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December 6, 2004

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW – Portals
Washington, DC 20554

Re: ***Unbundled Access to Network Elements*, WC Docket No. 04-313; *Review of Section 251 Unbundling Obligations for Incumbent Local Exchange Carriers*, CC Docket No. 01-338**

Dear Ms. Dortch:

I am writing in response to AT&T's November 12, 2004 *ex parte* in which AT&T argues that RBOC special access pricing plans decrease competitive carriers' opportunities to deploy their own facilities or use those of alternative providers, such that the Commission should ignore the availability of ILEC special access in deciding whether CLECs are impaired without access to unbundled high-capacity loops and transport.[1] None of this is true with respect to Verizon's special access pricing plans. As Verizon explained in its Reply Comments in this proceeding, Verizon offers a variety of volume and term pricing plans for its special access service, and these plans do not preclude facilities-based competition or prevents carriers from using alternative provider facilities.[2]

Verizon offers a variety of discount plans for its special access service, but there are two primary term plans that are most typically used by Verizon's customers. The first type of discount plan is strictly a term of years pricing plan that is circuit specific. A carrier purchasing special access service from Verizon may place the circuit under a discount plan for any term of years ranging from 2 to 10 years, with the amount of the discount increasing as the term increases. Under these plans, a carrier also may place some circuits under a plan with

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[1] *See* Letter from Frederick Beckner III, Sidley Austin Brown & Wood LLP to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-313, CC Docket No. 01-338 (dated November 12, 2004) ("AT&T Letter").

[2] Verizon Reply Comments at 90-93; Lataille/Jordan/Slattery Decl. at ¶¶ 19-26.

a short-term and others under a plan with a longer-term depending on the carrier's needs and plans for future self-deployment.[3]

Contrary to AT&T's claims that the discount plans "lock" carriers in, carriers may terminate the plan at any time by paying the lesser of 1) the difference between rates for the selected term plan and the rates for the longest term plan that the carrier could have satisfied or 2) a percentage of the monthly charges for the unexpired portion of the term. For example, under option 1, if the customer signed up for a 7-year term plan and only kept the circuit for 3 years, it would only be charged as if it had purchased a 3-year term plan. The termination charges, therefore, are not onerous and make the carrier no worse off than the carrier would have been had the carrier decided to enter a discount plan only for the period it desired to purchase the circuits from Verizon.[4]

Verizon's second major discount plan is a volume and term plan, called a Commitment Discount Plan. This plan requires a one-year minimum service period but allows a carrier to remove individual circuits as they choose, without termination liability, as long as the carrier purchases at least 14 DS1s or 1 DS3 and agrees to maintain a minimum volume level for a term of years ranging from 2 to 10 years. For DS1s and DS3s, the minimum volume level is based on a percentage of the circuits the carrier has in service with Verizon at the time the carrier subscribes to the plan.[5] Thus, as a carrier adds special access circuits in one area as it begins to build a customer base there in advance of deploying facilities, it may reduce the number of special access circuits it has under the plan in other areas and move those circuits to its own or alternative provider facilities without having to pay early termination charges.[6]

Contrary to AT&T's claims, a carrier is not required to agree both to a basic term plan and Verizon's volume discount plan to receive discounts on special access services the carrier purchases from Verizon. In Verizon's serving territory, a carrier may subscribe to either type of plan and thus choose the type of plan that best suits the carrier's business needs, and the discount the carrier receives is the same.[7] That is, the discount a carrier receives for a circuit placed under Verizon's basic term plan for three years is the same as the discount the carrier receives for a circuit placed under Verizon's volume discount plan for three years. The difference is in how the carrier may manage its special access services using the two types of plans.

A carrier concerned about declining demand or that its customers may not agree to accept longer service periods, as AT&T suggests, may choose Verizon's circuit-specific basic term

[3] Lataille/Jordan/Slattery Decl. At ¶ 21.

[4] *Id.* at ¶ 24-25.

[5] *Id.* at ¶ 22.

[6] *Id.* at ¶ 22-24.

[7] *Id.* at ¶ 24.

plans, which require no volume commitments and allow the carrier to choose the length of their term for each circuit purchased, consistent with the needs of their customers and the carrier's plans for self-deployment or use of alternative facilities.[8] On the other hand, a carrier that is growing its business may choose Verizon's volume discounts plans, which allow the carrier to move individual circuits off the plan without termination liability as long as the carrier maintains the agreed-upon volume level for that circuit type.

Perhaps the greatest fallacy in AT&T's argument with respect to ILEC special access pricing plans is AT&T's flawed assumption that carriers have no choice at the outset about whether to buy or build themselves facilities they need to serve their customers or from whom to buy the facilities if that is what they choose to do. But as Verizon has explained, Verizon's carrier customers constantly make these facilities build-versus-buy decisions, deploying facilities where it makes sense for them to do so, and in other instances, leasing facilities from alternative providers, including Verizon, until it makes economic sense for them to deploy their own.[9]

Verizon has offered extensive evidence demonstrating that alternative providers have deployed high-capacity loop and transport facilities wherever demand for high-capacity services exists.[10] Even AT&T concedes that special access pricing plans have arisen precisely because today "the Bells' wholesale access customers have a choice between keeping their service demand on a Bell's network or diverting it to their own facilities or to those of an alternative, non-Bell supplier."[11]

Furthermore, AT&T ignores the fact that where carriers have chosen to use Verizon's facilities in lieu of deploying their own facilities or leasing them from alternative providers, those carriers have relied predominately on Verizon's special access services, not UNEs. Verizon has shown that carriers using Verizon's facilities have purchased 93 percent of their DS1 loops and 99 percent of their DS3 loops as special access services, not as UNEs.[12] The fact that carriers have leased these facilities at steep discounts under the very volume and term pricing plans about which they now complain and have used them to successfully compete for customer of all types and sizes proves that the special access pricing plans do not impede competition for the provision of high-capacity services. Thus, AT&T's unsupported claims about ILEC special access pricing plans provide no basis for the Commission to ignore the availability of ILEC special access services in deciding whether CLECs are impaired without access to unbundled high-capacity loops and transport.

[8] *Id.* at ¶ 21, 24.

[9] *See* Declaration of Claire Beth Nogay ("Nogay Decl.") ¶¶ 4, 7, 8-18, 26.

[10] Verizon Comments at 36-54; Nogay Decl. at ¶¶ 27-31.

[11] AT&T Letter at 3.

[12] Verizon Comments at 59; Exhibit 10.

Please place this letter in the record of the above proceedings.

Sincerely,

Dell May

c: Jeff Carlisle
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