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

In the Matter of:	)	
	)	
Petition for Waiver of the Commission's Price Cap Rules for Services Transferred from VADI to the Verizon Telephone Companies	)))	WC Docket No. 07-31

REPLY IN SUPPORT OF VERIZON'S VADI WAIVER PETITION

Since 2001, the Wireline Competition Bureau ("Bureau") repeatedly has found that, in light of the uncertainty concerning the proper regulatory treatment of advanced services, the public interest is served by permitting Verizon to exclude from price caps advanced services offered under Tariff FCC No. 20.[1] Last year, after that regulatory uncertainty was removed for all VADI broadband services – those services capable of speeds of 200 kbps or greater – and it became clear that these services will not be subject to common carriage regulation, the Bureau further recognized that "it is appropriate to allow Verizon a reasonable period of time to respond to these [regulatory] changes without requiring it to incur the financial costs or administrative burdens of reintegrating advanced services into price caps" only to remove them thereafter.[2] At the same time, for the lower speed VADI services not subject to forbearance relief, the Bureau again concluded that remaining "open questions" concerning the appropriate regulatory treatment for these services continued to justify a waiver. *Id.* ¶ 10. These same considerations support a further extension of the waiver for the VADI services. For the VADI broadband services, that waiver should extend until these services are fully transitioned to private carriage

[1] These services were transferred to the Verizon telephone companies from their one-time separate advanced services affiliate, Verizon Advanced Data Inc (VADI).

[2] Order, *Petition for Waiver of the Commission's Price Cap Rules for Services Transferred from VADI to the Verizon Telephone Companies*, Order, 21 FCC Rcd 6,470, ¶ 9 (2006) ("*2006 VADI Waiver*").

arrangements – a process that is well underway. Likewise, for those few other VADI services, the Bureau should waive the price cap rules until such time as the continuing regulatory uncertainty is resolved.

The New Jersey Division of the Rate Counsel ("New Jersey DRC") is the only party that has objected to granting the relief Verizon seeks, and it has offered no compelling argument for imposing on Verizon the needless costs that would be entailed by bringing these advanced services under price cap regulation. *See* Comments of the New Jersey Division of the Ratepayer Counsel, WC Docket No. 07-31, filed March 13, 2007 ("*DRC Comments*"). In fact, the New Jersey DRC does little more than recycle its arguments that the Bureau properly rejected in last year's proceeding. They have not improved with age.

As an initial matter, the New Jersey DRC makes a threshold argument that the Commission, rather than the Bureau, should decide Verizon's waiver petition this year, given the New Jersey's pending application for review challenging last year's waiver. *See DRC Comments* at 3. The New Jersey DRC provides no authority for the proposition that the Bureau may not act within its delegated authority, simply because the Bureau previously rejected a parties' arguments in an earlier proceeding. That the Bureau has been delegated the authority to act on such petitions – and in fact has done so on Verizon's petitions for each of the last five years – is beyond dispute. *See* 47 C.F.R. § 0.91(b). And if the New Jersey DRC disagrees with the Bureau's decision, it is free to seek Commission review of that ruling, as the DRC also has done in the past. Nothing about the New Jersey DRC's pending application for review justifies a different procedural approach this year or undermines the Bureau's authority.[3]

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[3] The New Jersey DRC incorporates by reference all of the arguments set out in its application for review of last year's waiver. *DRC Comments* at 3. Accordingly, Verizon similarly incorporates by reference its responses to those arguments.

With respect to Verizon's request for a waiver for its VADI broadband services, the New Jersey DRC provides no basis for denying Verizon's request. Aside from the bald assertion that Verizon has generally failed to show good cause for a waiver, the only statement even addressing the broadband services seems to be the factual statement that Verizon's transition of these services to a pure private carriage regime "will not be complete as of the time for filing its 2007 tariff filing." *DRC Comments* at 4. But Verizon acknowledges as much in its petition, and, if that were not true, Verizon would have no need for a waiver in the first place. As Verizon explained in its petition, it is proceeding apace with the transition to private carriage in a deliberate and rational manner that meets the interests of its customers, and all of these services eventually will be detariffed. Moreover, even before the time of the 2007 annual access tariff filing, Verizon intends to grandfather all of these services, meaning that all new orders would be handled exclusively on a private carriage basis. The New Jersey DRC has not, and could not, explain any possible public benefits that would result from placing these services into price caps under these circumstances. On the other hand, granting the instant request will enable Verizon to transition its customers from its tariffed offerings to private carriage on a flexible schedule in a manner that responds to the individual concerns of each customer — unhindered by an artificial deadline imposed by outmoded and inapplicable regulation.

The New Jersey DRC also makes a series of arguments – all without merit – addressing the propriety of granting a waiver for the slower speed VADI services that were not subject to Verizon's broadband forbearance relief. First, the New Jersey DRC asserts, without support, that relief for the lower speed VADI services "requires a rulemaking and may not be done through a waiver." *DRC Comments* at 3-4. That suggestion, however, is belied by the fact that the Bureau has repeatedly granted waivers of the price cap rules for precisely these services since 2001. In

fact, the Bureau recognized just last year that these services in particular remained subject to "open questions" concerning their ultimate regulatory status and that a waiver remained appropriate. *See 2006 VADI Waiver* ¶ 10. Nothing inherent in the nature of these services justifies a departure from the Bureaus' prior approach to these services.

Next, the New Jersey DRC complains about extending the waiver for the slower speed VADI services given the length of time that the various proceedings that could have a bearing on the regulatory status these services have been pending. *DRC Comments* at 4. The fact remains that the Commission continues to pursue a path of lessening regulation of broadband services and is actively considering further steps in that direction. For example, when the Commission concluded that wireline Internet access services may be regulated as Title I information services and that wholesale broadband transmission services sold as inputs to such services may be sold on a private carriage basis, it also expressly noted that the Commission is contemplating further changes to the regulatory environment for other broadband services, including possibly declaring those services non-dominant when offered by incumbent local exchange carriers. *See Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853, ¶ 9 n.24 (2005). And as Verizon explained in its petition, the *Dominant/Non-Dominant Proceeding* remains active,[4] and the Commission could well address the regulatory status of the lower speed VADI services in that proceeding. Accordingly, the rationale for the past price cap waivers remains valid today.[5]

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[4] Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, Notice of Proposed Rulemaking, 16 FCC Rcd 22745 (2001) ("*Dominant/Non-Dominant Proceeding*").

[5] The New Jersey DRC also alludes to the fact that other carriers have included similar advanced services in price caps. *DRC Comments* at 4. Notably, those carriers have not objected to Verizon's waiver petition. Moreover, as the Bureau has previously recognized, Verizon is not similarly situated to other carriers that never were required to provide these services through a

Finally, the New Jersey DRC makes a hodgepodge of arguments complaining about the current price caps – in particular arguing that the current separations freeze has distorted the price cap regime and may have produced unreasonable rates. This argument is irrelevant and, in any event, wrong.[6] The current separations freeze is unrelated to the relief requested in the petition for extension of the price cap waiver. Under the waiver, Verizon will continue to allocate costs jurisdictionally in accordance with the Commission's separations rules; there will be no greater or lesser allocation of costs to the intrastate jurisdiction. To the extent the New Jersey DRC has complaints about the separations review, they are more appropriately directed to the Commission's ongoing review of those rules.[7]

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separate affiliate because such carriers did not have to undergo the substantial work associated with integrating these services into price caps. *See 2006 VADI Waiver* ¶ 11.

[6] The New Jersey DRC's argument is also puzzling: it asserts that the existing price caps are seriously flawed (and presumably, in its view, too high), yet it wants to subsume additional services within the price cap framework.

[7] *See Jurisdictional Separations and Referral to the Federal-State Joint Board*, Docket No. 80-286. Also, Verizon already has refuted the New Jersey DRC's claim that the separations freeze may have resulted in excessive intrastate rates and has shown that those rates are competitively disciplined. *See* Reply of Verizon, WC Docket No. 05-342, filed Feb. 13, 2006, at 2-3 & 3 n.4.

Conclusion

For the foregoing reasons, and those stated in its petition, the Commission should permit Verizon to exclude the VADI broadband services from the price cap indexes in all future annual access tariff filings, and should grant a waiver for all other VADI services until such time as their final regulatory status is settled.

Respectfully submitted,

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