

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)

REPLY COMMENTS OF TIME WARNER TELECOM

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REPLY COMMENTS OF TIME WARNER TELECOM

Time Warner Telecom Corporation ("TWTC"), by its attorneys, hereby submits these reply comments in response to the Public Notice¹ in the above-referenced proceeding. In the Public Notice, the Commission has requested comment on Verizon's application to discontinue federally-tariffed physical collocation service in the former Bell Atlantic region.²

I. INTRODUCTION

As numerous parties explained in their initial comments, Verizon's Application is a thinly-veiled attempt to impose unforeseen, substantial, and unjustified cost increases on competitors that purchase physical collocation under Verizon's federal expanded interconnection tariff. This is most blatantly the case with regard to DC power charges, which would increase by approximately 50 percent for TWTC if the Application were granted. Because the Application essentially seeks approval of rates that are unjust and unreasonable under Section 201, the Application should be denied. But even if the Commission grants the

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

² See *Verizon Telephone Companies Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, WC Docket No. 02-237 (filed Aug. 16, 2002) ("Application").

Application, it should do so on the condition that Verizon provide full grandfathering (applicable to all charges, including DC power charges) for physical collocations purchased under the federal tariff prior to the effective date of the discontinuance. Finally, to limit Verizon's opportunities to further raise its rivals' costs in the future, the Commission should ensure that carriers have the right to use Section 251(c)(6) physical collocation to obtain access to interstate special access circuits for the purposes of providing local exchange and exchange access services to others.

II. VERIZON'S APPLICATION TO DISCONTINUE FEDERALLY-TARIFFED PHYSICAL COLLOCATION SHOULD BE DENIED. IF THE COMMISSION GRANTS VERIZON'S APPLICATION, IT SHOULD CONDITION DISCONTINUANCE ON FULL GRANDFATHERING.

Section 214(a) requires Verizon to demonstrate that "neither the present nor future public convenience and necessity will be adversely affected" by its discontinuance of federally-tariffed physical collocation. 47 U.S.C. § 214(a). As currently proposed, Verizon's Application fails this standard and should be denied. But if the Commission for some reason feels compelled to grant the Application, it should, at a minimum, condition discontinuance on full grandfathering that would protect collocators from unforeseen and substantial rate increases. Anything less than full grandfathering -- including federal rates for all supporting services -- fails the statutory standard for discontinuance.

In its Application, Verizon states that it will grandfather existing federally-tariffed physical collocation arrangements, including space-related charges and cross-connects. *See* Application at 4. But Verizon's grandfathering is limited by an important caveat. Verizon will provide no grandfathering for "supporting services," and carriers will be required to take these services through state physical collocation arrangements. *See id.* at 5. As Verizon is well aware,

these supporting services, most notably DC power, comprise a substantial portion of the charges carriers incur for use of physical collocation.

Forcing carriers that purchased physical collocation under the federal tariff to purchase power under state tariffs would result in substantial increases in those charges, increases that Verizon does not even attempt to justify in its Application. A number of commenters submitted detailed data on the record that showed the impact of these rate increases.³ For example, Covad has over 200 federal physical collocations that would be affected by Verizon's power charge proposal. If the Commission grants Verizon's Application, Covad expects its power charges associated with its collocation arrangements in Verizon East's territory to increase by approximately \$200,000 per year. *See* Covad Comments at 8-9. Network Access Solutions projects that its power charges for its 298 collocations would increase by approximately \$240,000 per month. Strikingly, Network Access Solutions openly questions whether it would be able to continue operating under the burden of these massive power charges. *See* Network Access Solutions Comments at 7-8. Indeed, even Qwest, an ILEC itself, opposes Verizon's Application, estimating that Verizon's proposal would add more than \$1.6 million a year to Qwest's DC power charges. *See* Qwest Comments at 5.

TWTC's analysis of costs under Verizon's grandfathering proposal has yielded similar conclusions. TWTC provides service in three one markets in the Verizon North region. In those markets, TWTC has purchased 15 physical collocation arrangements under Verizon's federal

³ *See* Covad Comments at 8-9; Qwest Comments at 5; Network Access Solutions Comments at 7-8; Conversent Comments at 7 (explaining that Verizon's proposal would increase Conversent's DC power charges for 58 collocations by over \$34,000 per month or approximately 46 percent); Sprint Comments at 5 (estimating that under Verizon's proposed revisions, Sprint's monthly recurring charges for Verizon collocation would increase 20 percent overall and as much as 53 percent in New York). Moreover, these estimates do not even include the significant administrative and transaction costs for collocation customers if the Application is granted.

tariff. If TWTC were forced to purchase DC power for those collocations under state tariffs, its power costs would increase by approximately 52 percent, or approximately \$73,000 per year. In an environment in which competitive carriers like TWTC are held to strict, often onerous, conditions by its creditors, this kind of a cost increase (and accompanying loss of profit origins) in three markets is significant. Moreover, given that TWTC uses its physical collocation as an input for services such as special access for which Verizon often has almost complete pricing flexibility,⁴ there is an obvious risk of undetected price squeeze. This is especially true when the proposed increases are considered in the broader context of Verizon's many opportunities to raise TWTC's costs (*e.g.*, by denying, delaying and degrading access to interstate special access high-capacity end-user circuits).

Moreover, as several comments observe,⁵ Verizon is now attempting to use service discontinuance to achieve rate increases that it was precluded from obtaining through the normal process of amending its tariff. In April 2001, Verizon filed revisions to its federal expanded interconnection tariffs that would have changed both the rates and rate structures for DC power provided to federal physical collocation customers to rates and rate structures like those in Verizon's state tariffs.⁶ As the Commission observed at the time, the practical effect of these revisions would have been to increase DC power charges to Verizon's competitors by as much as

⁴ For example, New York City is one of the three markets in the Verizon North region in which TWTC uses federal physical collocation to provide interstate special access service. Verizon has received Phase II pricing flexibility for interstate special access. *See Verizon Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services*, Memorandum Opinion and Order, 16 FCC Rcd 5876 (2001).

⁵ *See, e.g.*, AT&T Comments at 7-8; Comments of Allegiance, DSLnet, and Focal at 1-4; Sprint Comments at 12-14.

⁶ *See* Bell Atlantic Tel. Co. Transmittal No. 1373, Tariff F.C.C. No. 1 (filed Apr. 11, 2001); Bell Atlantic Tel. Co. Transmittal No. 1374, Tariff F.C.C. No. 11 (filed Apr. 12, 2001).

293 percent.⁷ But these rate increases never went into effect. Following a full investigation and obviously facing the prospect of Commission rejection of its proposal, Verizon withdrew its proposed revisions just before the Commission's deadline to issue an order.⁸ Having obviously failed to convince the Commission that significant increases in DC power costs pass muster under Section 201 as part of a tariff amendment, Verizon must not now be permitted to achieve a substantial increase in rates through discontinuance.⁹

For these reasons, the Commission should find that Verizon's Application adversely affects the public convenience and necessity. Accordingly, the Commission should deny Verizon's Application to discontinue federally-tariffed physical collocation, or in the alternative, grant the Application conditioned upon full grandfathering. Such grandfathering should permit carriers that have purchased physical collocation under Verizon's federal tariff prior to the effective date of the discontinuance to continue to purchase all services covered by the federal tariff, including all supporting services. This requirement is necessary to ensure that purchasers of federal physical collocation are not exposed to significant price increases that could not have been foreseen when they purchased their physical collocation arrangements. Carriers that purchased such arrangements built their business plans for market entry around physical

⁷ See *Bell Atlantic Tel. Cos. Revisions in Tariff FCC Nos. 1 and 11 Transmittals Nos. 1373 and 1374*, Order Designating Issues for Investigation, 16 FCC Rcd 12967, ¶ 8 (2001) ("Verizon's proposed monthly per-load amp rates represent increases of approximately 293%, 236%, and 132% relative to its monthly per-fused amp rates in New York/Connecticut, Verizon New England, and Verizon South, respectively.").

⁸ See *Bell Atlantic Tel. Cos. Revisions in Tariff FCC Nos. 1 and 11 Transmittals Nos. 1373 and 1374*, Order Terminating Tariff Investigation, 16 FCC Rcd 17572, ¶ 4 (2001).

⁹ To be sure, the Commission did not have the chance to release an order concluding that Verizon's past attempt to increase power costs would have resulted in unjust and unreasonable prices. But it is quite clear that Verizon withdrew its proposed amendment at the eleventh hour to prevent the release of just such an order.

collocation as offered under the federal tariff, and it would be unreasonable to suddenly preclude such carriers from continuing to operate under those terms and conditions.

III. THE COMMISSION SHOULD CLARIFY THAT COMPETITORS MAY USE SECTION 251(c)(6) PHYSICAL COLLOCATION AND ILEC INTERSTATE SPECIAL ACCESS FOR THE PURPOSES OF PROVIDING EXCHANGE ACCESS AND TELEPHONE EXCHANGE SERVICE TO OTHERS.

In its Application, Verizon states that its proposed “tariff provisions make it clear that customers will be able to connect interstate switched access and special access services to state physical collocation arrangements.” Application at 8. However, this must not be understood merely as a voluntary commitment by Verizon, but rather as a legal requirement to make physical collocation broadly available for the purpose of enabling special access competition.

Section 251(c)(6) provides that ILECs have a statutory duty “to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection ... at the premises of the local exchange carrier....” 47 U.S.C. § 251(c)(6). Thus, where a competitor seeks to connect its own transport network with ILEC special access circuits, it may do so via physical collocation under Section 251(c)(6), so long as it is seeking “interconnection” under Section 251(c)(2). ILECs have a duty to provide interconnection “for the transmission and routing of telephone exchange service and exchange access.” *Id.* § 251(c)(2)(A).¹⁰ Where a competitor, such as TWTC, uses physically collocated equipment and ILEC special access as inputs into its own competitive special access or local

¹⁰ The Commission has held that “an incumbent must provide interconnection for purposes of transmitting and routing telephone exchange traffic or exchange access traffic or both.” *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, ¶ 184 (1996) (subsequent history omitted) (“*Local Competition Order*”). Therefore, the Commission concluded “that parties offering only exchange access are permitted to seek interconnection pursuant to section 251(c)(2).” *Id.* ¶ 185.

exchange service offering, it is providing exchange access service.¹¹ In the parlance of Section 251(c)(6), the competitor is using the inputs “for the transmission and routing of telephone exchange service and exchange access.” 47 U.S.C. § 251(c)(2)(A). In such circumstances, therefore, CLECs that use special access in this way are entitled to obtain physical collocation under Section 251(c)(6) for the purposes of connecting special access circuits to the CLECs’ transmission equipment.

The Commission should clarify this point in this proceeding. Competitors need the certainty that their interconnection arrangements through physical collocation will not be interrupted by Verizon’s withdrawal of federally-tariffed physical collocation or by any ILEC’s attempt to argue that physical collocation may not be used to obtain access to special access used to sell exchange access or local exchange service to others. The Commission should therefore unequivocally state that ILECs must allow competitors the use of interstate special access service in conjunction with physical collocation arrangements obtained pursuant to Section 251(c)(6) for the purpose of providing local exchange and/or access service to others.

¹¹ It is important to emphasize that TWTC uses special access to provide telephone exchange service and exchange access to others. It does not merely purchase special access for the purpose of originating and terminating interexchange traffic from and to interexchange service customers. TWTC’s (and other similarly situated CLECs’) use of special access in this manner does not therefore run afoul of the Commission’s determination that carriers merely “using” (and not providing) access are ineligible for interconnection under Section 251(c)(2). See *Local Competition Order* ¶ 191; *Competitive Telecommunications Ass’n v. FCC*, 117 F.3d 1068, 1073 (8th Cir. 1997).

IV. CONCLUSION

For the reasons described herein, the Commission should reject Verizon's Application to discontinue federally-tariffed physical collocation, or in the alternative, grant the Application with conditions and clarifications in accordance with TWTC's recommendations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of October, 2002, I served copies of the foregoing Reply Comments of Time Warner Telecom Corporation in WC Docket No. 02-237 electronically (*) or by first-class U.S. mail, postage prepaid on the following parties:

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