

ChoiceOne
Communications

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September 18, 2002

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

WC Docket No. 02-237 –

In the Matter of Verizon Telephone Companies Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation

Dear Secretary Dortch:

Choice One Communications Inc. ("Choice One") respectfully submits an original and four (4) copies of these Initial Comments for Commission consideration pursuant to the notice in the above-referenced matter.

Please do not hesitate to contact me at 518.689.3401 if I may be of further assistance. Thank you for your consideration of this submission.

Very truly yours,



Kim Robert Scovill

Attachment

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**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

INITIAL COMMENTS OF
CHOICE ONE COMMUNICATIONS INC.

KIM ROBERT SCOVILL
Choice One Communications Inc.
Its Attorney
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(585) 530-2665

Dated: Rochester, New York
September 18, 2002

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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INITIAL COMMENTS OF
CHOICE ONE COMMUNICATIONS INC.

In response to the Federal Communications Commission's ("Commission") Notice Inviting Comments in the above-referenced matter ("Notice")¹, Choice One Communications Inc. ("Choice One") respectfully submits its Initial Comments.

I. Introduction

On August 16, 2002, the Verizon Telephone Companies ("Verizon") filed an application ("214 Application") with the Federal Communications Commission ("FCC" or "Commission"), requesting authority under Section 214 of the Communications Act of 1934, as amended (the "Act"),² to discontinue the provision of federally-tariffed physical collocation services in the former Bell Atlantic region.³ Verizon indicates in its 214 Application that seeks authority to discontinue providing federal expanded interconnection services through federally tariffed physical collocation in order to address "inconsistencies" in rate levels and rate structures

¹ See Public Notice, "Comments Invited on Verizon's Application to Discontinue Federally Tariffed Physical Collocation Service" DA 02-2038 WC Docket 02-237 (Aug. 19, 2002).

² 47 U.S.C. § 214(a); see also 47 C.F.R. § 63.71.

³ See Public Notice, "Comments Invited on Verizon's Application to Discontinue Federally Tariffed Physical Collocation Service" DA 02-2038 WC Docket 02-237 (Aug. 19, 2002).

between the state and federal tariffs.⁴ According to Verizon, it has “been difficult for Verizon to reconcile” such inconsistencies and has allegedly led to carriers “seeking the lowest rates rather than submitting applications based on how the arrangements will be used.”⁵

Further, in support of its Application, Verizon states that expanded interconnection through virtual collocation will continue to be available through its interstate tariffs, and that physical collocation will continue to be available through Verizon’s state tariffs and interconnection agreements.⁶ Verizon states that it will allow carrier-customers the option of retaining *existing* physical collocation arrangements under the interstate tariffs or of converting those arrangements to rates, terms and conditions in Verizon’s state tariffs or interconnection agreements. However, Verizon proposes that supporting physical collocation services for “grandfathered” arrangements or collocation “augment”, including DC power and new cross-connects, will no longer be available through the federal interstate tariff, but must be purchased through state tariffs and interconnection agreements.

Choice One is a Delaware corporation with principal offices located at 100 Chestnut Street, Rochester, New York 14604. Choice One is competitive facilities-based local exchange carrier offering switched services in the footprint of the Verizon family of companies in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, and Indiana. At present, Choice One serves small- and medium-sized business and residential end users with access lines in thirty markets in twelve states. Choice One is increasing its end users and access lines on a monthly basis. Choice One offers a full array of local, long distance, high-speed data (including DSL), web hosting, design and development services to small and medium sized companies in its service territory.

⁴ See Application at 3.

⁵ See Application at 3.

⁶ See Application at 4-5.

For the reasons set forth herein, and for the reasons set forth in the filings of other Commenters, Choice One urges the Commission to carefully consider the Verizon 214 Application and its ramifications. Choice One believes that the public interest and law will not be served if this 214 Application is granted at this time.

II. Granting Verizon's Petition Would Reverse Existing Law and Policy

As a facilities-based provider, Choice One decided back in 1998 that it would order physical collocation from Verizon pursuant to the federal tariff scheme. Choice One and Verizon have provisioned such collocation since this time. Verizon has collected from Choice One, and other carriers using the federal scheme, significant non-recurring, up-front fees. Granting Verizon the 214 Application would permit Verizon to game the system and keep the higher NRCs from the federal tariff and the generally higher monthly recurring fees from the state tariffs. This is unfair as well as contrary to the principles of the Act.

A. Section 214

Section 214(a) of the Act provides that “no carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby.”⁷ Accordingly, despite its assertion that the section 214 inquiry merely focus only on “whether customers would be able to receive service or a reasonable substitute after the discontinuance,”⁸ Verizon actually has the burden to demonstrate that the approval of its 214 Application will not adversely affect the present or future interests of the community to which such service currently is offered, including CLECs.⁹

⁷ 47 U.S.C. § 214(a).

⁸ Application at 4. Verizon incorrectly cites to 47 C.F.R. § 63.71(a)(i) for this proposition. In fact, the rule cited by Verizon actually requires Verizon to notify customers affected by the proposed discontinuance and sets forth the required content of such a notice.

⁹ See *Southwestern Bell Telephone Company; US West Communication; Bell Atlantic Telephone Companies; BellSouth Telephone Companies; Applications for Authority Pursuant to Section 214 of the Communications Act of*

Section 214 requires the Commission, in evaluating Verizon's 214 Application, to balance the legitimate interests of both Verizon and the user community to which Verizon's federal physical collocation service is offered. Specifically, Section 214 has been interpreted to require the Commission, in evaluating Verizon's instant Application, to consider the following factors: (1) the financial impact upon Verizon of being required to continue to provide federally-tariffed physical collocation service; (2) the public need for physical collocation service in general; (3) the public need for the particular physical collocation facilities at issue; (4) the existence, availability and adequacy of alternative collocation service; and (5) the increased cost of alternative collocation service that would be incurred by the public if the Application were granted.¹⁰ Verizon's 214 Application fails to meet any of these five factors, and should be rejected. Finally, Verizon fails to prove that it has or will suffer any economic hardship if it is required to continue to provide physical collocation service pursuant to the terms and conditions of its federal tariffs. Accordingly, the Commission must conclude that Verizon's Application to discontinue federally tariffed physical collocation service fails to satisfy the requirements of Section 214.

B. Reverse "Settled" Collocation Requirements

Verizon's 214 Application does not support a conclusion that the Commission's current requirements that federally-tariffed collocation service by Verizon no longer serves the public interest, and therefore does not provide the Commission an adequate opportunity to reverse its regulatory policies that have prevailed for over a decade. Accordingly, the Commission should review Verizon's 214 Application in light of its rules and policies governing physical collocation, as promulgated in its *Expanded Interconnection* proceeding and reinforced by its *Local Competition Order*, and continuing with its series of order in the *Advanced Services*

¹⁰ 1934 to Cease Providing Dark Fiber Service, Memorandum Opinion and Order, 8 FCC Rcd 2589, ¶ 52 (rel. Mar. 29, 1993) ("Dark Fiber Order").

proceeding. We agree with legal and policy arguments as proffered by the Association For Local Telecommunications Services, The Competitive Telecommunications Association, Broadview Networks, Inc., And Dominion Telecom, Inc. that Verizon's 214 Application is inappropriate.

C. If Grant, Condition with Fair Requirements and Protections

If the Commission were somehow persuaded by Verizon's 214 Application, Choice One respectfully requests that Verizon be required to grandfather individual carriers or individual markets for full collocation schemes as they exist at present. Verizon should be required, at a CLECs option, to grandfather specific elements on a site-specific basis, including collocation augments for specific sites.

Only in this respect can carriers have certainty and retain the current arrangements on an equitable basis, without Verizon gaining some advantage.¹¹

III. Conclusion

For the reasons set forth herein, and for the reasons set forth in the filings of other Commenters, Choice One urges the Commission to carefully consider the Verizon 214 Application and its ramifications. Choice One believes that the public interest and the law will not be fulfilled if this 214 Application is granted at this time.

Respectfully submitted,



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Its Attorney
100 Chestnut Street
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(585) 530-2665

Dated: Rochester, New York
September 18, 2002

¹⁰ *Id.*

¹¹ If Verizon wants certainty and does not want a dual system, it should have offer the lowest costs of both schemes.

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of September 2002, a copy of the foregoing Petition of Choice One Communications Inc. was served on the following parties via first class postage-paid United States mail:

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Signed:



Diane Verdico
Choice One Communications