



March 3, 2003

BY ELECTRONIC FILING

Michael K. Powell
Chairman
Federal Communications Commission
445 12 Street, S.W.
Room 8-B201
Washington, D.C. 20554

Re: *Ex Parte Presentation* in CC Docket No. 00-256

Dear Chairman Powell:

Valor Telecommunications, LLC (“Valor”) is encouraged by the groundswell of support for FCC action to provide greater regulatory flexibility for mid-sized and rural carriers through the elimination of the Commission’s “all-or-nothing” rule, 47 C.F.R. § 61.41. Valor supports eliminating the rule in its entirety for all carriers, rather than an approach that would offer a limited revision of the rule in the context of the acquisition of properties. Valor asks that the Commission ensure that it structures its reform in such a manner as to preserve legitimate regulatory flexibility for LECs that own or acquire both price cap and rate of return study areas.

Valor is representative of a new class of specialized mid-sized carriers, in that Valor was:

Created by a BOC Spin Off: Valor purchased seemingly unwanted GTE rural lines in Texas, Oklahoma, New Mexico and Arkansas.

Inherited a Deteriorated Network:¹ GTE’s plant was in poor condition due to years of under investment, forcing Valor to invest millions of dollars in plant upgrades just in order to provide quality telephony services. Additionally, Valor is attempting to roll-out advanced services to rural customers in areas thought to be too remote to support such services.

¹ See Comments of ALLTEL Communications, Inc., CenturyTel, Inc., Madison River Communications, LLC, and TDS Telecommunications Corp., CC Docket No. 00-256 at 9 (filed Feb. 14, 2002) (“Joint Commenters”) (citing Legg Mason Report that “rural line consolidators have reported regularly that the plant acquired from the [BOCs] requires significant repair to meet minimum service standards”).

Forced to Make Extraordinary Outlays Due to Natural Disaster and Third Party Actions: Valor serves rural areas that have suffered significant weather damage over the past few years, which has magnified the deterioration of GTE's plant and forced the outlay of even greater resources.²

Struggled to Provide Quality Service and Earn a Profit: Valor has committed to state governments to maintain sufficient personnel to respond to customer inquiries and service installation and repair needs above and beyond GTE's former obligations. As one of the few mid-sized carriers governed by price caps, Valor repeatedly has had to make use of the Commission's low-end adjustment. Valor's rate of return in Texas was an anemic 6.7 percent in 2000 and 5.7 percent in 2001.³

Valor joins the majority of commenters who have recognized that two interrelated principles that must drive future Commission action affecting mid-sized and rural carriers: mid-sized and rural carriers are different;⁴ and the one-size-fits-all approach of the past will not suffice.⁵ These carriers need the regulatory tools that match the needs of rural communities. Indiscriminate application to mid-sized carriers of rules designed for BOCs fails to meet the Communications Act's goal of ensuring that quality service is provided to all consumers at affordable prices. The Commission needs to adopt specialized rules that permit mid-size and rural carriers to thrive, not merely survive.

Commission Should Eliminate the All-or-Nothing Rule: In particular, the majority of commenters seek the elimination of the all-or-nothing rule, which was created by the Commission over a dozen years ago.⁶ Created out of an "abundance

² Valor also has had to exert its limited resources to support extraordinary outlays, e.g., significant network improvements to meet the telecommunications needs of President George W. Bush at his ranch in Crawford, Texas, and related network improvements in and around Crawford to support other administrative functions of the White House and the media.

³ *In the Matter of Valor Telecommunications of Texas and Valor Telecommunications of New Mexico Petition for Waiver of the Operation of the X-factor in the Price Cap Indices Set Forth in § 61.45(b)(1)(i)*, Order, DA 02-1325 at ¶ 14 (2002).

⁴ Reply Comments of Innovative Telephone, CC Docket No. 00-256 at 4 (filed Mar. 18, 2002) ("smaller rural and insular carriers face a number of unique challenges in providing telecommunications service"); Reply Comments of Joint Commenters, CC Docket No. 00-256 at 13 (filed Mar. 18, 2002) ("price cap regulation has largely failed rural America").

⁵ USTA Ex Parte Letter, CC Docket No. 00-256 (filed Dec. 11, 2002) (mid-sized carriers require the "necessary flexibility to meet the demands of today's competitive marketplace").

⁶ Those opposed to the all-or-nothing rule include ALLTEL Communications, Inc.; CenturyTel, Inc.; Madison River Communications, LLC; TDS Telecommunications Corporation;

of caution,” the all-or-nothing rule requires carriers to operate all affiliated study areas under the same regulatory mechanism - either rate-of-return or price cap. Further, any rate-of-return carrier that acquires a price cap carrier must convert all of its affiliates to price caps within a year. This rule has become “a burdensome redundancy”⁷ which “is not just unnecessary, but actually is counterproductive.”⁸

A number of carriers, including Valor, have received waivers to allow newly acquired exchanges to operate under a different regulatory mechanism.⁹ The experience of carriers operating affiliates under those waivers has demonstrated that the all-or-nothing rule is senseless. The competitive harms which the Commission was trying to prevent in establishing the rule: (1) gaming the system by switching back and forth from rate-of-return to price caps; and (2) shifting costs between rate-of-return and price cap affiliates – have never materialized.¹⁰ Only the national long distance carriers support the continuation of the rule, yet they continue to focus on theoretical harm, rather than the absence of real problems. Commenters have noted that not a single federal or state complaint has alleged such “gaming” or “cost-shifting.”¹¹

More than adequate protections already exist to protect against these perceived harms without resorting to such a prophylactic and overly restrictive rule. Such measures include cost allocation rules, judicial separations procedures, reporting requirements, federal and state enforcement powers, affiliate transaction rules, and the tariff review procedures.¹² Any misconduct by mid-sized or rural carriers would be easily detected under the current coextensive monitoring by competing carriers,

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Verizon; Puerto Rico Telephone Company, Inc.; Independent Telephone & Telecommunications Alliance; and ICORE Companies. Although some companies are satisfied with waivers in the context of purchase transactions, such a limited remedy fails to address existing company properties.

⁷ Joint Commenters at 29.

⁸ Letter from Members of the House Commerce Committee, CC Docket No. 00-256 (filed July 25, 2002) (“House Commerce Letter”).

⁹ *Valor Telecommunications, LLC Petition for Waiver of Section 61.41 of the Commission’s Rules*, Memorandum Opinion and Order, DA 02-3553 at ¶ 1 (Dec. 20, 2002) (“allow existing exchanges of Valor’s wholly-owned subsidiary Kerrville Telephone Company to continue to operate under rate-of-return regulation until the Commission completes its review of the ‘all or nothing’ rule”).

¹⁰ House Commerce Letter (competitive harms are “more speculative than real”); Comments of Valor Telecommunications, LLC, CC Docket No. 00-256 at 4 (filed Feb. 14, 2002) (“Valor”).

¹¹ Joint Commenters Reply at 10.

¹² House Commerce Letter; Comments of Verizon, CC Docket No. 00-256 at 5 (filed Feb. 14, 2002); Valor at 4-5; CenturyTel Ex Parte Letter, CC Docket No. 00-256 at 5 (filed Dec. 23, 2002) (“CenturyTel Ex Parte”).

the Commission, and state agencies. In practice, the onerous all-or-nothing rule has only prevented mid-sized and rural carriers from operating their diverse study areas under the most rational regulatory mechanism.¹³

Commission Must Maximize the Benefit: The Commission must ensure that in eliminating the all-or-nothing rule, it brings immediate flexibility to *all* mid-sized and rural carriers, and permits ongoing flexibility to allow carriers to revisit the appropriate regulatory mechanism for their exchanges.

Immediate Re-election for Each Study Area: The reforms must allow all carriers to elect the most rational regulatory scheme for each of its study areas, including legacy exchanges.¹⁴ Thus, study areas currently under price cap regulation must be allowed to switch back to rate-of-return, and vice versa. Valor, and similarly situated carriers who elected price cap regulation prior to the closing of their transaction with GTE and the commencement of actual operation, should not be penalized for their previous decision to elect price cap regulation where operating experience suggests that an alternative regulatory approach would provide greater benefit to the Company and its customers. A one-time election offers an administratively simple and impartial means by which to inject regulatory flexibility into rural America, and thus should not be artificially limited to exchanges involved in acquisitions or currently governed by a particular regulatory mechanism.

Create a Workable Procedure to Allow Carriers to Switch Mechanisms Under Limited Circumstances: The current rules require burdensome waivers to transition a study area from price caps to rate-of-return. This waiver standard is overly restrictive and adds uncertainty into mid-sized and rural operations.¹⁵ Carriers must be free to switch study areas between rate-of-return and price caps based on a public interest demonstration. There is no policy rationale to force the initial election to be permanent.¹⁶ Carriers

¹³ USTA Ex Parte Letter, CC Docket No. 00-256 (filed Dec. 11, 2002) (“Rate-of-return LECs must have the flexibility to operate their affiliates under the form of regulation that is most efficient and least restrictive for updating network technology, meeting customer demand, and ultimately remaining competitive.”).

¹⁴ CenturyTel Ex Parte at 1-2; Valor at 7.

¹⁵ CenturyTel Ex Parte at 1-2 (“waivers also add[] to the cost, delay, and uncertainty”); Comments of NTCA, CC Docket No. 00-256 at 8 (filed Feb. 14, 2002) (“waiver process is an unnecessary and costly burden”).

¹⁶ Valor at 7. Some commenters suggest that the initial elections be permanent. While Valor concurs that carriers should not cavalierly switch back and forth between regulatory mechanisms, a

have neither the incentive nor the ability to “game the system” through such switches, as a public interest showing would prevent any misconduct.¹⁷ Further, establishing a means to transition regulatory mechanism will encourage carriers to maximize the number of study areas operating under price caps.¹⁸ Without a means by which to amend their regulatory mechanism, carriers will be overly cautious in the number of study areas operating under price caps.¹⁹

By eliminating the all-or-nothing rule in the manner described above, the Commission will immediately benefit mid-sized and rural carriers’ customers, and will give an incentive to mid-sized and rural carriers to rescue additional rural exchanges from BOC indifference.²⁰

Sincerely,



Kenneth R. Cole
Chief Executive Officer

cc: Christopher Libertelli
William Maher
Jane Jackson
Tamara L. Preiss

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known procedure must be in place for when such a transition is in the public interest and benefits consumers.

¹⁷ The substantial costs associated with such a transition (tariff and administrative filings) act as a substantial curb to any misuse of such a mechanism.

¹⁸ Criticism that carriers should never be allowed to opt-out of price caps is misplaced. Unlike BOCs with the necessary economies of scale and scope, every rural study area cannot succeed in incentive regulation as currently structured. It is not a matter of carriers being unwilling to “make hard choices” or causally “try[ing] out” price caps.

¹⁹ The failure of Valor and Iowa Telecom to thrive under price caps may serve as a cautionary tale to some carriers if initial elections are permanent. Carriers should not be eternally prejudiced by an initial election, especially for rural carriers that have no way to accurately foresee their outcome under price caps.

²⁰ House Commerce Letter (current rules have resulted in “millions in wasted resources and missed investment opportunities”); Reply Comments of ITTA, CC Docket No. 00-256 at 2 (filed Mar. 18, 2002) (“promoting ownership of rural exchanges by rural service specialists”).