

Before the  
Federal Communications Commission  
Washington, D.C. 20554

01/21/03

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

**ORDER**

**Adopted: October 17, 2003**

**Released: October 22, 2003**

By the Commission:

**I. INTRODUCTION**

1. On August 16, 2002, Verizon filed an application pursuant to section 214 of the Communications Act of 1934 (the Act) seeking to discontinue provision of section 201 expanded interconnection services through physical collocation in its federal tariffs in the former NYNEX and Bell Atlantic regions.<sup>1</sup> In support of its application, Verizon asserts that virtual collocation under section 201 will remain available through its federal tariffs, and physical collocation is available through its state interconnection offerings.<sup>2</sup> Verizon also proposes to give section 201

<sup>1</sup> Verizon Telephone Companies, Section 63.71 Application, WC Docket No 02-237 (filed Aug. 16, 2002) (Verizon Application). Hereinafter, we refer to collocation services provided pursuant to the Commission's expanded interconnection requirements as "section 201 collocation." There can be both "section 201 physical collocation" and "section 201 virtual collocation." This is intended to distinguish these services from collocation provided pursuant to sections 251 and 252 of the Act. Physical collocation is an offering that enables an interconnector to locate its own transmission equipment in a segregated portion of the LEC central office. The interconnector pays the LEC for the use of that central office space and may enter the central office to install, maintain, and repair the equipment 47 C.F.R. § 64.1401(d).

<sup>2</sup> Verizon Application at 1, 8. Virtual collocation is an offering in which the LEC owns (or may lease) and exercises exclusive physical control over the transmission equipment, located in the central office, that terminates the interconnector's circuits. The LEC dedicates this equipment to the exclusive use of the interconnector, and provides installation, maintenance, and repair services on a non-discriminatory basis. The interconnector has the right to designate its choice of central office equipment, and to monitor and control the equipment remotely. The LEC connects this equipment to the interconnector's circuit outside the central office, with an interconnection point between LEC-owned facilities and interconnector-owned facilities as close as possible to the office. 47 C.F.R. § 64.1401(e)

For convenience, we use the term "state interconnection offerings" to refer generically to the state tariffs, interconnection agreements, and statements of generally available terms (SGATs) through which Verizon offers (continued .)

physical collocation customers the options of converting their existing physical collocation arrangements to the physical collocation space-related rates, terms, and conditions in its state interconnection offerings, or remaining grandfathered under the federal tariff terms for space-related section 201 physical collocation charges.<sup>3</sup> Section 201 supporting services, such as charges for direct current (DC) power and for new cross-connections (cross-connects) between a section 201 physical collocation arrangement and Verizon's facilities, would not be grandfathered in the federal tariffs. Verizon proposes that section 201 physical collocation customers opting to convert their existing physical collocation arrangements to the rates, terms, and conditions in the state interconnection offerings for space-related services would receive a "conversion credit" in the New England and South regions. Because Verizon has demonstrated that its affected customers can obtain a reasonable substitute for Verizon's federally-tariffed section 201 physical collocation service, and we find that discontinuance of this service will not otherwise unduly harm the public convenience and necessity, we grant Verizon's application.

## II. BACKGROUND

2. There are currently two separate regimes for the provision of collocation by incumbent local exchange carriers (LECs), expanded interconnection collocation pursuant to section 201, and physical collocation pursuant to section 251. Beginning in 1992, the Commission imposed section 201 expanded interconnection requirements on the largest LECs to remove significant barriers to the growth of competition in the interstate access market.<sup>4</sup> Under the Commission's section 201 expanded interconnection rules, LECs were required to provide access to bottleneck facilities by allowing competitors to collocate network equipment dedicated to their use at the LECs' central offices.<sup>5</sup> Subsequently, in 1994, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) held that section 201 of the Act did not expressly authorize the Commission to require that carriers provide physical collocation, and

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physical collocation services. In each of its in-region states, Verizon offers physical collocation pursuant to section 251 through interconnection agreements or SGATs that derive from state tariffs. We note that such interconnection agreements and SGATs are section 251 offerings even though Verizon originally may have filed the underlying state tariff to comply with intrastate interconnection obligations under other statutory authority

<sup>3</sup> Verizon Application at 4-6. "Existing" section 201 physical collocation arrangements are those that are in service or on order as of the effective date of Verizon's filing to amend its federal tariffs in response to the grant of its section 214 authorization in this order. Verizon Application at 4.

<sup>4</sup> *Expanded Interconnection with Local Telephone Company Facilities, Amendment of the Part 69 Allocation of General Support Facility Costs*, CC Docket Nos 91-141 and 92-222, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369, 7372, para 1 (1992); *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, CC Docket No 93-162, Second Report and Order, 12 FCC Rcd 18730, 18733, para. 1 (1997) (*Physical Collocation Tariff Investigation Order*). The Commission's section 201 expanded interconnection requirements apply to LECs that are classified as Class A companies under section 32.11 of the Commission's rules, 47 C.F.R. § 32.11. These are LECs that have annual revenues from regulated telecommunications operations that are equal to or above an indexed revenue threshold. The current revenue threshold for Class A carriers is \$121 million. *Annual Adjustment of Revenue Threshold*, Public Notice, 18 FCC Rcd 10,002 (Pric. Pol Div. 2003)

<sup>5</sup> *Physical Collocation Tariff Investigation Order*, 12 FCC Rcd at 18733, para 1.

therefore the court vacated the Commission's orders imposing physical collocation requirements.<sup>6</sup> In response to the court's decision, the Commission amended its rules to require virtual collocation for section 201 interstate expanded interconnection, allowing carriers to provide section 201 physical collocation for these services on an optional basis.<sup>7</sup> Once a LEC opts to provide section 201 physical collocation, however, it is not permitted to withdraw its physical collocation offering without first obtaining authorization from the Commission pursuant to section 214.<sup>8</sup> In 1996, Congress added section 251 to the Communications Act, which requires that incumbent LECs provide physical collocation.<sup>9</sup> Section 251 collocation offerings are reflected in interconnection agreements and state-tariffed statements of generally available terms (SGATs), and are priced at total element long run incremental cost (TELRIC).<sup>10</sup> Unlike section 201 collocation, which is available to other carriers, information service providers, and end users, section 251 gives the right to collocate only to telecommunications carriers.<sup>11</sup>

3. Pursuant to the Commission's rules imposing section 201 expanded interconnection requirements, Verizon (then Bell Atlantic and NYNEX) filed federal tariffs for expanded interconnection physical collocation services in 1993. After the *Bell Atlantic* decision, NYNEX continued to provide physical collocation pursuant to section 201. Bell Atlantic initially discontinued providing physical collocation after the *Bell Atlantic* decision, instead satisfying its expanded interconnection requirements through the provision of section 201 virtual collocation, but it voluntarily reinstated physical collocation pursuant to section 201 on June 4, 1996.<sup>12</sup>

4. On August 16, 2002, Verizon filed its application under section 214 of the Communications Act and section 63.71 of the Commission's rules to discontinue providing federally-tariffed section 201 physical collocation in the former NYNEX and Bell Atlantic regions. Several parties commented on Verizon's application.<sup>13</sup> Section 63.71(c) of the Commission's rules provides for automatic grant of a domestic dominant carrier's discontinuance application on the 60<sup>th</sup> day after its filing unless the Commission notifies the

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<sup>6</sup> *Bell Atlantic v. FCC*, 24 F 3d 1441, 1447 (D.C. Cir. 1994) (*Bell Atlantic*).

<sup>7</sup> *Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, Memorandum Opinion and Order, 9 FCC Rcd 5154, 5156, para. 3 (1994) (*Virtual Collocation Order*).

<sup>8</sup> *Virtual Collocation Order*, 9 FCC Rcd at 5166, para. 32.

<sup>9</sup> 47 U.S.C. § 251(c)(6). Congress did not amend section 201 with respect to collocation.

<sup>10</sup> 47 U.S.C. §§ 252(a), (b), (d), and (f) "A Bell operating company may prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirements of section 251 and the regulations thereunder and the standards applicable under this section." 47 U.S.C. § 252(f)(1).

<sup>11</sup> 47 U.S.C. § 251(a)(1) and (c)(6)

<sup>12</sup> Bell Atlantic Tariff F.C.C. No. 1 Transmittal No. 883 (June 4, 1996).

<sup>13</sup> A list of parties filing comments and reply comments is attached at Appendix A.

applicant that the grant will not be effective automatically.<sup>14</sup> The Wireline Competition Bureau provided notice to Verizon that its application would not automatically be granted in an order released on October 17, 2002.<sup>15</sup> On March 31, 2003, Verizon revised its application in response to parties' comments.<sup>16</sup>

5. Verizon asserts that the Commission's rules do not require incumbent LECs to provide section 201 physical collocation,<sup>17</sup> and that most of the other former BOCs do not offer section 201 physical collocation.<sup>18</sup> Verizon states that federally-tariffed section 201 virtual collocation will remain available, and physical collocation is available through state interconnection offerings.<sup>19</sup> Therefore, according to Verizon, reasonable substitutes for federally-tariffed section 201 physical collocation are available.<sup>20</sup>

6. In its application and subsequent modification, Verizon proposes the following:

- Verizon will maintain its virtual collocation offering pursuant to section 201 in its federal tariffs.
- Verizon will no longer offer section 201 physical collocation services to new customers in its federal tariffs, Tariff F.C.C. Nos. 1 and 11.<sup>21</sup>
- Verizon will discontinue providing section 201 physical collocation supporting services, such as DC power and new cross-connects between a section 201 physical collocation arrangement and Verizon's facilities,<sup>22</sup> under its Tariff F.C.C. Nos. 1 and 11.<sup>23</sup>

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<sup>14</sup> For purposes of this rule section, an application is deemed filed on the date the Commission releases public notice of the filing 47 C.F.R. § 63.71(c). Public notice of Verizon's filing was released on August 19, 2002. *Comments Invited on Verizon's Application to Discontinue Federally-Tariffed Physical Collocation Service*, WC Docket No. 02-237, Public Notice, 17 FCC Rcd 16122 (Wireline Comp. Bur. 2002).

<sup>15</sup> *Verizon Telephone Companies Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, WC Docket No. 02-237, Order, 17 FCC Rcd 20411 (Wireline Comp. Bur. 2002).

<sup>16</sup> Letter from Joseph DiBella, Assistant General Counsel – Regulatory, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-237 (Mar. 31, 2003) (Verizon March 31 *Ex Parte* Letter).

<sup>17</sup> Verizon Application at 2, Verizon Reply at 20. See 47 C.F.R. § 64.1402(c). Subsequent to the court's decision in *Bell Atlantic*, the 1996 Act imposed a physical collocation requirement, which incumbent LECs now fulfill either through interconnection agreements with carriers or through SGATs. 47 U.S.C. § 251(c)(6).

<sup>18</sup> Verizon Application at 2. Of the former BOCs other than Verizon, four of the five SBC companies, Ameritech, Nevada Bell, Pacific Bell, and SNET, currently offer physical collocation in their federal tariffs. The remaining SBC company, SWBT, which serves five states, BellSouth, and Qwest do not offer physical collocation in their federal tariffs.

<sup>19</sup> Verizon Application at 1.

<sup>20</sup> Verizon Application at 8-9. See 47 C.F.R. § 63.71(a)(5)(ii).

<sup>21</sup> Verizon Application at 2.

<sup>22</sup> Verizon will continue to provide cross-connects between collocation arrangements as required by the (continued )

- Section 201 physical collocation customers may remain grandfathered under the physical collocation space-related provisions for existing arrangements, but not the supporting services provisions, of Verizon's federal section 201 tariffs. Customers that elect this option will purchase the supporting services from state interconnection offerings.<sup>24</sup> In the case of any existing customers that are not carriers and are unable to purchase supporting services pursuant to state interconnection offerings, Verizon agrees to furnish supporting services through private contracts at the same rates, terms, and conditions available under its state interconnection offerings.<sup>25</sup>
- Section 201 physical collocation customers may opt to convert their existing arrangements to the space-related rates, terms, and conditions in state interconnection offerings.<sup>26</sup>
- In the New England and South regions, section 201 physical collocation customers will receive a "conversion credit" for switching their existing physical collocation arrangements to the space-related rates, terms and conditions in the state interconnection offerings.<sup>27</sup>
  - The credit is meant to reimburse section 201 physical collocation customers for the high up-front space preparation non-recurring charge (NRC) paid under the federal section 201 tariff, and it is based on the average unamortized difference between federal and state-tariffed NRCs for space preparation.<sup>28</sup>
  - Verizon has agreed to use a 30-year period, the same period it uses as the depreciation life of buildings, as the amortization period for the credit.<sup>29</sup>
  - Verizon will give converting section 201 physical collocation customers the option of receiving the credit as a one-time payment, or as an annual credit applied over nine years with 5.45 percent interest.<sup>30</sup>

7. Verizon claims that a conversion credit is not appropriate in New York and Connecticut because the rate structures are very different in the federal section 201 collocation

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Commission's rules Verizon Reply at 4-6. See 47 C.F.R. § 51.323(h).

<sup>23</sup> Verizon Application at 5-6.

<sup>24</sup> Verizon Application at 4-5.

<sup>25</sup> Letter from Joseph Muleri, Assistant Vice President Federal Regulatory Advocacy, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-237 at 1 (July 11, 2003) (Verizon July 11 *Ex Parte* Letter).

<sup>26</sup> Verizon Application at 6.

<sup>27</sup> Verizon Application at 6-8, Verizon March 31 *Ex Parte* Letter at 2

<sup>28</sup> Verizon Application at 6

<sup>29</sup> Verizon March 31 *Ex Parte* Letter at 1.

<sup>30</sup> Verizon March 31 *Ex Parte* Letter at 1-2

tariff and the state tariffs.<sup>31</sup> The federal section 201 tariff recovers almost all space preparation charges through a high, up-front NRC, with minimal monthly recurring charges. The New York and Connecticut state tariffs recover all space preparation charges through monthly recurring charges. Therefore, according to Verizon, existing section 201 physical collocation customers in New York and Connecticut would remain grandfathered under the federal section 201 tariff and would not choose to switch to the state interconnection offerings with the higher monthly recurring charges.<sup>32</sup>

### III. DISCUSSION

8. Section 214 of the Communications Act states that no carrier shall discontinue service until the Commission has certified that “neither the present nor future public convenience and necessity will be adversely affected” by the discontinuance.<sup>33</sup> The Commission normally will authorize a discontinuance unless reasonable substitutes are unavailable or the public convenience and necessity is otherwise adversely affected.<sup>34</sup> In determining whether to allow a carrier to discontinue service pursuant to section 214, the Commission considers a number of factors in balancing the interests of the carrier and the affected user community. These include (1) the financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) the existence, availability, and adequacy of alternatives; and (5) increased charges for alternative services, although this factor may be outweighed by other considerations.<sup>35</sup> We conclude that Verizon has demonstrated that reasonable substitutes are available and that the public convenience and necessity will not be otherwise adversely affected by the proposed discontinuance of its federally-tariffed section 201 physical collocation services.

#### A. Financial Impact on Verizon

9. In its application, Verizon states that, due to timing differences between the promulgation of federal and state regulations, inconsistencies in rate levels and rate structures exist between Verizon’s state tariffs and its federal section 201 tariffs for physical collocation

<sup>31</sup> Verizon Application at 6-7; Verizon Reply at 4, 17, Verizon July 11 *Ex Parte* Letter at 2.

<sup>32</sup> Verizon Application at 6-7, Verizon Reply at 4, 17, Letter from Ann D. Berkowitz, Project Manager-Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-237, Att. at 4 (Dec. 19, 2002) (Verizon December 19 *Ex Parte* Letter); Verizon July 11 *Ex Parte* Letter at 2.

<sup>33</sup> 47 U.S.C. § 214(a). Although authority to act upon applications to discontinue service is routinely delegated to the Wireline Competition Bureau, see 47 C.F.R. § 0.291(a)(1), an application to discontinue a service provided pursuant to our expanded interconnection regime presents a novel issue not present in prior discontinuance applications. Accordingly, we will resolve this application at the Commission level. See 47 C.F.R. § 0.291(a)(2).

<sup>34</sup> 47 C.F.R. § 63.71(a)(5)(ii), *Southwestern Bell Tel. Co., US West Communications, Bell Atlantic Tel. Cos., BellSouth Tel. Cos., Application for Authority Pursuant to Section 214 of the Communications Act of 1934 to Cease Providing Dark Fiber Service*, File Nos. W-P-C-6670 and W-P-C-6671-D-364, 8 FCC Rcd 2589, 2601, para. 59 (1993) (*Dark Fiber Order*), remanded on other grounds, *Southwestern Bell v. FCC*, 19 F.3d 1475 (D.C. Cir. 1994).

<sup>35</sup> *Dark Fiber Order*, 8 FCC Rcd at 2600, para. 54.

services.<sup>36</sup> These rate differences have led Verizon's physical collocation customers to "tariff shop" between the federally-tariffed and state-tariffed rate regimes. These customers are ordering physical collocation services based on rate offerings, instead of ordering service based on the jurisdictional nature of their traffic.<sup>37</sup> To avoid the regulatory arbitrage caused by this tariff-shopping, and to eliminate the administrative burdens of maintaining two separate regulatory offerings for the same physical collocation service, Verizon has requested permission to discontinue providing section 201 physical collocation through its federal tariffs.<sup>38</sup>

10. Commenters opposing Verizon's petition do not dispute Verizon's claim that its physical collocation customers engage in tariff shopping. In fact, one commenter confirms that it orders physical collocation services from Verizon's federal section 201 tariff for reasons other than the jurisdictional nature of its traffic.<sup>39</sup> WorldCom argues that other services, such as switched and special access services, are tariffed at both the federal and state levels and Verizon is not complaining about arbitrage opportunities between these rates.<sup>40</sup> Verizon responds that, for dual-jurisdictional services other than physical collocation, the jurisdictional nature of the traffic dictates the tariff out of which customers must order service. Verizon claims that there is no basis for it to deny a physical collocation application on jurisdictional grounds because only the collocator knows for what type of traffic, interstate or intrastate, the collocation services will be used.<sup>41</sup> This creates arbitrage opportunities by allowing collocation customers to choose between the federal section 201 tariffs and the state tariffs based on the rates, terms and conditions available in each. SBC also asserts that differences between the federal section 201 tariffs and the state physical collocation regulatory regimes create tariff shopping and regulatory arbitrage problems.<sup>42</sup> We agree with Verizon that requiring it to continue offering section 201 physical collocation services in its federal tariffs creates a financial burden for Verizon, due to the administrative burdens of maintaining two separate regulatory offerings for the same service and the opportunities for regulatory arbitrage.

## **B. Need for the Service**

11. The Commission imposed expanded interconnection requirements on LECs to open the interstate access market to competition. When the Commission first adopted expanded interconnection rules, it required LECs to make section 201 physical collocation available to all

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<sup>36</sup> Verizon Application at 3.

<sup>37</sup> *Id*

<sup>38</sup> Verizon Application at 2.

<sup>39</sup> See Sprint Comments at 9 (describing the "operational and practical" reasons behind Sprint's election to use federal physical collocation instead of state physical collocation).

<sup>40</sup> WorldCom Comments at 8.

<sup>41</sup> Verizon Reply at 25

<sup>42</sup> SBC Reply at 1-2.

interconnectors that requested it.<sup>43</sup> As discussed above, on June 10, 1994, the D.C. Circuit in *Bell Atlantic v. FCC* vacated in part the Commission's expanded interconnection orders mandating physical collocation on the ground that the Commission lacked authority under section 201 of the Act to require LECs to provide expanded interconnection through physical collocation.<sup>44</sup>

12. In response to the court's decision, the Commission adopted a mandatory section 201 virtual collocation policy to preserve the substantial public interest benefits of expanded interconnection.<sup>45</sup> Under the *Virtual Collocation Order*, LECs that chose to offer section 201 physical collocation in lieu of virtual collocation were exempt from the virtual collocation requirement.<sup>46</sup> Therefore, LECs were able to choose how they met their expanded interconnection obligations, through offering either virtual or physical collocation in their federal tariffs pursuant to section 201.

13. In analyzing Verizon's application, we examine the need for the service in general, and the need for the particular service in question. The Commission has consistently reiterated the public interest benefits of expanded interconnection requirements generally in promoting competition. The Commission also has expressed a preference for physical collocation as the best method of ensuring that the interstate expanded interconnection policy goals are met.<sup>47</sup> Mandatory physical collocation, however, is not available pursuant to section 201 of the Act as a result of the *Bell Atlantic* decision. Thus, the Commission concluded that virtual collocation is the best alternative to serve the public interest.<sup>48</sup> Physical collocation is, however, available to telecommunications carriers pursuant to section 251 of the Act, even if it is not available under section 201.<sup>49</sup> Therefore, while expanded interconnection services are necessary to achieve the public interest benefits identified by the Commission, the provision of physical collocation pursuant to section 201 is not.

### C. Alternatives to Federally-Tariffed Physical Collocation

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<sup>43</sup> *Expanded Interconnection with Local Telephone Company Facilities, Amendment of Part 69 Allocation of General Support Facilities Costs*, CC Docket Nos. 91-141 and 92-222, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369, 7390, para. 39 (1992) (*Special Access Expanded Interconnection Order*); *Expanded Interconnection with Local Telephony Company Facilities, Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 91-141 Transport Phase I and 80-286, Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374 (1993) (*Switched Transport Expanded Interconnection Order*)

<sup>44</sup> *Bell Atlantic v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994).

<sup>45</sup> *Virtual Collocation Order*, 9 FCC Rcd at 5156, para. 3.

<sup>46</sup> *Id.* at 5161, para. 17.

<sup>47</sup> *Id.* at 5159, para. 12.

<sup>48</sup> *Id.* at 5159-60, para. 12.

<sup>49</sup> 47 U.S.C. § 251(c)(6).

## 1. Virtual Collocation Under Section 201 and Physical Collocation Under State Interconnection Offerings are Reasonable Substitutes.

14. If Verizon's application to discontinue providing section 201 physical collocation is granted, Verizon will continue to meet its expanded interconnection obligations through the provision of virtual collocation in its federal tariffs pursuant to section 201.<sup>50</sup> Several commenters argue that virtual collocation is not an adequate substitute for physical collocation.<sup>51</sup> The D.C. Circuit has found that section 201 does not authorize the Commission to mandate physical collocation in the first instance; therefore the Commission adopted a virtual collocation requirement to replace the section 201 physical collocation requirement. In so doing, the Commission expressly found that virtual collocation is the best available alternative to physical collocation to ensure that the expanded interconnection policy goals are met.<sup>52</sup> Virtual collocation enables electronic equipment dedicated to an interconnector's use to terminate that interconnector's transmission links and to interconnect them with the LEC's network equipment inside LEC central offices.<sup>53</sup> This allows interconnectors to avoid purchasing costly transmission links, which would inhibit interconnectors' ability to price competitively with LECs, and to overcome technical constraints regarding the maximum length of cross-connects needed to interconnect the LECs' and interconnectors' electronic equipment.<sup>54</sup> For the same reasons, we conclude that virtual collocation is a reasonable substitute in this context as well.

15. In addition, Verizon provides physical collocation to telecommunications carriers pursuant to section 251 of the Act.<sup>55</sup> Under the Act, section 251 physical collocation must be made available to telecommunications carriers either through negotiated or arbitrated interconnection agreements, or through SGATs reviewed and approved by the state commissions.<sup>56</sup> Thus, all future collocation customers of Verizon can obtain expanded interconnection pursuant to section 201 through virtual collocation, as required by the Commission's rules, and telecommunications carriers can obtain physical collocation pursuant to section 251.

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<sup>50</sup> Verizon Application at 2.

<sup>51</sup> These commenters assert that virtual collocation competitively disadvantages collocation customers by forcing them to rely on incumbent LECs for equipment installation, and maintenance and repair. ALTS *et al.* Comments at 14-15, Covad Comments at 4-5; Sprint Comments at 9-10; AT&T Reply at 6. We note that the commenters appear to be either telecommunications carriers or a trade association of telecommunications carriers, for which section 251 physical collocation is available

<sup>52</sup> *Virtual Collocation Order*, 9 FCC Rcd at 5159-60, para. 12

<sup>53</sup> *Virtual Collocation Order*, 9 FCC Rcd at 5159, para. 10.

<sup>54</sup> *Virtual Collocation Order*, 9 FCC Rcd at 5159, paras. 10-11

<sup>55</sup> 47 U.S.C. § 251(c)(6).

<sup>56</sup> 47 U.S.C. § 252(a) and (f).

## 2. Verizon's Options for Existing Section 201 Physical Collocation Customers and Conversion Credits are Reasonable.

16. Verizon proposes two alternatives for physical collocation customers with existing section 201 physical collocation arrangements taking service under Verizon's federal tariffs. For the space-related services, these collocation customers may choose either to grandfather their existing arrangements under the federal section 201 tariff rates, terms and conditions, or to convert to the physical collocation space-related rates, terms, and conditions in the state interconnection offerings.<sup>57</sup> Verizon reiterates that no section 201 physical collocation customer will be forced to convert its existing arrangements to a state collocation arrangement: a customer may choose instead to grandfather its existing arrangements in the federal section 201 tariff for space-related charges.<sup>58</sup>

17. As discussed above, section 201 physical collocation customers that are taking service pursuant to Verizon's federal tariffs paid a substantial, up-front space preparation non-recurring charge (NRC), and in return they incur lower monthly recurring space-related charges. Verizon's state tariffs require much smaller up-front NRCs, with larger monthly recurring space-related charges.<sup>59</sup> Verizon proposes to reimburse a portion of the federally-tariffed NRC to section 201 physical collocation customers that opt to convert their existing arrangements to the space-related rates, terms, and conditions of the state interconnection offerings.<sup>60</sup> Verizon does not propose to calculate the specific amount owed to individual collocation customers, but rather to provide the same amount to all.<sup>61</sup> This "conversion credit" would be based on the average unamortized difference between the federally-tariffed section 201 space preparation NRCs and the state-tariffed space preparation NRCs.<sup>62</sup> Verizon proposes to offer this credit to converting section 201 physical collocation customers in its New England and South regions, but not in its New York region.<sup>63</sup> Verizon explains that the rate structure difference between the federal section 201 tariff and the state tariffs is too large in the New York region; therefore, it expects that its existing

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<sup>57</sup> Verizon Application at 4-6.

<sup>58</sup> Verizon Reply at 3-4.

<sup>59</sup> See, e.g. Verizon Telephone Companies Tariff F.C.C. No. 11, Section 31.28.1(A)(2) and (B)(2) (federal NRC of \$47,686.20 for a 100 square-foot collocation arrangement and monthly recurring space charge of \$2.04 per square foot) and Verizon New England Inc. Tariff NHPUC No. 84, Part M, Sections 5.2.2 and 5.2.3 (New Hampshire state NRC of \$14,686.00 for a 100 square-foot collocation arrangement and monthly recurring space charge of \$2.57 per square foot).

<sup>60</sup> Verizon Application at 6.

<sup>61</sup> Verizon Reply at 18.

<sup>62</sup> Verizon Application at 6-8, Verizon March 31 *Ex Parte* Letter.

<sup>63</sup> Verizon Application at 6-7, Verizon March 31 *Ex Parte* Letter at 2. Verizon's New England region includes Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont. Verizon's South region includes Washington, D.C., Delaware, Maryland, New Jersey, Pennsylvania, Virginia, and West Virginia. Verizon's New York region includes Connecticut and New York.

section 201 physical collocation customers in the New York region will choose to remain grandfathered under the federal section 201 tariff space-related rates, terms and conditions.<sup>64</sup>

18 Commenters oppose several aspects of Verizon's proposed conversion credit. Verizon originally proposed to provide the credit over a 9.5 year period at 5.45 percent interest, and to calculate the refund using a 12-year amortization period for the collocation equipment. In response to criticisms of these aspects of the proposal,<sup>65</sup> Verizon revised the conversion credit to allow collocation customers the option of receiving the credit in a one-time lump-sum payment or as an annual credit over nine years at 5.45 percent interest.<sup>66</sup> Verizon also agreed to use a 30-year amortization period in calculating the credit.<sup>67</sup> No party has objected to the revised amortization period or lump-sum payment option. We conclude that the availability of a lump-sum payment and the use of a 30-year amortization period in calculating the credit are reasonable.

19. The commenters also argue that the conversion credit should be available in all Verizon East regions, including the New York region.<sup>68</sup> Verizon's grandfathering proposal for space-related services ensures that existing section 201 physical collocation customers in the New York region will continue to receive these services at the same monthly recurring rates that are currently available under Verizon's federal section 201 tariff. Therefore existing section 201 physical collocation customers are not harmed by Verizon's decision not to offer the conversion credit in the New York region.

20. Conversent argues that the conversion credit should be calculated on a carrier-specific basis, and not as an average amount.<sup>69</sup> We find that it is permissible for Verizon to offer an average credit, rather than a carrier-specific credit, to carriers that opt to convert to the state tariff space-related recurring rates. Verizon's average credit, based on an average collocation life of 36 months, may not precisely reimburse each collocator for the actual amount of the unamortized portion of the federal NRC each paid. Collocation customers that do not believe the average conversion credit adequately compensates them for the federal NRCs they paid may instead opt to remain grandfathered under the current federal space-related rates, terms, and conditions for

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<sup>64</sup> Verizon Reply at 17.

<sup>65</sup> Allegiance *et al.* Comments at 12; AT&T Comments at 14; Sprint Comments at 7-8; AT&T Reply at 6-7.

<sup>66</sup> Verizon March 31 *Ex Parte* Letter.

<sup>67</sup> *Id.*

<sup>68</sup> Conversent Comments at 13, Sprint Comments at 5-7.

<sup>69</sup> Conversent Comments at 11. Verizon contends that it would be prohibitively burdensome to calculate a specific conversion credit for each collocator based on the length of time each has taken physical collocation services, and the various rates in effect during that period. Specifically, Verizon asserts that calculating carrier-specific credits would entail researching the date each collocation arrangement was ordered and the rates that were in effect at that time, as well as examining the history of each arrangement to determine if any augments or modifications were made to the arrangement and the rates in effect when the augments or modifications were made. Verizon Reply at 18.

their existing section 201 physical collocation arrangements. The federal tariff grandfathering option ensures that collocators that object to the conversion credit may maintain the status quo with respect to the space-related rates they pay, and that, therefore, they are not harmed by Verizon's offering of an average conversion credit.

### **3. Verizon Will Provide Reasonable Substitutes for Non-Telecommunications Carriers.**

21. Commenters also argue that physical collocation pursuant to section 251 is not available to non-telecommunications carriers; therefore, no adequate alternative to Verizon's federally-tariffed section 201 physical collocation exists for these entities.<sup>70</sup> Verizon responds that the Commission's expanded interconnection rules entitle customers only to virtual collocation under section 201, not physical collocation.<sup>71</sup> Verizon also asserts that it has no existing non-telecommunications carrier customers taking service pursuant to its federal section 201 physical collocation tariffs.<sup>72</sup> To the extent it has any existing section 201 physical collocation customers that cannot obtain physical collocation services through its state interconnection offerings, Verizon has offered to enter into non-carrier contracts to provide physical collocation at the same rates, terms and conditions available to telecommunications carriers pursuant to the state interconnection offerings.<sup>73</sup> Based on the continued availability of Verizon's section 201 virtual collocation offering, and Verizon's representation that it is willing to continue to provide physical collocation services to its existing non-telecommunications carrier section 201 physical collocation customers, if any exist, at the rates, terms and conditions available in its state interconnection offerings, reasonable substitutes exist for these customers.

### **4. Verizon's Proposal not to Grandfather Section 201 Physical Collocation Supporting Services is Reasonable.**

22. As discussed above, Verizon proposes to grandfather existing space-related rates, terms and conditions for section 201 physical collocation customers that do not opt to convert existing arrangements to the physical collocation space-related rates, terms, and conditions available pursuant to state interconnection offerings. Verizon does not, however, provide a grandfathering option for section 201 physical collocation supporting services. These services include DC power; new cross-connects between a section 201 physical collocation arrangement and Verizon's facilities; augments; new cable racking; new entrance cabling; changes, additions or rearrangements of space; and all other miscellaneous services such as testing, escorts to non-collocation space, and identification badges, for which customers are charged.<sup>74</sup> Parties opposing

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<sup>70</sup> ALTS *et al* Comments at 10-12, 22-24, Covad Comments at 5.

<sup>71</sup> Verizon Reply at 21

<sup>72</sup> Verizon July 11 *Ex Parte* Letter at 1.

<sup>73</sup> *Id*

<sup>74</sup> Verizon Application at 5.

Verizon's application argue that these supporting services should be grandfathered at the rates, terms and conditions currently in effect in the federal section 201 physical collocation tariffs.<sup>75</sup> In response, Verizon argues that it is appropriate to grandfather space-related charges, which are based on collocation arrangements purchased in the past, but the ongoing costs of supporting services are recovered through recurring charges that need not be based on what collocation customers paid for similar services in the past.<sup>76</sup> Physical collocation supporting services are available to telecommunications carriers pursuant to section 251, at rates based on TELRIC.<sup>77</sup> Verizon has agreed to make these supporting services available through private contracts to existing non-telecommunications carrier section 201 physical collocation customers that are unable to obtain such services from state interconnection offerings at the rates, terms, and conditions in Verizon's state interconnection offerings.<sup>78</sup> Therefore, we find that the availability of comparable physical collocation supporting services provides a reasonable substitute to the federally-tariffed section 201 physical collocation supporting services Verizon proposes to discontinue.

#### D. Increased Charges for Alternative Services

23. Parties opposing Verizon's application assert that grant of the application will increase the amount they pay for physical collocation services. In particular, commenters argue that changing from the federally-tariffed section 201 physical collocation DC power rate to the state-tariffed rates will increase significantly their physical collocation costs.<sup>79</sup>

24. In its reply, Verizon provides an analysis purporting to demonstrate that the opposing parties' collocation costs would decrease if Verizon's application is granted.<sup>80</sup> The analysis is based on the assumption that collocation customers switching from the federal section 201 tariffs to the state interconnection offerings can decrease the amount of DC power they request by two-thirds.<sup>81</sup> Verizon asserts that this reduction in the amount of power requested is possible due to differences in the manner in which Verizon bills for DC power in its federal and state tariffs. Pursuant to its federal section 201 tariffs, Verizon bills collocation customers for power based on

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<sup>75</sup> Allegiance *et al.* Comments at 12, ALTS *et al.* Comments at 12-13; Choice One Comments at 6; Conversent Comments at 12-13, Covad Comments at 10; Time Warner Reply at 2, 5-6.

<sup>76</sup> Verizon Reply at 19.

<sup>77</sup> 47 U.S.C. § 252(d)(1), *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15844-57, paras. 672-703 (1996) (*Local Competition First Report and Order*) (subsequent history omitted).

<sup>78</sup> Verizon July 11 *Ex Parte* Letter at 1.

<sup>79</sup> Allegiance *et al.* Comments at 9-10, ALTS *et al.* Comments at 9; AT&T Comments at 8; Conversent Comments at 7, Covad Comments at 8-9, Network Access Solutions Comments at 5-8; Qwest Comments at 4-5; Sprint Comments at 4-5, Time Warner Comments at 2-4.

<sup>80</sup> Verizon Reply at Att.

<sup>81</sup> Verizon Reply at 10-15.

the total fused capacity of each power feed ordered by the collocater on its collocation application.<sup>82</sup> For its section 201 physical collocation customers, Verizon fuses each feed at 1.5 times the requested amount of power. If a section 201 physical collocater orders two feeds at 40 amps per feed, for example, it would be billed for 120 amps of power.<sup>83</sup> Pursuant to its state tariffs, Verizon bills for power usage based on the total number of amps ordered by the collocater on its collocation application for all feeds. For physical collocation customers ordering power pursuant to its state tariffs, Verizon fuses each feed at 2.5 times the requested amount of power.<sup>84</sup> Verizon claims that this higher fusing factor will enable collocation customers to request fewer amps on each feed, because each feed can carry the entire load at a level below the capacity of the fuse if one of the feeds should fail.<sup>85</sup>

25. According to Verizon, a section 201 physical collocater that requires 40 amps of power for its equipment would typically order 40 amps on an A feed and 40 amps on a B feed to ensure redundancy should one of the feeds fail.<sup>86</sup> Under the federal section 201 tariff, this collocater would be billed for 120 amps of fused power. If this collocater converted to the rates, terms, and conditions in a state tariff, it could request 20 amps on the A feed and 20 amps on the B feed. Because the fusing factor under the state tariffs is 2.5 percent, each feed would be fused at 50 amps and therefore could handle the entire 40 amp load if the other feed failed. Under the state tariffs, Verizon would bill the collocater only for the 40 amps ordered. Therefore, the collocater could reduce the number of amps for which it is billed from 120 under the federal section 201 tariffs to 40 under the state tariffs.<sup>87</sup> Verizon argues, therefore, that even if the per-amp rates in the state tariffs are higher than the federally-tariffed section 201 rates, this power request reduction, combined with the conversion credit, will allow collocation customers to reduce their physical collocation charges.<sup>88</sup>

26. Opposing parties generally dispute Verizon's cost reduction claims.<sup>89</sup> Opposing

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<sup>82</sup> Qwest argues that Verizon is charging federal collocation customers improperly for DC power on a per-fused amp basis in violation of the language in its federal tariffs. Letter from Robert B. McKenna, Associate General Counsel, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-237 (Oct. 17, 2002). Verizon's billing practices with respect to its federal tariff are not at issue in this proceeding, which is limited to consideration of Verizon's section 214 application to discontinue federally-tariffed physical collocation service. Parties wishing to challenge Verizon's billing practices may file a complaint pursuant to section 208 of the Communications Act, 47 U.S.C. § 208.

<sup>83</sup>  $(2 \text{ feeds}) \times (40 \text{ amps/feed}) \times (1.5 \text{ fusing factor}) = 120 \text{ amps}$

<sup>84</sup> Verizon Reply at 10 n.2.

<sup>85</sup> Verizon Reply at 10. Verizon will not bill customers for fuse changes resulting solely from the rate structure changes in moving from the federal to the state collocation tariffs. Verizon July 11 *Ex Parte* Letter at 2.

<sup>86</sup> Verizon Reply at 9-10.

<sup>87</sup> Verizon Reply at 10.

<sup>88</sup> Verizon Reply at 9-15, Att

<sup>89</sup> See Letter from Norma Moy, Director, Federal Regulatory Policy and Coordination, Sprint, to Marlene H. (continued )

parties also argue that, in addition to increasing the rates for DC power, Verizon's discontinuance of federally-tariffed section 201 physical collocation will increase collocation customers' transaction costs and will impose substantial and disruptive administrative burdens on collocation customers.<sup>90</sup>

27. The Commission will consider increased charges to consumers in determining whether grant of a service discontinuance adversely affects the public convenience and necessity. The Commission, however, has found that increased consumer charges may be outweighed by other factors.<sup>91</sup> The relevant issue is whether the alternative services are priced so high that most users cannot afford to purchase them.<sup>92</sup>

28. Opposing parties do not argue that Verizon's federally-tariffed section 201 rates for

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Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-237 (Dec. 11, 2002) (Sprint's review indicated that grant of Verizon's application would result in a minor decrease in Sprint's recurring collocation expense, but the addition of a single augment under the state rates would eliminate this cost savings); Letter from Patrick J. Donovan, Counsel for Allegiance Telecom, Inc., and Focal Communications Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-237 (Dec. 18, 2002) (Allegiance and Focal are not persuaded that they could or should reduce their DC power requirements), Letter from Frank S. Simone, Government Affairs Director, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-237 (Dec. 19, 2002) (Verizon's suggestion that conversion to state interconnection offerings will benefit CLECs is specious), Letter from Scott Sawyer, Vice President-Regulatory Affairs, Conversent Communications, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-237 (Jan. 29, 2003) (Conversent cannot reduce its power request by two-thirds and its costs will increase if Verizon's application is granted). We discuss the impact of the proposed discontinuance on DC power rates at paragraph 34, *infra*.

*But see* Letter from Don Shephard, Vice President Federal Regulatory Affairs & Policy, Time Warner Telecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-237 (Dec. 20, 2002) (after discussions with Verizon regarding the fusing factor issue, Time Warner Telecom's issues with Verizon's application generally are resolved).

<sup>90</sup> ALTS *et al* Comments at 6; AT&T Comments at 12; Covad Comments at 9; Sprint Comments at 8.

<sup>91</sup> See *American Telephone and Telegraph Co. Application for Authority Pursuant to Section 214 of the Communications Act to Discontinue the Offering of Type 400 Switching System Service*, File No. T-D-23028, Memorandum Opinion, Order and Certificate, 63 F.C.C. 2d 371, 372-73, para. 4 (1977) (finding that increased charges to consumers were outweighed by other factors favoring grant of the application to discontinue service). See also *AT&T Corp. Application for Authority Under Section 214 of the Communications Act, as Amended, to Discontinue the Offering of High Seas Service and to Close its Three Radio Coast Stations (KMI, WOM, and WOO)*, File No. ITC-MS-19981229-00905, Memorandum Opinion and Order, 14 FCC Rcd 13225, 13230, para. 10 (Int'l Bur. 1999) ("the Commission has made it clear that the mere fact that an alternative service costs more than the discontinued service, or requires customers to purchase additional equipment, does not render the alternative service nonviable as a substitute")

<sup>92</sup> *AT&T Corp. Application for Authority Under Section 214 of the Communications Act, as Amended, to Discontinue the Offering of High Seas Service and to Close its Three Radio Coast Stations (KMI, WOM, and WOO)*, File No. ITC-MS-19981229-00905, Order on Reconsideration, 16 FCC Rcd 13636, 13644, para. 15 (Int'l Bur. 2001).

virtual collocation service are prohibitively high,<sup>93</sup> although WorldCom argues that existing section 201 physical collocation customers would not forgo the sunk investment in a physical collocation arrangement to convert to virtual collocation.<sup>94</sup> WorldCom does not claim that this conversion would be unaffordable, but only that collocation customers would be “unlikely” to make the switch.<sup>95</sup> This does not demonstrate that converting from a Verizon section 201 physical collocation arrangement to a section 201 virtual collocation arrangement would be unaffordable.

29. Section 201 physical collocation customers that are telecommunications carriers also have the option of obtaining physical collocation pursuant to section 251. Opponents of the application argue that negotiating interconnection agreements will be administratively burdensome and costly, although they do not claim that these negotiations are unaffordable.<sup>96</sup> To the extent telecommunications carriers wish to avoid the administrative cost of negotiating or opting into interconnection agreements, they may avail themselves of Verizon’s other state interconnection offerings. In the case of SGATs, section 251 physical collocation rates are set based on TELRIC, and are reviewed by the state commissions pursuant to section 252 of the Act.<sup>97</sup> This process ensures that the space-related and supporting services rates set pursuant to section 251 are affordable.

30. Commenters also argue that, if Verizon’s application is granted, physical collocation customers will be subject to disparate pricing regimes that vary significantly from state to state.<sup>98</sup> Conversent states that the Commission should require all incumbent LECs to file federal physical collocation tariffs under section 251(c)(6) in place of existing state tariffs.<sup>99</sup> We find no reason to do so. Section 252(f) requires that any SGATs be filed with state commissions, not the Commission.<sup>100</sup> The statutory mechanism providing for section 251 physical collocation contemplates that rates will be set at the state level, and that these rates lawfully may vary. Finally, we note that collocation customers that do not wish to contend with multiple state rates can avail themselves of Verizon’s section 201 virtual collocation offering.

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<sup>93</sup> Indeed, rates for federal virtual collocation are governed by the “just and reasonable” requirements of section 201. 47 U.S.C. § 201(b).

<sup>94</sup> WorldCom Comments at 4, 6.

<sup>95</sup> WorldCom Comments at 4.

<sup>96</sup> ALTS *et al.* Comments at 6; AT&T Comments at 12; Covad Comments at 9; Sprint Comments at 8.

<sup>97</sup> 47 U.S.C. §§ 252(d)(1), (e)(1), and (f); *Local Competition First Report and Order*, 11 FCC Rcd at 15844-57, paras 672-703.

<sup>98</sup> ALTS *et al.* Comments at 8, Conversent Comments at 5; Covad Comments at 5

<sup>99</sup> Conversent Comments at 1, 5

<sup>100</sup> 47 U.S.C. § 252(f). The Commission may preempt a state commission’s authority only if the state commission fails to act to carry out its responsibility under section 252. 47 U.S.C. § 252(e)(5).

31. For these reasons, we find that both section 201 virtual collocation and section 251 physical collocation services are affordable and are therefore reasonable substitutes to Verizon's federally-tariffed section 201 physical collocation services.

## E. Other Issues

### 1. Cross-Connects.

32. Several opponents of Verizon's application argue that it violates the Commission's rule requiring Verizon to make available through federal tariffs certain types of cross-connects.<sup>101</sup> Cross-connects are cabling schemes that connect pieces of equipment in a central office.<sup>102</sup> Verizon responds that its application is consistent with the Commission's cross-connects requirements because Verizon is seeking approval under section 214 to discontinue providing only cross-connects between physical collocation arrangements and Verizon's equipment.<sup>103</sup> Verizon is not proposing to discontinue or change its federally-tariffed section 201 cross-connect service between physical collocation arrangements.<sup>104</sup> The Commission's rules require only that Verizon offer cross-connects between collocated telecommunications carriers, and that it include the rates, terms, and conditions for the provision of these cross-connects in its federal tariffs.<sup>105</sup> Grant of Verizon's application would not, therefore, violate the Commission's cross-connects requirement. Furthermore, existing cross-connects between section 201 physical collocation arrangements and Verizon's equipment will be grandfathered under the existing federally-tariffed section 201 rates, terms, and conditions, or the section 201 physical collocater may opt to convert these existing cross-connects to the rates, terms, and conditions in Verizon's state interconnection offerings.<sup>106</sup> Therefore, we find that reasonable substitutes exist for the cross-connect services Verizon proposes to discontinue.

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<sup>101</sup> Allegiance *et al.* Comments at 8-9, ALTS *et al.* Comments at 21; AT&T Comments at 14-15; WorldCom Comments at 4-5, AT&T Reply at 4, 7

<sup>102</sup> "A cross-connection [or cross-connect] is a cabling scheme between cabling runs, subsystems, and equipment using patch cords or jumper wires that attach to connection hardware on each end." *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Fourth Report and Order, 16 FCC Rcd 15435, 15465, para. 58 (2001) (*Collocation Remand Order*) (citing John Vacca, *The Cabling Handbook*, 151 (Prentice Hall 1998)).

<sup>103</sup> Verizon Reply at 5.

<sup>104</sup> *Id.* The Commission has held that incumbent LECs must provide this type of cross-connect pursuant to sections 201 and 251(c)(6) of the Act. *Collocation Remand Order*, 16 FCC Rcd at 15467-78, paras. 62-84.

<sup>105</sup> 47 C.F.R. § 51.323(h). *See also Collocation Remand Order*, 16 FCC Rcd at 15464-78, paras. 55-84 (requiring incumbent LECs to provision cross-connects between two collocated competitive LECs); *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Order on Reconsideration of Fourth Report and Order, and Fifth Report and Order, 17 FCC Rcd 16960, 16963, paras. 1 n.2 and 9 (2002) (requiring incumbent LECs to file federal tariffs for cross-connects between collocated carriers)

<sup>106</sup> Verizon Application at 5

33. Conversent also argues that, if Verizon's application is granted, collocation customers buying new cross-connects pursuant to the state tariffs would pay twice for the non-recurring costs associated with cross-connects.<sup>107</sup> According to Conversent, Verizon's federal tariff requires collocation customers to purchase cross-connects in batches of 28 and to pay NRCs at the time the cross-connects are ordered.<sup>108</sup> Conversely, according to Conversent, the state tariffs in Verizon's New England region do not include NRCs, but recover all costs through monthly recurring charges.<sup>109</sup> Verizon does not propose to grandfather federally-tariffed cross-connects that are not in service and being billed as of the effective date of the discontinuance.<sup>110</sup> Therefore, Conversent claims that any federally-tariffed cross-connects that collocation customers have ordered (and for which they have paid a federally-tariffed NRC) but have not yet placed in service will incur the higher monthly recurring rates in New England, or possibly a new NRC if the New England state tariffs are modified to include a NRC.<sup>111</sup> In response, Verizon argues that the federally-tariffed NRC cited by Conversent is not in effect in the New England region.<sup>112</sup> Verizon claims that the rate structures for cross-connects are the same in the New England federal and state tariffs, i.e., Verizon does not charge a NRC and does not begin billing monthly charges until the cross-connects are placed in service.<sup>113</sup> On this basis, we find Conversent's concern about double-billing of a federally-tariffed NRC in this region to be unfounded.

## 2. Prior DC Power Tariff Filing.

34. Several opponents of the application argue that Verizon is merely trying in this proceeding to achieve the higher federally-tariffed DC power rates that it was unable to obtain pursuant to a tariff filing in 2001.<sup>114</sup> In that proceeding, Verizon filed revisions to its FCC Tariff Nos. 1 and 11 to revise the monthly rates for DC power to section 201 physical and virtual collocation arrangements in the New York and New England regions, and to revise the monthly rates for DC power to section 201 physical collocation arrangements and to establish a new rate element for DC power to section 201 virtual collocation arrangements in the South region.<sup>115</sup> In

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<sup>107</sup> Conversent Comments at 8.

<sup>108</sup> *Id.*

<sup>109</sup> Conversent Comments at 9.

<sup>110</sup> Verizon Application at 5.

<sup>111</sup> Conversent Comments at 9-10.

<sup>112</sup> Verizon Reply at 7 (citing Verizon Telephone Companies Tariff F.C.C. No. 11, Section 31.28(C)(2) (note #)).

<sup>113</sup> Verizon Reply at 7.

<sup>114</sup> Allegiance *et al.* Comments at 1-3, AT&T Comments at 5-8; Network Access Solutions Comments at 4-5; Sprint Comments at 12-13; AT&T Reply at 3-4, Time Warner Telecom Reply at 4-5.

<sup>115</sup> Letter from Kenneth W. Rust, Director Government Relations-FCC, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, Transmittal No. 1373 (Apr. 11, 2001) (Bell Atlantic Transmittal No. 1373); Letter from Kenneth W. Rust, Director Government Relations-FCC, Verizon, to Magalie Roman Salas, (continued . . .)

response to several petitions, the revisions were suspended and an investigation was instituted.<sup>116</sup> Before the tariff investigation concluded, Verizon reinstated the rates in effect prior to the investigation, and the Commission therefore terminated the investigation.<sup>117</sup> Verizon's current rates for section 201 physical collocation DC power in its federal tariff were set by the Commission pursuant to a 1997 order, and they have not changed since that time.<sup>118</sup> Existing physical collocation rates pursuant to state interconnection offerings have been reviewed and approved by the state commissions in recent proceedings,<sup>119</sup> and any future changes to these rates are also subject to state review and approval. Section 251 physical collocation rates pursuant to state-tariffed SGATS and interconnection agreements are priced at TELRIC under sections 251(c)(6) and 252 of the Act, and, as we discuss above, they are affordable to carriers. Therefore, a reasonable substitute to the current federally-tariffed section 201 DC power physical collocation charges exists.

35. For this reason, and because we have also found that the public convenience and necessity is not otherwise adversely affected, the commenters are incorrect in asserting that Verizon should file tariff revisions for the change in DC power rates: rather, Verizon has satisfied the criteria for discontinuance of service set forth in section 214 and our implementing regulations, and it may discontinue its section 201 physical collocation service.

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Secretary, Federal Communications Commission, Transmittal No. 1374 (Apr. 12, 2001) (Bell Atlantic Transmittal No. 1374)

<sup>116</sup> *The Bell Atlantic Telephone Companies Revisions for Tariff F.C.C. Nos. 1 and 11; The Verizon Telephone Companies Tariff F.C.C. Nos. 1 and 11*, Transmittal Nos. 1373 and 1374, Transmittal Nos. 23 and 24, Order, 16 FCC Rcd 8901 (Comp. Proc. Div. 2001); *Bell Atlantic Telephone Companies Revisions in Tariff FCC Nos. 1 and 11, Verizon Telephone Companies Tariff FCC Nos. 1 and 11*, CC Docket No. 01-140, Transmittal Nos. 1373 and 1374, Transmittal Nos. 23 and 24, Order Designating Issues for Investigation, 16 FCC Rcd 12967 (Comm. Carr. Bur. 2001)

<sup>117</sup> *Bell Atlantic Telephone Companies Revisions in Tariff FCC Nos. 1 and 11, Verizon Telephone Companies Tariff FCC Nos. 1 and 11*, CC Docket No. 01-140, Transmittal Nos. 1373 and 1374, Transmittal Nos. 23 and 24, Order Terminating Tariff Investigation, 16 FCC Rcd 17572 (2001).

<sup>118</sup> *Physical Collocation Tariff Investigation Order*, 12 FCC Rcd 18730. Although the Commission reviewed Verizon's DC power rates in the 2001 tariff investigation, no rate changes resulted from that proceeding because Verizon reinstated its previous rates.

<sup>119</sup> *See, e.g., The Collocation Tariff Filed Under Transmittal No. 1003 by Bell Atlantic-Maryland, Inc.*, Case No. 8766, Order No. 77575 (MD PSC, Feb. 27, 2002); *Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, Based Upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided-Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts*, D.T.E. 01-20, Order (MA DTE, July 11, 2002); *Bell Atlantic Petition for Approval of Statement of Generally Available Terms Pursuant to the Telecommunications Act of 1996*, Docket DT 97-171, Order Addressing Motion for Reconsideration of Order No. 23,847, Order No. 23,915 (NH PUC, Feb. 4, 2002), *Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Formal Case No. 962, Order, Order No. 12614 (DC PSC, Dec. 12, 2002)

### 3. State-Tariffed Interstate Rates.

36. Several commenters argue that Verizon cannot provide supporting services from state tariffs to interstate physical collocation arrangements because the Commission has exclusive jurisdiction over interstate services.<sup>120</sup> Verizon responds that incumbent LECs currently provide state-regulated services in connection with almost all collocation arrangements ordered exclusively from the federal tariffs.<sup>121</sup> For example, Verizon notes that some carriers order collocation services exclusively from the federal tariff, but use these arrangements primarily for access to unbundled network elements, rates for which are governed by the states pursuant to section 251.<sup>122</sup> Verizon also cites other instances where the Commission has allowed carriers to provide services that are jurisdictionally interstate pursuant to state tariffs, such as the enhanced service provider (ESP) exemption, which permits ESPs to obtain interstate services by purchasing local exchange service under the state tariffs; the provision of custom calling features under the state tariffs to customers that purchase Feature Group A access service from the interstate tariff; and the provision of complementary network services (CNS) under the state tariffs to customers purchasing open network architecture services under the interstate tariffs.<sup>123</sup> Verizon further argues that the states have the authority to set physical collocation rates pursuant to section 251(c)(6) and there is no federal tariffing requirement for collocation in this section.<sup>124</sup>

37. Under the conditions for discontinuance set forth in this order, commenters' jurisdictional claims are only applicable to existing customers that purchase supporting services directly from a non-section 251 state tariff,<sup>125</sup> whether they are carriers<sup>126</sup> or non-carriers.<sup>127</sup> This jurisdictional issue does not arise where customers purchase physical collocation services pursuant to sections 251 and 252 of the Act through state-tariffed SGATs or interconnection agreements.<sup>128</sup> As commenters in this proceeding recognize, physical collocation arrangements are being purchased from the federal or state tariffs based on the rates, terms and conditions available in those tariffs and not on the jurisdictional nature of the traffic traversing those arrangements.<sup>129</sup> We find that, in these instances, the public interest is served by allowing state-

<sup>120</sup> Allegiance *et al* Comments at 4-8; ALTS *et al* Comments at 19; WorldCom Comments at 4, 6-7.

<sup>121</sup> Verizon December 19 *Ex Parte* Letter Att at 2.

<sup>122</sup> *Id*

<sup>123</sup> Letter from Ann D. Berkowitz, Project Manager-Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-237 (Apr. 25, 2003)

<sup>124</sup> Verizon Reply at 23-24

<sup>125</sup> *See supra* n 2.

<sup>126</sup> *See supra* para. 29.

<sup>127</sup> *See supra* para. 22

<sup>128</sup> 47 U.S.C. §§ 251(c)(6), 252(f) *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 379-82 (1999).

<sup>129</sup> *See* para. 10 *supra*.

set rates, terms and conditions to govern services that may be used for interstate traffic. To now require collocation customers to purchase physical collocation services based entirely on the jurisdictional nature of the traffic would be disruptive and burdensome to collocation customers and collocation providers. For instance, collocation customers would be required to use cross-connects between their arrangements and Verizon's equipment purchased from the federal tariff only for interstate traffic, and to purchase separate cross-connects from the state tariffs for their intrastate traffic, or, alternatively, to begin jurisdictionally separating the traffic over the cross-connect and paying proportionately from two separate tariffs. This would impose redundant and inefficient provisioning and purchasing requirements on the industry with potentially negative effects on consumers. To minimize customer impact, we find that it is in the public interest to allow physical collocation customers to order supporting services from the relevant state tariff.<sup>130</sup>

As discussed above, section 251 gives states the authority to govern physical collocation for telecommunications carriers without regard to the jurisdictional nature of the traffic, and the states are experienced in regulating these services.

#### 4. Interconnection Agreements.

38. Commenters also argue that grant of Verizon's section 214 application would constitute an unlawful unilateral modification of Verizon's interconnection agreements with competitive LECs.<sup>131</sup> According to these commenters, Verizon's interconnection agreements mirror the terms in the federal tariff that it now seeks to eliminate.<sup>132</sup> Verizon responds that its interconnection agreements were not intended to lock the parties in to the rates, terms and conditions that existed at the time the agreements were executed.<sup>133</sup> By referencing tariffs rather than specifying particular rates in the interconnection agreements, Verizon states that the parties were necessarily deferring to the regulatory commissions as the ultimate arbiters of those tariffs.<sup>134</sup> We agree. Tariffed rates, terms and conditions are not frozen by the existence of an interconnection agreement incorporating their terms. Moreover, interconnection agreements generally acknowledge that underlying regulatory obligations will change given that they normally incorporate provisions to address changes in law. The impact on interconnection agreement terms is thus not a basis for denying changes to tariffed rates, terms and conditions, and we do not deny Verizon's application on that basis here.

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<sup>130</sup> See *MTS and WATS Market Structure*, CC Docket No. 78-72 Phase I, 97 FCC 2d 682, 715, para. 83 (1983) (allowing non-carriers to continue paying local business exchange service rates for interstate access services due to concerns about customer impact and market displacement of imposing federally-tariffed access charges).

<sup>131</sup> Network Access Solutions Comments at 2-3, Qwest Comments at 1-7.

<sup>132</sup> Network Access Solutions Comments at 3; Qwest Comments at 2-3.

<sup>133</sup> Verizon Reply at 26

<sup>134</sup> Verizon Reply at 27

#### IV. CONCLUSION

39. We find that there are reasonable substitutes for the services Verizon proposes to discontinue, and that grant of Verizon's application to discontinue providing federally-tariffed section 201 physical collocation services, subject to the conditions discussed in this order that we impose pursuant to section 214(c) of the Act, will not adversely affect the present or future public convenience and necessity.<sup>135</sup> These conditions, which Verizon will incorporate in revisions to its Tariff F.C.C. Nos. 1 and 11, are: the ability of section 201 physical collocation customers to remain grandfathered under the federally-tariffed section 201 space-related rates, terms and conditions for their existing physical collocation arrangements;<sup>136</sup> the option for section 201 physical collocation telecommunications carrier customers to convert their existing physical collocation arrangements to the space-related rates, terms, and conditions in state interconnection offerings;<sup>137</sup> the ability of non-telecommunications carrier section 201 physical collocation customers to enter into non-carrier contracts for their existing physical collocation arrangements, and supporting services for those arrangements, where they are unable to obtain such services from a state interconnection offering, at the same rates, terms and conditions available in Verizon's state interconnection offerings;<sup>138</sup> and the availability of a conversion credit for section 201 physical collocation customers in the New England and South regions that convert their existing physical collocation arrangements to the space-related rates, terms, and conditions in state interconnection offerings.<sup>139</sup> Should Verizon fail to observe these conditions, the Commission could initiate an enforcement action on its own or in response to a complaint that Verizon failed to observe conditions imposed under section 214(c) and its tariffs.<sup>140</sup>

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<sup>135</sup> 47 U.S.C. § 214(c) ("The Commission may attach to the issuance of the [section 214] certificate such terms and conditions as in its judgment the public convenience and necessity may require. . . . Any . . . discontinuance . . . contrary to the provisions of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, the State commission, any State affected, or any party in interest.").

<sup>136</sup> Verizon Application at 4-6

<sup>137</sup> Verizon Application at 6.

<sup>138</sup> Verizon July 11 *Ex Parte* Letter at 1

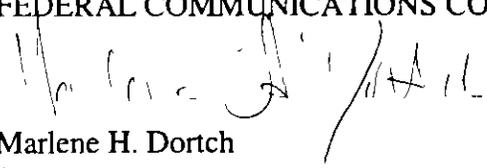
<sup>139</sup> See *supra* paras 17-20, Verizon Application at 6-8, Verizon March 31 *Ex Parte* Letter. The conversion credit would also apply to any existing Verizon section 201 physical collocation non-telecommunications carrier customers that opt to convert to state interconnection offering rates, terms, and conditions through non-carrier contracts.

<sup>140</sup> 47 U.S.C. §§ 208, 214(c).

**V. ORDERING CLAUSE**

40. Accordingly, pursuant to sections 1, 4(i), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214, and section 63.71 of the Commission's rules, 47 C.F.R. § 63.71, IT IS ORDERED that the application of Verizon to discontinue provision of section 201 expanded interconnection services through physical collocation in its federal tariffs in the former NYNEX and Bell Atlantic regions IS GRANTED subject to the conditions set forth in paragraph 39 above.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

## APPENDIX A

## Commenters in WC Docket No. 02-237

**Parties filing Comments:**

Allegiance Telecom, Inc., *et al.* (Allegiance)  
Association for Local Telecommunications Services, *et al.* (ALTS)  
AT&T  
Choice One Communications Inc.  
Conversent Communications, LLC  
Covad Communications Company  
Network Access Solutions Corporation  
Qwest Communications Corporation  
Sprint Corporation  
WorldCom, Inc.

**Parties filing Reply Comments:**

AT&T  
SBC Communications, Inc.  
Time Warner Telecom  
Verizon