

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)
)
Verizon Telephone Companies) WC Docket No. 02-237
)
Section 63.71 Application to Discontinue)
Expanded Interconnection Service Through)
Physical Collocation)

COMMENTS OF CONVERSENT COMMUNICATIONS, LLC

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY.....	1
II. DISCUSSION	2
III. CONCLUSION	13

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Conversent Communications, LLC (“Conversent” or the “Company”), by its attorneys, hereby files these comments in the above-captioned proceedings in response to Verizon’s application to discontinue its interstate tariff for physical collocation pursuant to Section 214 of the Communications Act (“Application”).¹

I. INTRODUCTION AND SUMMARY

Verizon’s Application seeks the withdrawal of its FCC expanded interconnection physical collocation tariff. However, in reviewing Verizon’s request, the Commission should give serious consideration to whether it would not make more sense to require that all ILECs file federal physical collocation tariffs under Section 251(c)(6) *in lieu* of the existing state tariffs. If the Commission decides not to take that approach, it must nonetheless reject the instant application because it would, under the proposals set forth therein, result in a significant and arbitrary increase in rates paid by CLECs for, at the very least, DC power and cross-connects (and therefore a significant increase in the overall cost of physical collocation). In all events, any

¹ See *Comments Invited on Verizon’s Application to Discontinue Federally-Tariffed Physical Collocation Service*, Public Notice, DA 02-2038 (rel. Aug. 19, 2002).

determination that Verizon should be allowed to withdraw its federal physical collocation tariff must be appropriately conditioned. Verizon must offer competitors a comprehensive grandfathering of rates for all physical collocation services purchased under the federal tariff prior to the effective date of the discontinuance. Verizon cannot be permitted, as it has proposed, to exclude from the grandfathering option those federal rates that benefit competitors. Verizon must also offer competitors the option of a comprehensive conversion to state physical collocation. Any credits due for payments previously made by competitors under the federal tariff must accurately reflect the amount due to a particular CLEC rather than an averaged amount as Verizon has proposed.

II. DISCUSSION

In its Application, Verizon asks the Commission to approve the withdrawal of its interstate expanded interconnection physical collocation tariff, an offering that was originally introduced pursuant to Section 201 of the Communications Act.² Verizon proposes that in the future carriers be limited to purchasing physical collocation arrangements pursuant to Section 251(c)(6) and that such service should only be available pursuant to state tariffs or via interconnection agreements. The only option available under the FCC tariff for collocation arrangements ordered after the effective date of the proposed withdrawal of service would be virtual collocation.

For physical collocation arrangements purchased under the federal expanded interconnection tariff prior to the effective date of a discontinuance, Verizon proposes that requesting carriers be given the option of converting to physical collocation under the relevant

² See Verizon Telephone Companies Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation, WC Docket No. 02-237 (filed Aug. 19, 2002).

state tariff or an interconnection agreement. Application at 6. Carriers choosing this option would receive, over a 9 ½ year period, a “conversion credit based on the average unamortized difference between the federal and state non-recurring charges for space preparation.” *Id.*

Alternatively, Verizon proposes that carriers that purchased physical collocation arrangements under the FCC tariff before the effective date of the withdrawal could “grandfather” a limited number of federal charges. For example, “space-related” charges under the federal tariff would continue to apply for collocation arrangements ordered before the discontinuance of the tariff. *Id.* at 4. Federal charges would also continue to apply for cross-connects “that are in-service and being billed under the federal tariffs” when the tariff is discontinued. *Id.* at 5. All other charges associated with physical collocation arrangements previously purchased under the federal tariff would be governed by the relevant state tariff or interconnection agreement. Most importantly, Verizon would not grandfather rates for DC power or for cross-connects that have been ordered under the federal tariff (including those for which the purchasing carrier has paid non-recurring charges under the FCC tariff) but that are not “in service” and “being billed” as of the effective date of the discontinuance. *Id.* at 5.³

The reasoning relied upon in Verizon’s Application and the specific proposals therein suffer from several serious flaws. As a threshold matter, Verizon argues that its expanded interconnection physical collocation service is merely a voluntary offering under Section 201. Application at 2. It appears to assume that physical collocation under Section 251(c)(6) can *only* be offered pursuant to state tariffs or state arbitration decisions. But this allocation of jurisdictional responsibility is not mandated by either the Communications Act or Commission

³ Other collocation-related inputs that would become subject to state rates under the Verizon proposal include augments, new cable racking, new entrance cabling, changes, additions or rearrangements of space and all other miscellaneous services such as testing, escorts, etc. for which customers are charged. Application at 5.

precedent. The Communications Act does not delegate to the states the responsibility for setting prices for physical collocation. In contrast to interconnection, unbundled network elements, and reciprocal compensation, Section 252 in general and subsection (d) of that provision in particular offer no basis for concluding that Congress intended that states would set specific prices for physical collocation.⁴ The only role expressly assigned to the states by the statute with regard to physical collocation is that of assessing ILEC claims that space exhaustion in wire centers justifies limiting competitors to virtual collocation (a role for which the states are of course well suited). *See* 47 U.S.C. § 251(c)(6).

Nor does the Commission's discussion of physical collocation in the *Local Competition Order* or any other order indicate that physical collocation prices must be set in state tariffs or arbitration proceedings. To be sure, in the *Local Competition Order*, the Commission did not require incumbents to file federal tariffs for Section 251(c)(6) physical collocation because it found that the statute did not mandate such a requirement. *Local Competition Order* ¶ 567. Moreover, the Commission generally assumed that the states would have responsibility for setting specific physical collocation rates, since it assumed that physical collocation would be purchased via interconnection agreements over which state commissions have primary responsibility under Section 252. *Id.* ¶ 629. But the Commission never concluded that this approach is the only permissible means of setting the price of physical collocation required by Section 251(c)(6). Moreover, in the absence of such a limitation, the Commission is free to set

⁴ Section 251(c)(6) contains its own pricing standard (that prices be just, reasonable, and nondiscriminatory) and makes no reference to state implementation of that standard. *See* 47 U.S.C. § 251(c)(6). The Commission determined that TELRIC should apply to physical collocation based on the pricing standard in Section 251(c)(6), *not* the provisions of Section 252(d). *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499, ¶ 629 (1996) (subsequent history omitted) ("*Local Competition Order*").

those prices pursuant to its general authority under Section 201(b). *See AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 377-78 (1999).

In reviewing whether to permit Verizon to withdraw its federal expanded interconnection physical collocation tariff, the Commission should consider whether to use its authority under Section 201(b) to mandate that ILECs file federal physical collocation tariffs for Section 251(c)(6) *in lieu* of state-set rates. Such an approach makes sense for several reasons. To begin with, most competitors do not purchase collocation out of interconnection agreements, but rather out of tariffs, either federal or state. Contrary to the Commission's assumption at the time of the *Local Competition Order*, the states' responsibility for interconnection agreement arbitrations and mediations does not therefore make them more suitable fora for setting collocation prices. In addition, the significant differences among the state-set physical collocation rates and rate structures have led to arbitrary differences in the cost of entry that a single set of national rules applied by one agency would diminish. Limiting the consideration of physical collocation rates to a single forum would also be more efficient for regulators and carriers than the current system in which the same issues are reviewed and re-reviewed in 50 different jurisdictions. Moreover, the Commission has considerable experience in setting collocation prices, since it did so for the expanded interconnection collocation arrangements that are at issue in this proceeding.⁵ Thus, it may well be that the most efficient and sensible way of addressing the inconsistencies in the existing physical collocation prices (Verizon's stated reason for filing the instant withdrawal request) is to set those rates at the federal level.

⁵ Of course, rates set for physical collocation under Section 251(c)(6) must comply with TELRIC, while rates set for expanded interconnection do not.

But even if the Commission decides not to assume responsibility for setting prices under Section 251(c)(6), Verizon's specific proposals for withdrawing its expanded interconnection physical collocation tariff cannot be approved. In reviewing the Verizon proposal, the Commission must ensure that the withdrawal comports with the "public convenience and necessity." *See* 47 U.S.C. § 214(a). In so doing, the Commission may "attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require." *Id.* § 214(c). The proposal as set forth in the Application does not meet the "public convenience and necessity" test because it would impose arbitrary and substantial price increases on competitive carriers. It would do so in at least three ways.

First, as mentioned, DC power is excluded from the limited grandfathering proposed in the Application. Forcing competitors to purchase DC power under state tariffs would result in very significant price increases. A comparison of Conversent's own DC power costs under the current Verizon federal tariff with the rates that would apply under the relevant state physical collocation tariffs illustrates this point.

When purchasing power for its physically collocated equipment, Conversent requests two electric conduits, or "power feeds," to deliver power from the fused panel to the collocated equipment. One feed is known as the primary feed, or A-feed, and the other as the back-up feed, 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. Each feed is designed to carry a maximum capacity equal to the amount of power that the attached collocated equipment is expected to use, or "drain."⁶ In each of its federal collocation arrangements, Conversent orders

⁶ "Drain" refers to the amount of power that a piece of equipment can actually use. These feeds are in turn connected to fuses on the fuse panel.

40 amps per feed. The rate for DC power set forth in Verizon's FCC tariff is \$4.88 per amp for the New England states, \$6.44 per amp in New York, and \$17.44 in New Jersey.⁷ Verizon bills for DC power on a fused basis for each feed under its federal tariff. As a result, while Conversent only orders 40 amps per feed, it is billed for 60 amps per feed for a total of 120 amps per month for each collocation arrangement. Verizon's monthly bill for DC power associated with the 58 physical collocation arrangements Conversent has ordered under the federal tariff amounts to approximately \$39,000.

This amount would increase substantially if Conversent were required to purchase DC power at the prices applicable in the relevant states. The rate for DC power in most of the Verizon states in which Conversent has federal physical collocations ranges from approximately \$14.00 per amp to approximately \$20.00 per amp.⁸ Unlike DC power ordered in connection with a federal collocation arrangement, Verizon bills DC power ordered under its respective state tariffs on a per load, per amp basis. As a result, when Conversent orders 40 amps under Verizon's state collocation tariffs it is billed for 40 amps on the A-feed and 40 amps for the B-feed for a total of 80 amps per collocation arrangement. Notwithstanding this difference, DC power charges at the state level are much higher than is the case under the federal tariff. Applying the applicable state tariffed rates for DC power on a per load amp, per feed basis to Conversent's federal collocation arrangements would result in a monthly bill for DC power of \$73,303, an increase of over \$34,000 a month or approximately 46 percent.

⁷ Conversent has federal physical collocation arrangements in the following Verizon states: Massachusetts, Rhode Island, New Hampshire, Maine, New York, and New Jersey.

⁸ An exception is in New Hampshire where the rate for DC power is below \$4.00.

Second, as mentioned, the grandfathering proposed in the Application would not apply to cross-connects that are not “in service” and “being billed” as of the effective date of the discontinuance. Those cross-connects would become subject to state tariff or interconnection rates. This change is likely to force CLECs to double-pay for the non-recurring costs associated with cross-connects.

Verizon’s federal physical collocation tariff contains recurring and non-recurring cross-connect charges for DS-1 and DS-3 circuits (the tariff includes no cross-connect charges for DS-0 circuits). Under the tariff, competitors are required to purchase DS-1 cross-connects in batches of 28. *See* Verizon Tariff FCC No. 11, § 31.28.1(C)(2). This means that competitors must generally order more DS-1 cross-connects than they can initially use. In addition, the non-recurring charges associated with costs Verizon incurs to initially provision equipment needed for DS-1 cross-connects and also DS-3 cross-connects (*e.g.*, costs associated with purchasing and installing POT Bay equipment) apply at the time the cross-connects are *ordered*.⁹ The recurring charges apply for a particular cross-connect when the competitor begins actually *using* the cross-connect.¹⁰

⁹ Verizon's federal tariff for physical and SCOPE arrangements makes clear that cross-connect NRCs apply "at the time of equipment installation" as follows:

"The OCT POT Bay Termination Charge [NRC]...is a non-recurring charge that is for the termination strip or panel that resides in the POT Bay Frame. *This charge will be applied at the time of equipment installation and only applies when the Telephone Company provides the POT Bay Frame.*

The OCT Cable and Frame Termination Charge...is a non-recurring charge that is for the cabling to and the termination strip or panel that resides on the Telephone Company frame. *This charge will be applied at the time of equipment installation* (emphasis added)."⁹

Verizon Tariff FCC No. 11, § 28.1.10 (A)(1)(b), (c) (emphasis added).

¹⁰ *See id.* § 28.1.10 (A)(2)(a).

In contrast, the tariffs for physical collocation in the Verizon states in which Conversent operates generally do not contain non-recurring charges for DS-1 or DS-3 cross-connects (or indeed for DS-0 cross-connects). This is the case in Massachusetts, New Hampshire, Maine, Rhode Island and New Jersey¹¹. However, those states all have recurring charges for DS-1 and DS-3 cross-connects (as well as DS-0 cross-connects).

If a competitor were forced to pay state tariffed rates for cross-connects that were ordered under the existing Verizon expanded interconnection physical collocation tariff but that have not yet been placed “in service” and are not “being billed,” it is likely that the competitor would double-pay. This would occur in one of two ways. To the extent that state rates include only recurring charges, those charges recover the cost of non-recurring expenses for which competitors have already paid Verizon under the federal tariff. Paying state recurring charges that recover the same costs covered by the federal non-recurring charges would therefore cause competitors to pay Verizon twice for the same facilities and work.

Alternatively, to the extent that a state seeks to introduce non-recurring charges for physical collocation, there is again a distinct risk that competitors would be forced to double pay. For example, Verizon is currently asking the Massachusetts DTE to adopt a revised rate structure for physical collocation cross-connects that would include both recurring and non-recurring charges. Verizon has argued that the non-recurring charge should apply to those cross-connects that have been ordered and provisioned but not yet been put into use by the competitor.¹² The

¹¹ While New Jersey does not have a non-recurring charge in its physical collocation tariff, Verizon has charged CLECs in that state a non-recurring charge pursuant to a settlement agreement among Verizon and certain of the CLECs in that state.

¹² *See Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New*

non-recurring charge Verizon has proposed for Massachusetts would apparently recover costs associated with the same POT Bay Termination equipment and labor as is covered by the non-recurring charge paid by carriers that have purchased physical collocation under the federal tariff.¹³ Moreover, as mentioned, the federal tariff requires that carriers purchase DS-1 cross-connects in minimum batches of 28, even when the carrier needs only a single DS-1 cross-connect. Competitors that have ordered physical collocation under the Verizon federal tariff are usually in the position of having paid non-recurring charges for a significant number of DS-1 cross-connects that are not yet in service. Thus, if applied to cross-connects originally ordered under the federal tariff, the approach Verizon has proposed in Massachusetts would likely cause competitors to pay two non-recurring charges for same facilities and work in a significant number of cases.

Third, the conversion credit Verizon proposes for competitors that choose to convert their collocations entirely to state arrangements in the New England region would arbitrarily raise certain CLEC costs. The conversion credit appears to be based on Verizon's recognition that space preparation costs for physical collocation ordered under the federal tariff are paid for in non-recurring charges while the same costs are covered in the New England states by recurring charges. Apparently to prevent carriers from double-paying for space preparation after they

England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts, Verizon Massachusetts' Reply To The Motions For Reconsideration And Clarification Filed By AT&T, WorldCom, The CLEC Coalition, And Z-Tel, D.T.E. 01-20 at 49 (filed Aug. 29, 2002).

¹³ *Compare Verizon Tariff FCC No. 11, § 31.28.1(C)(2) (establishing non-recurring charges for POT Bay Termination), with Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts, Direct Testimony of Dinell Clark Verizon Massachusetts, D.T.E. 01-20 at 24 (filed May 4, 2002) (describing Verizon's proposal for non-recurring charges for POT Bay termination in Massachusetts).*

convert their physical collocations to state tariffed rates, Verizon has proposed that competitors receive a credit for the non-recurring charge already paid at the federal level.

But the proposed credit is arbitrary because Verizon has set the credit based on what it asserts is the industry average for the length of time collocations have been in place. Since Verizon estimates that the average collocation arrangement has been in place for 2 ½ years, it assumes that any carrier that purchased collocation under the federal tariff would, by now, have paid 2 ½ years worth of amortized charges for space preparation under the relevant state tariff (if that tariff had applied during that period). Application at 7. But of course, this approach systematically benefits those competitors that purchased collocation more than 2 ½ years ago at the expense of those that purchased physical collocation under the federal tariff more recently than 2 ½ years ago.

As each of these points demonstrates, the withdrawal of the Verizon federal physical collocation tariff would result in very significant increases in rates paid by competitors. This result simply does not comport with the public convenience and necessity. Verizon cannot be allowed to achieve through the discontinuance of its federal tariff an increase in rates that would never be permitted through revisions to its federal tariffs. Indeed, a central policy underlying the required prior approval by the Commission of applications to discontinue must be the extent to which a dominant carrier seeks to use withdrawal as an end run around its obligation to provide service subject to FCC jurisdiction on just and reasonable terms and conditions. Since Verizon appears to be attempting to do just that, the Commission should reject the Application.

But even if the Commission does not outright reject the Application, it must at the very least attach appropriate conditions to its approval. All three of the cost categories discussed above illustrate a fundamental underlying problem with the conversion process proposed by

Conversent Comments
WC Docket No. 02-237
September 18, 2002

Verizon. In each case, Verizon has selectively chosen a means of converting a competitor to a state physical collocation arrangement that increases the CLECs' costs. The grandfathering approach in fact does not grandfather rates such as those of DC power and cross-connects for which the relevant state charge is likely to be higher or which will likely cause the CLEC to double-pay. Moreover, the conversion approach is actually not a complete conversion at all, because it arbitrarily withholds part of the credit due to carriers that purchased federal physical collocation less than 2 ½ years ago.

This "heads I win, tails you lose" approach should not be allowed to go into effect. Carriers that have chosen to purchase collocation and associated cross-connects under the federal tariff have done so after an examination of the totality of the relevant circumstances. The charge for one service or facility may be higher at the federal level (*e.g.*, space preparation), but that higher charge may be outweighed by lower charges for other inputs (*e.g.*, DC power). Moreover, customers have a reasonable expectation that the rates they pay for these inputs will remain largely stable. Verizon cannot be allowed now to exploit the mechanism of service withdrawal as a means of selectively foisting upon competitors the prices in federal and state tariffs most beneficial to Verizon while phasing out those prices most beneficial to competitors.

Accordingly, to the extent that the Commission decides to permit some form of conversion from the Verizon federal to the state physical collocation tariff, it must require that Verizon offer a true grandfathered and a true full conversion alternative. Under the former, all rates currently applicable under the federal tariff (including DC power and charges for cross-connects ordered but not used and billed) should remain applicable. Of course, any new cross-connects or augments or indeed any other new physical collocation service purchased in the future by a carrier would be subject to the relevant state rates under such a grandfathering

Conversent Comments
WC Docket No. 02-237
September 18, 2002

scheme. Under the complete conversion approach, a full and prompt refund should be available for space preparation and any other non-recurring charges that apply under the federal tariff but not under the relevant state tariff. Granting these two options allows carriers to continue to operate under the terms and conditions around which they have thus far designed their business plans while at the same time allowing for a transition to the state tariff regime.

III. CONCLUSION

The Commission should reject the Verizon Application or, in the alternative, attach conditions to its approval consistent with these comments.

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