to collocated CLEC equipment. Other CLECs, including members of ALTS, AT&T, Covad, Digital Broadband, and Rhythms have raised these issues in a variety of forums.

For example, in November, Covad and AT&T filed a complaint and petition for declaratory ruling with the New York Public Service Commission, alleging that Verizon New York had unlawfully incorporated language into its tariff that would greatly increase the rates

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<sup>28</sup> See, e.g., FCC Tariff No. 11, § 28.9.8(B) at page 28-97 (“[b]illing for monthly rates will commence on the occupancy date or 30 days from the date the Telephone Company provides access to the multiplexing node, cable space, roof space or transmitter/receiver space, whichever comes first”); Verizon Massachusetts Tariff No. 17, Part E, § 2.4.1(D) at page 19 (Verizon “will begin billing all fees (except for special construction charges) commencing on the occupancy date or thirty days after written notice”).

<sup>29</sup> Abbreviated Dispute Resolution Petition of Cavalier For Resolution of Disputed Issues with Verizon-Pennsylvania, PUC Dkt. No. P-00001852, Main Brief of Cavalier at 6-7 (filed Feb. 16, 2001).

that CLECs pay for DC power.<sup>30</sup> As Covad and AT&T explained, despite the fact that the PSC approved Verizon's rate as a "per amp, per month" charge, Verizon filed tariff language allowing it to charge on a "per amp fused, per feed" basis. Complaint ¶¶ 9-11.<sup>31</sup> As a result, "[t]his new and totally unauthorized rate structure has the functional effect of increasing the cost of power by 300 to 400 percent." *Id.* ¶ 11. First, Verizon's unilateral modification of its tariff to charge for power on a "per amp fused" basis typically results in a greater than 50% mark-up. *Id.* ¶ 13. For example, if a collocater orders 22 amps, that order is increased to 33 amps, and then, because fuses only come in 10 amp increments, the 33 is bumped up to 40 amps. Second, Verizon's addition of the "per feed" language then doubles that amount, to 80 amps. *Id.* ¶ 15. Thus, instead of paying for the 22 amps it initially ordered, the CLEC is now paying nearly four times that amount.

More recently, as mentioned, in response to complaints before this Commission that Verizon was improperly charging CLECs for DC power in Massachusetts,<sup>32</sup> on January 12, Verizon modified its Massachusetts tariff.<sup>33</sup> Those modifications appear to have clarified that Verizon will charge for power "per load amp." Even so, this clarification does not relieve CLECs of the excessive rates that Verizon charges and it does not change Verizon's practices with regard to when it begins to charge CLECs for power or whether it can properly charge for power not used. Moreover, Verizon has not committed to adjust CLEC invoices that were billed based on an improper "fused" amp rate. As a result, AT&T and Covad have filed a complaint against Verizon with the DTE seeking, *inter alia*, a refund of Verizon's illegally collected charges.<sup>34</sup>

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<sup>30</sup> Complaint and Petition for Declaratory Judgment of Covad and AT&T Regarding Unjust and Unreasonable Collocation Power Charges in New York Telephone Co. PSC Tariff No. 914 (filed Nov. 16, 2000).

<sup>31</sup> Moreover, Verizon had itself argued that the monthly recurring power charge should be based on drained, not fused, DC current. Complaint ¶¶ 7-8. Not surprisingly, its prior tariffed DC power rate was also on a "per amp, per month" basis.

<sup>32</sup> For example, ALTS, Covad, and Rhythms each raised the issue of Verizon's collocation power charges in comments filed in response to Verizon's initial Massachusetts application. See Comments of Covad at 43-47, Comments of ALTS Coalition at 18-20, Comments of Rhythms at 18-20, filed in Application by Verizon New England Inc. for Authorization to Provide In-region, InterLATA Services in Massachusetts, CC Dkt. No. 00-176 (Oct. 16, 2000). These complaints were reiterated in comments filed in response to Verizon's supplemental application. Those comments stated that, although Verizon was no longer charging CLECs three times the appropriate amount for power (due to the clarification that it would charge on a "per load amp requested" basis), it was still charging double (due to its practice of charging per feed, which requires CLECs to pay for unused power). See Comments of ALTS, XO Communications, and Focal Communications at 11-13, Comments of Covad at 35-39, filed in Application by Verizon New England Inc. for Authorization to Provide In-region, InterLATA Services in Massachusetts, CC Dkt. No. 01-9 (Feb. 6, 2001).

<sup>33</sup> Letter from Robert Mudge, President, Verizon Massachusetts, to DTE, at 2 (Jan. 12, 2001).

<sup>34</sup> Complaint by Covad and AT&T Regarding Historic Overcharges by Verizon for Collocation Power, DTE Dkt. No. 98-57 (filed Feb. 22, 2001).

**VI. Conversent Urges The Commission To Modify Its Rules To Clarify That Verizon's Practices With Regard To DC Power Violate The Act And The Commission's Rules.**

At this point, CLECs are being forced to litigate the issue of Verizon's unjust, unreasonable, and discriminatory rate policies and charges on a piecemeal basis. Rather than allowing Verizon to further raise CLECs' costs in this manner, Conversent submits that this is precisely the type of policy issue that should be resolved by the Commission on a national basis. Resolution of this problem is simple. The Commission should (1) set a carrier's federal power rate as the ceiling for state power rates; (2) prohibit incumbent LECs from charging CLECs for power on a fused amp basis; (3) prohibit incumbent LECs from charging for power on a per feed basis unless that power is actually drawn; (4) prohibit incumbent LECs from charging CLECs for power prior to when such power becomes available; and (5) require Verizon to bring its federal collocation installation charges in line with its state rates. Moreover, these prohibitions must apply nationally at both the state and federal levels.

**VII. Conclusion**

Access to collocation at cost-based rates and reasonable terms and conditions is critical to true facilities-based competition. As demonstrated, Conversent is paying more than \$3.6 million annually for power that it does not order and does not use. Even this amount understates the effect of Verizon's anticompetitive conduct, as it does not include overcharges due to Verizon's non-cost-based state rates or due to its practice of charging CLECs for power before their power source is activated. Not surprisingly, charges for DC power constitute the greatest portion of Conversent's (and no doubt other CLECs') monthly recurring costs for collocation. In addition to raising its rivals' costs, Verizon's non-cost-based power rates also send false signals to the marketplace, leading CLECs to conclude that they cannot efficiently enter local markets that they could otherwise (with cost-based rates) efficiently enter. As long as Verizon is allowed to continue to grossly overcharge CLECs for power, facilities-based competition will be, at best, delayed, and, at worst, barred altogether. Conversent respectfully urges the Commission to address this vital issue.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1), an original and one copy of this letter are being provided for inclusion in the record of the above-referenced proceeding.

Sincerely,



A. Renée Callahan  
Attorney for Conversent Communications

cc: William A. Kehoe