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verizon

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Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 Twelfth Street, S.W.
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *Virginia Arbitration – Motion to Stay Bureau TELRIC Pricing Order*, CC Docket Nos. 00-218, 00-251

Dear Chairman Powell and Commissioners:

The parties' recent compliance filings confirm the pressing need for a stay of the Bureau's TELRIC pricing order, at a minimum, pending a decision on Verizon's application for review of that decision by the full Commission.

1. *The compliance filings confirm that the Order produces extreme results that will perpetuate the downward spiral of UNE rates.* While the other parties to this proceeding have tried to portray the Order as "balanced" based on the fact that it adopts a \$.67 increase in the statewide loop rate and adopts a higher cost of capital, the compliance filings confirm that the overall effect of the Order is anything but that.

In reality, the black box nature of TELRIC allows other inputs and other rates to be adjusted to more than offset any perceived improvement in order to drive rates dramatically lower. That is precisely what happened here, as we explained at length in our stay motion and accompanying application for review. Indeed, the Order would produce dramatic reductions despite the fact that the full Commission found that current rates comply with TELRIC and are comparable to or lower, using the FCC's established benchmark comparison, than the rates in effect in New York (where other carriers use UNE-P to serve more than 2 million lines). For example:

- Using assumptions which correspond to WorldCom's own numbers for its customers' minutes of use, the unbundled local switching[1] rates would be the *lowest* for Verizon in any of the thirty-one jurisdictions where it provides service, and more than *45%* lower than the rates that the full Commission found comply with TELRIC, while the

[1] "Switching" includes line port, switching, transport, signaling, and features.

unbundled loop rate would remain below the New York benchmark comparison. Attachment 1 compares the switching rate produced by the Order with rates in effect in the other Verizon East (former Bell Atlantic) states. Switching rates in the Verizon West (former GTE) states are comparable to or higher than those in the other Verizon East states. Attachment 2 provides the benchmark comparison to New York for the statewide average loop rate under the Order.

- Using assumptions which correspond to WorldCom's own numbers for its customers' minutes of use, the resulting statewide UNE-P rate in Virginia would be some *$2.50 per line lower* than the current rates that were found to be TELRIC compliant. *See* Attachment 3.

- Using assumptions which correspond to WorldCom's own numbers for its customers' minutes of use, the statewide UNE-P rate in Virginia would be more than *five dollars per line lower* than the benchmark standard for the equivalent customer in New York. *See* Attachment 4.

- And, again using assumptions which correspond to WorldCom's own numbers for its customers' minutes of use, the UNE-P rate in zone 1 in Virginia, where approximately 75 percent of the customers are located, would be the *second lowest* rate in effect for any comparable density cell served by Verizon in any state. Attachment 5 compares the UNE-P rate for density zone 1 produced by the Order with rates in comparable density zones in the other Verizon East states. UNE-P rates for comparable density zones in the Verizon West states are similar to or higher than those in the other Verizon East states.

- The UNE-P rate would be the lowest for the high end customers that AT&T and MCI target, because the Order imposes a new flat switching rate that makes the UNE-P especially attractive for high volume users, even though that very issue is currently pending before the Commission in the ongoing rulemaking.

- The high capacity loop rates are slashed by approximately *50%*, based on a model that does not even purport to calculate the cost of these loops, despite the fact that the current rates already are equal to or lower than the New York benchmark rates and were found by the full Commission to be TELRIC compliant, and despite the fact that this creates new subsidies to encourage carriers to use EELs to displace competitive special access services.

- The non-recurring rates are drastically reduced or simply eliminated. For example, AT&T and MCI in their compliance filing in response to the Order propose loop qualification and conditioning charges that would be 40 to 90% lower than the rates that the full Commission found comply with TELRIC. And other non-recurring charges, such as those for provisioning dark fiber loops or unbundled NIDs, are simply eliminated on the theory that they should be converted into recurring charges – but without any adjustment to recurring rates that accounts for those particular costs – even though that issue also is currently pending before the Commission in the ongoing rulemaking.

2. *The Order and the extreme rate reductions it produces will have immediate, detrimental effects in the real world.* While the other parties have tried in the confines of this proceeding to portray the Order as narrow and having limited effect, the reality is that it will have significant repercussions both in Virginia and elsewhere.

In Virginia itself, the Order would inflate the subsidy that UNE-P carriers receive at current rates and further undermine continued deployment of competing facilities. Indeed, current rates already reflect one previous reduction that was required to meet the FCC's section 271 benchmarking standard. Prior to that reduction, competition in Virginia overwhelmingly involved the use, in whole or part, of facilities that competitors had deployed themselves. Following that reduction, the number of lines that competitors have added using all or some of their own facilities has declined by more than 11,000 lines per month, and competitors have shed thousands of lines that they previously served with their own switches. At the same time, the number of UNE-P lines served by AT&T, MCI and others has ballooned. Of course, AT&T has made clear that it won't even consider entering a state without at least a 45% margin. Reducing the UNE-P rate would only further inflate this already substantial margin and increase the subsidy to carriers that use a single network.

The harmful effects are not limited to Virginia. Although the Order was decided by the Bureau rather than the full Commission and therefore is *not* binding precedent, CLECs are widely touting the Order as the FCC's interpretation of its rules that should be followed by the states. For example, in a letter it recently filed with the Maryland Commission, Covad portrayed the *Order* as a "ruling issued . . . by the Federal Communications Commission" and cited it in support of Covad's extreme proposals concerning non-recurring rates.[2/] In fact, even the courts are already (incorrectly) citing the Bureau's decisions in the Virginia arbitration as binding authority, even though reconsideration or review of those orders is pending. *See, e.g.*, *Southwestern Bell Tel. Co. v. Pub. Utils. Comm'n of Texas, et al.*, No. 03-50107, slip op. at 5-6, 10 (5th Cir. Oct. 21, 2003) (repeatedly characterizing the Bureau's non-cost order as an "*FCC* decision" that determines the correct interpretation of the Commission's rules) (emphasis added).

2/ Covad Letter to Md. Pub. Serv. Comm'n, Case No. 8879 (Sept. 4, 2003); *see also* Letter from David Carpenter, Counsel for Voices for Choices and AT&T, to Gina Agnello, Clerk, U.S. Court of Appeals for the Seventh Circuit, at 1 (Sept. 9, 2003) (stating that the Bureau's *Order* "confirms" that AT&T's positions are consistent with TELRIC); Ex Parte Submission of AT&T Communications of California, Inc. (U5002C), "Comparison of Cost Models and Studies," *Joint Application of AT&T Communications of California, Inc. (U5002C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Switching in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050, et al.* (Sept. 26, 2003) (referring throughout to the *Order's* determinations for support); *cf. AT&T Communications of NJ. L.P. et al. Amended Petition for Arbitration of Interconnection Terms and Conditions with Verizon New Jersey Inc., Docket No. TO00110893*, at 12 (N.J. Bd. Of Pub. Utils. Nov. 6, 2002) (stating that the Bureau's decision on *non*-cost issues "reflects the reasoned application by the FCC of the very rules that Congress charged it with crafting").

And despite the claims of others, who blithely assert that Verizon is somehow big enough or profitable enough to subsidize others, the fact that Verizon is unable to recover any reasonable measure of its costs does have real consequences in the real world. For example, the very New York UNE-P rates on which the current Virginia rates are based have themselves been cited by Moody's as a basis for a possible multi-step downgrade of Verizon's debt rating in New York. *See* D. Saputo, Moody's Investors Services, *Moody's Places the A2 Senior Unsecured Debt Rating of Verizon New York on Review for Possible Downgrade* (Oct. 27, 2003). No company, Verizon or any other, can continue indefinitely to pay large subsidies to other carriers while simultaneously taking on real world competition from cable companies, wireless providers and others.

3. *The Commission should act promptly to stay the Order, at a minimum, pending a decision on the pending application for review.* The Commission has correctly recognized that the TELRIC rules already produce rates that understate the costs of real world telephone networks and need to be reformed. Completing those reforms is critical to restore rational investment incentives for all carriers, and to restoring the health of the telecommunications sector. The first priority in that process has to be to avoid unnecessarily making matters materially worse, yet that is precisely what the Order would do.

For all the reasons outlined above, the compliance filings submitted by the parties provide further confirmation that the Order should be stayed. And because the pleading cycle addressing the compliance filings was completed last week, and a further Bureau order to implement new rates potentially could issue at any time, the Commission should grant the stay promptly.

Finally, in the event the Commission does not grant a stay, we request that the Commission provide at least two weeks notice of its decision prior to the Bureau's release of the compliance order approving the final rates in this case. This notice is necessary to afford Verizon an opportunity to invoke its due process right to seek appropriate judicial intervention prior to any Bureau-ordered rates taking effect.

Sincerely,

Susanne Guyer

Attachments

cc: C. Libertelli
M. Brill
D. Gonzalez
J. Rosenworcel
L. Zaina
W. Maher

Verizon Unbundled Switching Rates*
Verizon East States

State	Unbundled Switching Rates
VA Arbitration	$3.80
NJ	$5.46
ME	$6.88
MD	$7.04
VA Current	$7.05
NY	$7.27
MA	$7.53
DE	$7.85
PA	$8.29
NH	$8.57
WV	$9.36
RI	$9.77
DC	$11.50
VT	$13.49

Virginia Switching* Rate Comparison

Current VA switching	$7.05	
VA Arbitration switching	$3.80	
Difference	$3.25	3.25/7.05 = 46 %

* Switching includes line port, switching, transport, signaling, and features. Assumes 1200 originating local MOUs, 1200 terminating local MOUs, 185 originating access MOUs, and 185 terminating access MOUs, which correspond to WorldCom's own numbers for its customers' minutes of use.

Attachment 2

Loop Benchmark Comparison

State	Statewide Model Loop Cost	Statewide Average Loop Rate	Cost Ratio to New York	Rate Ratio to New York	(NY rate x 134.55%) - VA arb. rate
NY	$10.37	$11.49	100%	100%	$15.46
VA arb.	$13.96	$14.43	134.55%	126%	$14.43
					$ 1.03

Verizon Statewide UNE-P* Rate Comparison

Current VA UNE-P rate	$20.81
VA Arbitration UNE-P rate	$18.23
Difference	$2.58

* Assumes 1200 originating local MOUs, 1200 terminating local MOUs, 185 originating access MOUs, and 185 terminating access MOUs, which correspond to WorldCom's own numbers for its customers' minutes of use.

UNE-P Benchmark Comparison*

	NY Cost	Cost Relationship	Benchmark Cost	Ordered Rates	Difference
Loop	$11.49	134.55%	$15.46	$14.43	$1.03
Non-Loop	$7.27	107.48%	$7.81	$3.80	$4.01
Total	$18.38	128%	$23.47	$18.23	$5.24

* Assumes 1200 originating local MOUs, 1200 terminating local MOUs, 185 originating access MOUs, and 185 terminating access MOUs, which correspond to WorldCom's own numbers for its customers' minutes of use.

Verizon Density Zone 1 UNE-P* Rates
Verizon East States

State	UNE-P Rates
NJ	$13.58
VA Arbitration	$15.69
MD	$16.55
VA Current	$17.79
DE	$17.92
ME	$18.32
MA	$18.34
PA	$18.54
NY**	$18.58
DC	$19.99
NH	$20.54
RI	$20.96
VT	$21.21
WV	$23.85

* Assumes 1200 originating local MOUs, 1200 terminating local MOUs, 185 originating access MOUs, and 185 terminating access MOUs, which correspond to WorldCom's own numbers for its customers' minutes of use.

** NY = Density Cell 1b

CERTIFICATE OF SERVICE

I do hereby certify that true and accurate copies of the foregoing were served by hand delivery via courier this 24th day of November, 2003, to:

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