

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Valor Telecommunications of Texas, L.P.)	WCB/PPD File No. 03-166
)	
Petition for Waiver of the 2003 X-Factor)	
Reductions Under Section 61.45(b)(1)(i))	
Of the Commission's Rules)	

**OPPOSITION OF SPRINT CORPORATION TO
VALOR'S APPLICATION FOR REVIEW**

Sprint Corporation, pursuant to the Public Notice released July 16, 2003 (DA 03-2324), hereby respectfully submits its opposition to the above-captioned Application for Review of Valor Telecommunications of Texas ("Valor"). In this application, Valor requests review of the Wireline Competition Bureau's Order¹ denying Valor's petition to waive the 2003 X-factor reductions required by Section 61.45(b)(1)(i) of the Commission's Rules. Valor alleges (p. 1) that the Bureau "acted contrary to its own precedent and the public interest, and in doing so, jeopardized the financial well-being of a rural carrier."

Valor's application for review should be denied. On the basis of the record before it, the Bureau quite properly denied Valor's petition for waiver, concluding (*Order*, para. 8) that Valor had not demonstrated "unique or unusual circumstances that satisfy the waiver standard set by the Commission and the courts." Specifically, the Bureau found

¹ *Valor Telecommunications of Texas, L.P. Petition for Wavier of the 2003 X-Factor Reduction Under Section 61.45(b)(1)(i) of the Commission's Rules, WCB/Pricing File No. 03-16, Order, 18 FCC Rcd 11523 (2003).*

that Valor had not documented any impact, other than \$229,000 in additional depreciation expense related to an ice storm in 2000, it would incur in 2003 “due to substantial capital expenditures beyond Valor’s control,” and that it had failed to provide supporting evidence for its assumption that “adverse economic conditions will not improve”² (*id.*). In the instant application for review, Valor still has not raised any new issues or provided any new information which would warrant reversal of the Bureau’s *Order*. Valor has also failed to demonstrate that the alternative forms of relief available to it -- and cited in the Bureau’s *Order* (paras. 12-14) -- are insufficient to address its “diminishing” interstate returns.

1. Valor’s Claim of “Unique Circumstances” Does Not Withstand Scrutiny

The basis for Valor’s initial petition for waiver and the instant application for review is that it has been subject to “unique circumstances” which warrant special treatment for its Texas operations. However, as Sprint and other parties have repeatedly pointed out,³ and as the Bureau properly concluded, the circumstances about which Valor complains are not unique (many carriers, including Sprint, have faced stagnant economic conditions), or are the result of decisions entirely within Valor’s control (Valor knew, or should have known, about the costs related to its acquisition of the Texas exchanges from GTE, and still chose to consummate that purchase). Valor has had several opportunities (two petitions for waiver of the Commission’s Rules, two replies to oppositions to those

² In fact, the US economy grew at a 2.4% pace in the second quarter of 2003 (*see, e.g.*, “GDP Data Spark Hopes Recovery Is Strengthening,” *Wall Street Journal*, August 1, 2003, p. A1).

³ *See, e.g.*, Sprint’s April 30, 2003 Opposition to Valor’s petition for waiver of Section 61.45(b)(1)(i), pp. 2-4; Sprint’s May 30, 2003 Opposition to Valor’s petition for waiver of Section 54.305, p. 3.

petitions for waiver, and the instant application for review) to demonstrate precisely why it is entitled to special regulatory relief, and has here again failed to do so.

In this application, Valor continues to cite its “capital investments due to unanticipated events” (*see, e.g.*, p. 4), without explaining the nature of those “unanticipated events.” It is conceivable that these capital expenditures were “unanticipated” because of a flawed business model – for example, because Valor did not adequately plan for replacement of its “decrepit” plant and equipment, or assumed (thus far, incorrectly) that it would obtain federal regulatory relief to offset an excessive purchase price or strict acquisition compliance requirements. However, unbudgeted is not the same as uncontrollable or exogenous, and Valor’s failure to make the kind of showing required for a waiver of the Commission’s rules means that the Bureau’s *Order* should be upheld, not overturned.

Valor also complains that it is facing unique circumstances because it is the only price cap carrier to seek three consecutive low-end adjustments (Application, p. 3). However, Valor confuses results and causes. Three years of low (pre-lower formula adjustment) interstate returns may be a unique result for a price cap LEC, but unless those returns are specifically due to unique exogenous factors, they are not a legitimate basis for waiver or for overturning the Bureau’s *Order*. Because Valor-Texas’s interstate returns are largely the result of its own business decisions rather than of factors beyond its control and factors which affect only Valor, the Bureau’s decision to deny Valor’s request for relief was entirely appropriate, and Valor’s application for review should be denied.

2. Other Relief Is Available to Valor

Valor asserts (p. 3) that review of the *Order* is warranted because the Bureau has “refused to provide Valor Texas any affirmative relief.” This is incorrect. In fact, Valor is free to continue to avail itself of the lower formula adjustment mechanism available to price cap carriers (indeed, use of this mechanism enabled Valor-Texas to achieve an interstate rate of return of 10.63% in 2002).⁴ Further, the fact that the Bureau invited Valor to make an above-cap filing (*Order*, para. 14) if it believed it could make the necessary showing⁵ is a clear indication of the Bureau’s willingness to consider other remedies for low earnings.

Respectfully submitted,

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August 15, 2003

⁴ See Valor-Texas Form 492 rate of return report for calendar year 2002, filed on April 1, 2003.

⁵ Valor complains (p. 6) that an above-cap filing is not available to it because it has only three years of cost support. However, Section 61.49(d) of the Rules requires that above-cap filings be accompanied by “an explanation of the manner in which all costs have been allocated among baskets,” and “a cost assignment showing down to the lowest possible level of disaggregation.” Section 61.38 of the rules requires more broadly the provision of information on the reasons for a proposed rate change, the basis of ratemaking employed, and economic information to support the changed rates. Neither rule requires four years of cost support information.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **OPPOSITION OF SPRINT CORPORATION TO VALOR'S APPLICATION FOR REVIEW** was sent by e-mail or by United States first-class mail, postage prepaid, on this the 15th day of August, 2003 to the parties on the attached page.


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August 15, 2003

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