

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

In the Matter of)	
)	
Joint Petition for Forbearance From)	WC 03-189
the Current Pricing Rules for)	
the Unbundled Network Element)	
Platform)	

REPLY COMMENTS OF THE VERIZON TELEPHONE COMPANIES¹

Most commenters in the above-captioned proceeding simply repeat arguments they made with respect to Verizon’s Petition for Expedited Forbearance (WC 03-157). Verizon has already demonstrated that those arguments are without merit. *See Reply Comments of Verizon Telephone Companies in Support of Petition for Expedited Forbearance*, WC Docket No. 03-157, filed September 2, 2003. Verizon’s Reply Comments here address two arguments not raised earlier.

First, several commenters suggest the issuance of the UNE pricing rulemaking should preclude grant of the SBC/Qwest/BellSouth forbearance petition. MCI at 2-3, Z-Tel at 17, Sprint 3-5, Pace Coalition at 3. Commenters raised similar claims with respect to Verizon’s Petition in anticipation of the issuance of the NPRM. In Reply Comments there, Verizon explained that the Act directs that “the Commission *shall forbear*” from the application of existing rules whenever the substantive criteria of section 10(a) are met. *See* 47 U.S.C. § 160(a) (emphasis added). Nothing in the statute or the applicable

¹ The Verizon telephone companies (“Verizon”) are the affiliated local telephone companies of Verizon Communications Inc. These companies are listed in Attachment A.

case law permits the Commission to ignore that mandate on the ground that it might someday grant alternative relief through some other procedural vehicle. To the contrary, because “Congress has established § 10 as a *viable and independent* means of seeking forbearance,” reference to “another, very different, regulatory mechanism,” such as a traditional notice-and-comment rulemaking proceeding, provides “no authority” for the Commission to abdicate its statutory responsibilities under section 10.^{2/}

Now that the Commission has issued Notice of Proposed Rulemaking, it only reinforces the need for the Commission to forbear from applying its TELRIC rules to the unbundled network element platform (UNE-P) and from its rule permitting UNE-P carriers — rather than the incumbents that actually provide exchange access service — to collect per-minute access charges. The Commission’s notice of proposed rulemaking highlights the many flaws associated with TELRIC, and as such, makes clear that the Commission must not wait until the conclusion of a lengthy rulemaking before it addresses the most egregious aspect of TELRIC by halting its application to UNE platforms.

In its *TELRIC NPRM*, the Commission explained that TELRIC embodies a “central internal tension” because it “purports to replicate the conditions of a competitive market by assuming that the latest technology is deployed throughout the hypothetical

^{2/} *AT&T v. FCC*, 236 F.3d 729, 737-38 (D.C. Cir. 2001) (emphasis added); *see also* Brief for FCC at 29, *Cellular Telecommunications & Internet Ass’n v. FCC*, No. 02-1264 (D.C. Cir. filed Feb. 3, 2003) (FCC is “*oblige[d]* . . . to evaluate the rule or statute pursuant to the criteria set out in section 10 and to determine on the basis of the record and its evaluation whether forbearance is required”) (emphasis added); *see also* Memorandum Opinion and Order, *Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance*, 14 FCC Rcd 16252, 16269 ¶ 29 (1999) (“*NDA Order*”) (“Section 10 states, however, that we *must* forbear from enforcing section 272 if we find that” the three statutory conditions are met) (emphasis added).

network, while at the same time assuming that this hypothetical network benefits from the economies of scale associated with serving all of the lines in a study area.” TELRIC NPRM ¶ 50. The Commission noted that this internal inconsistency “may work to reduce estimates of forward-looking costs below the costs that would actually be found even in an extremely competitive market. It therefore may undermine the incentive for either competitive LECs or incumbent LECs to build new facilities, even when it is efficient for them to do so.” *Id.* ¶ 51.^{3/} The Commission further explained that the “excessively hypothetical nature of the TELRIC inquiry” renders it a “black box” that is “difficult to reconcile with our desire that UNE prices send correct economic signals.” *Id.* ¶ 7. As a result, the Commission tentatively concluded that its “TELRIC rules should more closely account for the real-world attributes of the routing and topography of an incumbent’s network.” *Id.* ¶ 52.

The Commissioners themselves have echoed these conclusions. For example, Chairman Powell has correctly recognized that the TELRIC rules result in rates that are “subsidized and below costs,” “distort a competitor’s decision whether to invest in new facilities,” and need to be changed to “an approach grounded in the real-world attributes of the incumbent’s network.”^{4/} Commissioner Martin has explained that the rules need to be adjusted to “more accurately reflect incumbent costs and help spur deployment in new facilities and services.” *TELRIC NPRM*, Separate Statement of Commissioner Martin at 1. Commissioner Abernathy has pointed out that the current pricing standard is

^{3/} See also *id.* ¶ 3 (“To the extent that the application of our TELRIC pricing rules distorts our intended pricing signals by understating forward-looking costs, it can thwart one of the central purposes of the Act: the promotion of facilities-based competition.”).

^{4/} Jeremy Pelofsky, *FCC Chief Denies Leaving, Outlines Media Agenda*, Star-Ledger, Aug. 19, 2003; *TELRIC NPRM*, Separate Statement of Chairman Powell at 1.

“excessively hypothetical,” “sends inappropriate investment signals and produces irrational pricing.” *Id.*, Separate Statement of Commissioner Abernathy at 1. And Commissioner Adelstein has acknowledged that the rules may need to be changed to “more closely account for certain real-world factors.”⁵ *Id.*, Separate Statement of Commissioner Adelstein at 1. Therefore, rather than counseling against granting forbearance, the *TELRIC NPRM*’s key acknowledgements of TELRIC’s deficiencies only reinforce the urgency of halting TELRIC’s uneconomic effects by granting the instant forbearance petition, as well as Verizon’s, as an immediate, short-term fix until the Commission completes the process of adopting new pricing rules.

Second, in an Ex Parte filed September 11, 2003, the National Alternative Local Exchange Carrier Association (NALA) argued that it would be “strange” for the Commission to deny the receipt of access charges to UNE platform carriers because “it is the CLEC who pays for the very usage upon which access fees are based.” According to NALA, incumbents are not entitled to the usage fees associated with UNE platforms and access fees for the “very same usage.” NALA at 1. NALA misunderstands the relief that has been requested.

Permitting incumbents to collect exchange access charges would not result in a double-recovery of costs, as NALA suggests, because UNE platform traffic sensitive

⁵ Likewise, in a Policy Paper accompanying the *TELRIC NPRM*, Commission Staff has concluded that TELRIC fails to ensure appropriate cost recovery. As the paper states, “if investment costs are falling over time, and the period between TELRIC price adjustments is shorter than asset lives, then traditional TELRIC pricing will not permit incumbents to recover the cost of their investment.” David M. Mandy & William W. Sharkey, “Dynamic Pricing and Investment from Static Proxy Models,” FCC, Office of Strategic Planning and Policy, OSP Working Paper Series No. 40, at 1 (Sept. 2003). And this shortfall is substantial: “When investment costs are falling by 11% per year (as is assumed for switching assets in the FCC Synthesis Model), the TELRIC correction factor is approximately 50%. That is, switching prices should be increased by 50% from those suggested by Synthesis Model runs.” *Id.* at 43.

charges and access charges do not pertain to the “same” usage. Rather, per-minute access charges will apply to long distance traffic, while per-minute UNE switching charges will apply to local traffic. Thus, for any given minute of use, the incumbent would collect one, but not both, charges and there would be no double recovery. Incumbents are entitled to receive these access charges because they -- not UNE platform carriers -- actually provide exchange access services to originate and terminate long distance traffic. Additionally, because exchange access charges were designed as a way to help pay for the underlying network infrastructure, a finding that the incumbent, as the underlying facilities provider, is entitled to the per-minute access charges would ensure that the underlying network provider receives the payments that were intended to support the ongoing operation and maintenance of the network.

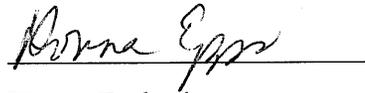
NALA is also wrong to suggest that the incumbents’ total-company financial returns somehow justify below-cost TELRIC rates for UNE platforms. NALA at 2. Incumbent carriers’ total-company returns include revenues from many different lines of business including wireless, Internet businesses, and long distance -- none of which have anything to do with the health of the incumbents’ wholesale business. The incumbents’ total-company returns are irrelevant to the pending forbearance petition because they reveal nothing about whether incumbents are able to recover their *wholesale* costs of providing UNE platforms at TELRIC rates. TELRIC rates do not recover incumbents’ wholesale costs. Revenues from unregulated business units cannot be used to subsidize or justify the below-cost rates for the incumbents’ regulated wholesale business. In fact, the courts have held that regulators may not rely on revenues from competitive services to justify confiscatory rates. *See Brooks-Scanlon Co. v. Railroad Comm’n*, 251 U.S. 396, 399 (1920); *Smith v. Illinois Bell Tel. Co.*, 282 U.S. 133, 160-61 (1930); *Michigan Bell*

Tel. Co. v. Engler, 257 F.3d 587, 594 (6th Cir. 2001) (under *Brooks-Scanlon*, diversified enterprises cannot be “required to subsidize their regulated services with income from rates either deemed to be competitive, or with revenues generated from unregulated services.”). Consequently, NALA fails to demonstrate that TELRIC rates cover incumbents’ wholesale costs for UNE-platform or that incumbents are not entitled to receive access charges.

CONCLUSION

For the foregoing reasons, the Commission should forbear from applying its current pricing rules to the UNE-platform, and should forbear from its rule permitting UNE-P carriers — rather than the incumbents that actually provide exchange access service — to collect per-minute access charges.

Respectfully submitted,



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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.