

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

In the Matter of)	
)	
Verizon Petition for Waiver to Allow)	
It to Exercise Pricing Flexibility for)	
Advanced Services Where the)	
Commission has Granted Relief for)	
Traditional Special Access Services)	
)	WC Docket No. 04-246
Verizon Petition, in the Alternative,)	
for Forbearance to Allow it to Exercise)	
Pricing Flexibility for Advanced Services)	
Where the Commission has Granted)	
Relief for Traditional Special Access)	
Services)	

OPPOSITION OF SPRINT CORPORATION

On behalf of its Incumbent Local Exchange Carrier (“ILEC”), competitive LEC (“CLEC”)/long distance, and wireless operations, Sprint Corporation (“Sprint”) opposes Verizon’s Petition for Waiver to Allow it to Exercise Pricing Flexibility for Advanced Services where the Commission has Granted Relief for Traditional Special Access Services (“Waiver Petition”). Sprint also opposes Verizon’s Petition, in the Alternative, for Forbearance to Allow it to Exercise Pricing Flexibility for Advanced Services where the Commission has Granted Relief for Traditional Special Access Services

(“Forbearance Petition”).¹ Both Petitions are premature, vague, and improper, and both must be denied.

As Verizon acknowledges, its Petitions raise issues already pending before the Commission in the *ILEC Broadband* rulemaking proceeding.² Rather than allow the Commission to complete its work in that proceeding, Verizon claims it needs immediate relief, ostensibly because:

[t]he unique circumstances surrounding the transfer of the former VADI services back to Verizon while the broadband proceedings are pending provide the “special circumstances” justifying a waiver of Section 69.729 and Paragraph 173 of the *Pricing Flexibility Order*.³

To the contrary, there is nothing “unique” or “special” about the circumstances in which Verizon finds itself. Rather, the circumstances are the result of proactive steps Verizon took, undoubtedly based upon Verizon’s internal business decisions made at a time when Verizon knew full well that the Commission’s rules did not provide pricing flexibility for special access services not in price caps.⁴

¹ Public Notice, *Pleading Cycle Established for Comments on Verizon’s Petition for Waiver, or, Alternatively, Forbearance, to Allow it to Exercise Pricing Flexibility for Fast Packet Services*, DA 04-2116 (rel. July 13, 2004).

² *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Notice of Proposed Rulemaking, 16 FCC Rcd 22745 (2001) (“*ILEC Broadband* rulemaking”).

³ Verizon’s Memorandum of Points and Authorities in support of Verizon’s Petition for Waiver of Pricing Flexibility Rules and Contingent Petition for Forbearance, WC Docket No. 04-246, June 25, 2004 (“Memorandum”) at 13.

⁴ Additionally, Sprint notes that AT&T’s petition for pricing flexibility reform is still pending. See *Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM No. 10593 (filed Oct. 15, 2002). While Sprint did not agree entirely with AT&T’s position, Sprint did agree and still believes that the current pricing flexibility regime needs reform, because

For instance, Verizon complains that “SBC is able to exercise pricing flexibility for these services, because it maintains them in a separate affiliate pursuant to its merger order.”⁵ In fact, SBC’s merger order subjected it to same separate affiliate requirement as Verizon’s merger order, as well as to the same nine month sunset of that requirement in the event a court determined the affiliate was a “successor or assign” of the SBC ILECs⁶ – exactly what happened in *ASCENT v. FCC*, 235 F.2d 662 (D.C. Cir. 2001). However, following the *ASCENT* decision, SBC left its advanced services in its separate affiliate, and thus it does not have the same self-created “problem” as Verizon with regard to pricing flexibility. Verizon knew the Commission rules governing pricing flexibility and price caps, and it chose not to do as SBC. Instead, Verizon chose to bring its advanced services back into the Verizon ILECs. Indeed, Verizon proactively sought Commission permission to accelerate the reintegration of advanced services back into the ILEC faster than the nine month termination period set forth in the Verizon Merger Order.⁷ Verizon’s pleas that it needs a waiver or forbearance so as to receive the same treatment as SBC

the triggers do not provide any reasonable or accurate measure of the degree of competition. The Commission should deny Verizon’s Petitions and instead complete its work on AT&T’s petition and reform the current pricing flexibility regime.

⁵ Memorandum at 10.

⁶ *In re Application of Ameritech Corp. Transferor, and SBC Communications Inc. For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act of Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission Rules*, Memorandum Order and Opinion, 14 FCC Rcd 14712 (1999).

⁷ See Memorandum at 3, citing *Application of GTE Corp. and Bell Atlantic Corp. for Consent to Transfer Control of Domestic and International Section 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, Order, 16 FCC Rcd 16915 (2001).

should fall on deaf ears. It is Verizon's own conscious business decisions alone that have caused Verizon to be in a different position than SBC.

Verizon also complains that BellSouth already has pricing flexibility for these services, "which are included in their special access tariffs."⁸ Verizon's point, apparently, is that it should enjoy the same pricing and regulatory flexibility as BellSouth. Verizon neglects to point out, however, that the only reason it does not enjoy the same flexibility as BellSouth once again, is Verizon's own business decisions.

BellSouth included advanced services such as ATM and Frame Relay in its special access tariffs and in price caps.⁹ Additionally, when BellSouth applied for pricing flexibility, it included these advanced services in the data submissions to demonstrate that the pricing flexibility triggers had been met.¹⁰ Verizon, again because of its internal business decisions made with full knowledge of the Commission's rules on pricing flexibility and price caps, did not. In its petitions for pricing flexibility, Verizon consistently chose to use the revenue test in Rule 69.709(b)(2) and (c)(2) to satisfy the pricing flexibility triggers.¹¹ Because Verizon did not include advanced services in price cap, however, revenues from such services were not included in the data that showed the

⁸ Memorandum at 10.

⁹ BellSouth includes its Fast Packet Services such as ATM and Frame Relay in the Trunking Services Basket. *See In the Matter of BellSouth Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, Memorandum Opinion and Order, 17 FCC Rcd 23725 (2002).

¹⁰ *Id.*

¹¹ *See In re Verizon Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, 18 FCC Rcd 11356, Memorandum Opinion and Order (2003); Memorandum Opinion and Order, 18 FCC Rcd 6237 (2003); and Memorandum Opinion and Order, 17 FCC Rcd 5359 (2002).

triggers had been met. Thus, it is quite possible that, had it treated its advanced services as BellSouth did, Verizon would have qualified for pricing flexibility. Verizon should not be allowed to do an end-run around the Commission rules to gain pricing flexibility in MSAs where it may not have qualified had it followed the pricing flexibility processes as BellSouth did.

Clearly, there are no “unique” or “special” circumstances justifying a waiver of Commission rules. Nor has Verizon made a case for forbearance. Verizon’s Petitions are fatally vague. They ask for relief for “Frame Relay, Asynchronous Transfer Mode (“ATM”), and other packet-switched services other than DSL....”¹² Yet Verizon never bothers to explain what these other services are, or even whether there are any other services being offered today that Verizon could later claim are covered by its Petitions. Does Verizon expect the Commission and the industry to *guess* at what services Verizon might offer in the future that “qualify” as advanced services under the Petitions? Likewise, Verizon never explains why it excludes DSL services. Such vagueness certainly cannot result in forbearance under the standards of Section 10 of the Act. 47 U.S.C. § 160. Section 10 requires the Commission to determine that enforcement of a regulation is not necessary to ensure against unjust, unreasonable or discriminatory charges or practice and to protect consumers. Additionally, it requires the Commission to determine that forbearance is consistent with the public interest and will further competition. The Commission simply cannot make a well reasoned, justified determination consistent with the requirements of Section 10 of the Act without knowing

¹² Forbearance Petition at 1 (emphasis added.)

what services are within the scope of the forbearance. Verizon has failed to make the showing necessary to support forbearance under Section 10.

Verizon's latest Petitions are premature and vague, and they fail to make the case for waiver or forbearance. The industry would be better served by the Commission establishing rules on ILEC-provided advanced services through its the pending *ILEC Broadband* rulemaking,¹³ rather than entertaining piece-meal requests through petitions for waivers or forbearance that cannot be properly granted in any event. Additionally, the Petitions exhibit a fatal and irreparable lack of specificity with regard to the services at issue. Lacking such specificity, Verizon's Petitions must be denied on that ground alone.

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¹³ See note 2, *supra*.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition of Sprint Corporation, filed in WC Docket No. 04-246, was sent by First Class Mail, postage prepaid, and/or electronic mail on this the 3rd day of August, 2004 as follows:


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