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November 8, 2007

VIA ELECTRONIC FILING (ECFS)

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 04-440, *Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160 (c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*

WC Docket No. 06-125, *Petitions of AT&T Inc., BellSouth Corporation and Qwest for Forbearance Under 47 U.S.C. § 160 (c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*

WC Docket No. 05-25, RM, *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers*

RM-10593, *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*

Dear Ms. Dortch:

Covad Communications Group and XO Communications, LLC, through counsel, submit for inclusion in the above-referenced dockets the attached filings of the United States Department of Defense and all other Federal Executive Agencies ("DOD/FEA"), in proceedings before the New York State Public Service Commission and the Virginia State Corporation Commission.[1] These submissions by DOD/FEA, a major consumer of telecommunications

[1] Attachment A: *Tariff Filing of Verizon New York to Implement Pricing Flexibility for Non-Basic Services*, N.Y. Pub. Serv. Comm'n, Case No. 06-C-0897, Initial Comments of

services throughout the Verizon Telephone Companies' ("Verizon") incumbent service territory, unequivocally confirm that the Verizon continues to enjoy significant market power in the enterprise customer markets and that competition is not sufficient to justify a nationwide grant of forbearance from Title II and the Commission's *Computer Inquiry* rules for any of Verizon's enterprise broadband service offerings, or to support further deregulation of Verizon's pricing of other special access services.

Specifically, in these filings, the United States government demonstrates that its own experience as a major enterprise customer of telecommunications services is that Verizon retains substantial market power in business customer markets, that competition is not yet sufficient to restrain Verizon's exercise of market power, and that Verizon is increasing prices and reducing service quality as a result.[2] The U.S. government also maintains at the state level that additional

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the United States Department of Defense and All Other Federal Executive Agencies (filed Oct. 22, 2007) ("NY Comments"); Attachment B: *Application of Verizon Virginia Inc. and Verizon South Inc. for a Determination that Retail Services Are Competitive and Deregulating and Detariffing of the Same*, Virginia State Corp. Comm'n, Case No. PUC-2007-00008, Post-Hearing Brief of the United States Department of Defense and All Other Federal Executive Agencies (filed Sept. 14, 2007) ("VA Brief").

2 *E.g.,* NY Comments at 3 ("...Enterprise users such as federal agencies need more competition for retail services...there are several indications that actual competition is inadequate."), 3 ("...competition has not been sufficient to limit Verizon's pricing power....Verizon has been increasing its rates...."), 3 ("If there were strong competition, as Verizon contends, the company would not be increasing its prices...."), 3 ("...the quality of Verizon's services has been deficient. If there were strong competition, as Verizon asserts, the company would be forced to maintain high quality services so that customers do not switch...."), 4 ("...intermodal competition often has a number of major shortcomings, especially for business users"), 7 ("Verizon's recent actions to increase charges for services to its business users, particularly in the New York City area where competition should be the most intense, show that the company still has a great deal of market power throughout its service area."), 8 ("...there is not much wireline competition as federal agencies would like in order to help control telecommunications prices"), 8 ("By any reasonable standard, [Verizon] has great market power."), 8 ("...wireline competition has not been increasing. Indeed, for the first half of 2006, there was a decline in the amount of competition in New York State...."), 9 ("...it is unlikely that wireline competition will increase much in the near future....mergers have eliminated alternative suppliers of telecommunications services."), 10 ("Deficiencies in the quality of Verizon's services in New York State also show that competition has been inadequate."), 13 ("...for the vast majority of business subscribers in the state of New York, intermodal telecommunications services do not represent a viable substitute for the traditional landline offerings of the incumbent...and...do nothing to diminish or constrain the market power of [Verizon]."), 14 ("...services offered by cable companies are often not a significant part of the competitive marketplace for business and government users.").

regulatory flexibility for Verizon will only exacerbate these problems.[3] Given that the U.S. government, acting as a consumer, has experienced first-hand the failure of market forces to discipline Verizon's pricing and service quality, it is hard to fathom how the Commission could compound the problem through further deregulation of Verizon's broadband services, and other special access services that are essential to carriers and enterprise end users, including the U.S. government.

The attached filings demonstrate that DOD/FEA has reached the same conclusion reached by virtually every participant in the instant proceedings other than Verizon; *i.e.*, that actual competition within the markets for retail and wholesale enterprise telecommunications services is not sufficient to limit Verizon's pricing power. DOD/FEA details Verizon's recent actions to increase rates to business customers, and concludes that such actions demonstrate Verizon's substantial market power throughout its service area.[4] DOD/FEA also points out that wireline competition has been *decreasing* in New York State and is unlikely to increase much (if at all) in the near future.[5] DOD/FEA similarly reports that in Virginia, Verizon has increased rates for residential services, generally by the full amount permitted under the cap for the current regulatory plan, and concludes that such rate increases occurred because "Verizon saw the opportunity to obtain increased revenue, and in its view the market forces were not great enough to prevent that outcome."[6]

In its filings, DOD/FEA also note deficiencies in Verizon's service quality as reported by large and small business users, and conclude that "[d]eficiencies in the quality of Verizon's services . . . also show that competition has been inadequate."[7] DOD/FEA maintains that Verizon is allowing its physical plant to deteriorate needlessly, and that this deterioration harms consumers, and, importantly, restrains competition.[8] For this additional reason, DOD/FEA concludes that competition is not ready to substitute for continuing the current level of regulation of Verizon's services.[9]

Moreover, despite repeated claims by Verizon that sufficient competition from intermodal service providers exists to warrant forbearance from federal regulation of its broadband services, and substantial modifications to the Commission's rules for the pricing of

3 *Id.*, at 9-10.

4 *Id.*, at 7.

5 *Id.*, at 8-9.

6 VA Brief, at 9.

7 NY Comments, at 10.

8 VA Brief, at 19.

9 *Id.*, at 21.

other special access services, the DOD/FEA filings confirm that the services offered today by wireless, cable, and Voice Over Internet Protocol ("VoIP") providers are not adequate substitutes for the local services provided by Verizon. DOD/FEA states that those services do not meet the needs of federal agencies, large businesses, or other enterprise users, and they do not diminish or constrain Verizon's persistent market dominance.[10]

The Commission ought to take notice both of DOD/FEA's first-hand experience with the failure of competitive forces alone to control Verizon's market power, and the DOD/FEA's advocacy at the state level that additional regulatory flexibility for Verizon would be premature. It would be strange indeed for the Commission to forbear from critical regulatory requirements or grant additional special access pricing flexibility at the federal level while, at the same time, the U.S. government as a consumer is urging state regulators to not grant similar regulatory relief at this time.

Respectfully submitted,

John Heitmann

John J. Heitmann
Brett Heather Freedson

Counsel to Covad Communications Group and XO Communications, LLC

Attachments

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[10] NY Comments, at 12-15; VA Brief, at 12-17.

ATTACHMENT A

BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Tariff Filing of Verizon New York to Implement Pricing Flexibility for Non–Basic Services	Case No. 06–C–0897

INITIAL COMMENTS

of

THE UNITED STATES DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES

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Filing Date: October 22, 2007

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BEFORE THE

STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

Tariff Filing of Verizon New York to Implement Pricing Flexibility for Non–Basic Services	Case No. 06–C–0897

INITIAL COMMENTS

of

THE UNITED STATES DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES

I. INTRODUCTION

On May 21, 2007, Verizon New York Inc. ("Verizon") filed tariff amendments with the Public Service Commission ("Commission") to implement "limited" pricing flexibility for most business telecommunications services in New York.[1] The company seeks to take "at least preliminary steps towards the greater regulatory flexibility enjoyed by its competitors in the market for retail business services.[2]

On September 14, 2007, Verizon made a "Supplemental Fling in Support of Increased Pricing Flexibility for Business Services."[3] In that filing, the company offered additional comments on its assessment of competition in this state.

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1 Verizon Tariff Filing to Implement Limited Pricing Flexibility for Retail Business Services, May 21, 2007 ("Initial Filing").

2 *Id.*, Attachment 1: Description and Justification, p. 2.

3 Supplemental Filing of Verizon New York in Support of Increased Pricing Flexibility for Retail Business Services, September 14, 2007.

On September 26, 2007, the Commission issued a "Notice Soliciting Comments" from all parties with interests in telecommunications services.[4] In the Notice, the Commission invited Initial Comments and Reply Comments on Verizon's filings.

The United States Department of Defense and All Other Federal Executive Agencies ("DOD/FEA") is a major consumer of telecommunications services. DOD/FEA provides these Initial Comments on Verizon's proposals from its perspective as a large and diverse business user of services provided by Verizon and other telecommunications carriers in New York.

II. DOD/FEA URGES THE COMMISSION TO REJECT VERIZON'S REQUEST FOR GREATER PRICING FLEXIBILITY IN NEW YORK.

Contrary to Verizon's claims, the company's request is not a "preliminary" or "limited" step. Indeed, the company is seeking great more pricing flexibility. Furthermore, there is no evidence that the company's proposals will help more competition to develop, or help to reduce the costs for telecommunications services, or provide any other tangible benefits to consumers in New York.

Verizon seeks pricing flexibility for all retail business services with the exception of Public Access Lines with specific rates set by the Commission on June 30, 2006.[5] The company could implement price changes for all other retail business services, without approval by the Commission, on one–day's notice.[6] Moreover, the company's charges for any individual rate element, except message rate access lines ("1MB service") could be increased up to 25 percent in any year.[7] Rate increases for 1MB

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4 Notice Soliciting Comments, September 26, 2007.

5 Initial Filing, Description and Justification, p. 2.

6 *Id.*

7 *Id.*

service would be limited to 10 percent annually.[8] In addition, Verizon requests "no substantive restrictions" on downward pricing flexibility.[9]

As a consumer in New York, DOD/FEA urges the Commission to deny Verizon's request to sharply reduce surveillance of retail services until it becomes clear that this step will increase competition for telecommunications services in New York State. As explained in these Initial Comments, Enterprise users such as federal agencies need more competition for retail services. Verizon focuses on the availability of alternative services.[10] However, there are several indications that actual competition is inadequate.

In the first place, competition has not been sufficient to limit Verizon's pricing power. As explained in these Initial Comments, Verizon has been increasing its rates and charges for telecommunications services. If there were strong competition, as Verizon contends, the company would not be increasing its prices, but would be forced to reduce them to meet the efforts of its competitors.

Moreover, there is evidence that the quality of Verizon's services has been deficient. If there were strong competition, as Verizon asserts, the company would be forced to maintain high quality services so that customers do not switch to competitors.

Verizon explains that much of the competition in New York State is by firms relying primarily on alternative platforms. Verizon describes "available" competition by wireless networks, broadband networks and application-based Voice over Internet Protocol ("VoIP") services, satellite service providers, and cable company networks.[11]

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8 *Id.*

9 *Id.*

10 Supplemental Filing of Verizon New York in Support of Increased Pricing Flexibility for Retail Business Services, pp. 13–15.

11 *Id.*, pp. 9–28.

However, as DOD/FEA explains in these Initial Comments, intermodal competition often has a number of major shortcomings, especially for business users.

III. AS ENTERPRISE CUSTOMERS, FEDERAL AGENCIES HAVE A VITAL INTEREST IN DEVELOPING MORE COMPETITION FOR TELECOMMUNICATIONS SERVICES.

A. Consumers who obtain telecommunications services through contracts are concerned with the rates, terms and conditions for retail services.

Federal agencies are required to procure telecommunications through competitive bidding procedures whenever possible. The use of competitive procurement procedures, which are designed to ensure that agencies receive the best possible services at the lowest possible costs, gives DOD/FEA a major stake in the outcome of this case.

First, this case is focused on the level of <u>competition</u> among providers of telecommunications services in New York State. More competition is critical to contract users, because the competitive bidding process works best, resulting in lower prices and better services, if there are more potential competitors. A competitive procurement process does not achieve its objectives if there if only one firm in the market.

Second, users who procure services through contracts are concerned with the <u>retail prices</u> for services obtained one–by–one or in small quantities. At least implicitly, retail rates set a floor for contract rates. Basically, in return for procuring a larger quantity, procuring for a longer term, or meeting other conditions, the contract user usually gets a lower price. Indeed, contract prices are often compared informally with "tariff rates" as a measure of the savings achieved through the contracting process. Consequently, all else being equal, reductions in retail rates will result in reductions in contract prices over time. Conversely, increases in retail rates will result in increases in contract prices. Thus, federal agencies obtaining telecommunications through contracts have a financial interest in the prices for services provided at minimum volumes throughout the state.

Third, this case concerns the quality of telecommunications services in New York. Service quality is not only a localized concern. A business user with a contract to obtain a volume of service at a given location may have leverage over the quality of service at that location or other locations covered by the contract. However, there are two ends to any call. A business user makes calls to and receives calls from business residential users who are not under contract, many of whom are receiving telecommunications from Verizon. The quality of the services rendered at these off-net points has a direct impact on the quality of communications for the contract user.

Moreover, Federal Executive Agencies have many requirements for a wide variety of voice and data communications with individuals and commercial organizations, as well as state and local government agencies, in order to perform their missions and meet their responsibilities to the public. Thus, federal agencies have a direct interest in all aspects of the quality of services provided by Verizon throughout its entire network.

B. Federal agencies have telecommunications requirements at a variety of locations throughout New York State.

Federal offices and facilities are situated at many types of locations in New York State. Periodically, the Office of Personnel Management ("OPM") tabulates data on employment at federal facilities, by county, throughout the U.S. The most recent publication was for December 2002.[12] According to that OPM report, total federal civilian employment in New York State was about 139,400 persons, including more than

12 U.S. Office of Personnel Management, "Federal Employment Statistics – December 31, 2002", available at <www.opm.gov/feddata>

11,900 employees of DOD.[13] Also, in addition to civilian employees, there were a substantial number of uniformed personnel at military installations in the state.

Federal employees were located in nearly every county. New York County had the largest number — more than 31,000 persons. The five counties comprising New York City had about 63,500 federal civilian employees, which is just under half of the statewide total.

Moreover, many federal offices and facilities are located outside of metropolitan areas. The Department of Agriculture, the Department of Health and Human Services, the Social Security Administration, and the Department of Veterans Affairs are examples of Federal Executive Agencies that have frequent contact with members of the "public" and therefore often locate facilities in smaller communities within and outside of the principal business areas.

For example, the OPM Report shows that the Department of Health and Human Services had 35 employees in Albany County and 12 employees in Westchester County, while the Social Security Administration had 26 employees in Rockland County and 35 in Orange County.[14] Also, some DOD installations such as recruiting offices for the various armed forces are frequently located far from major office buildings.

From DOD/FEA's experience, competition has lagged outside of major business centers, but federal agencies need more competition for highly reliable services at all types of locations in New York State. Therefore, DOD/FEA urges the Commission to ensure that there is ample competition throughout Verizon's entire service area in New York State before approving any request for statewide pricing flexibility for the company's retail services.

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13 *Id.*, Statistics from Table 5; Federal Civilian Employment in the U.S. by State, County and Selected Agency.

14 *Id.*

IV. VERIZON'S PRICING POLICIES PROVIDE EVIDENCE OF THE COMPANY'S SUBSTANTIAL MARKET POWER.

A. Verizon's request for great pricing flexibility is not consistent with its claims concerning competition in New York.

Market power is the ability of a firm to change the market prices of its goods or services. A firm with substantial market power can raise prices without losing its customers to competitors. Verizon's recent actions to increase charges for services to its business users, particularly users in the New York City area where competition should be the most intense, show that the company still has a great deal of market power throughout its service area.

Verizon's Corporate Rewards Program is an optional calling plan designed for Enterprise customers.[15] The plan provides discounts depending on the customer's aggregate monthly local and toll usage. The Corporate Rewards Program in available throughout New York State, but Verizon indicates that the majority of the customers for this plan are located in the New York Metropolitan Local Transport Area.[16]

On January 5, 2007, Verizon filed tariff revisions to reduce the discounts associated with the local and toll rates in the Corporate Rewards Program, resulting in a rate increase for participants.[17] The tariff was allowed to go into effect by operation of law on February 19, 2007.[18]

With this backdrop of rate increases, Verizon is seeking even greater pricing flexibility. The company seeks authority to increase the recurring and/or non–recurring charges for nearly all business services by 25 percent in a 12–month period. DOD/FEA submits that 25 percent is a substantial increase for nearly any user. Moreover, a

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15 Case No. 07–C–0030, Order Issued and Effective February 28, 2007, p. 1.

16 *Id.*, pp. 1–2.

17 *Id.*, p. 1.

18 *Id.*

request for this level of upward pricing flexibility is totally at odds with the company's assertions that competition is "vigorous, pervasive and permanently entrenched."[19]

B. Wireline competition has been declining in New York State.

The focus of this Commission proceeding is on wireline telecommunications competition because Verizon's proposals concern the company's wireline services in New York. Unfortunately, however, there is not as much wireline competition as federal agencies would like in order to help control telecommunications prices.

The Wireline Competition Bureau of the Federal Communications Commission ("FCC") publishes a semi-annual report showing the extent of wireline competition in each jurisdiction. The FCC's most recent "Local Telephone Competition Report," shows that competitive LECs had a total share of 27 percent of the market in New York State as of June 30, 2006.[20] Twenty-seven percent may appear to be a great deal of competition, particularly when compared with the fact that competition was virtually zero a little more than a decade ago. However, even a 27 percent share means that the market leader is serving more than two times as many lines as all of its competitors in total — not two times as many as its largest competitor, but two times as many as all competitors combined. By any reasonable standard, the incumbent has great market power.[21]

Moreover, wireline competition has not been increasing. Indeed, for the first half of 2006, there was a decline in the amount of competition in New York State, because

19 Initial Filing, Description and Justification, p. 2.

20 Federal Communications Commission, Industry Analysis and Technology Division, *Local Telephone Competition as of June 30, 2006*, Table 7.

21 *Id.*

the prior "Local Telephone Competition" report shows that on December 31, 2005, the competitive LECs' total share in New York was 31 percent.[22]

Also, it is unlikely that wireline competition will increase much in the near future. There are two important reasons for the lack of growth. First, mergers have eliminated alternative suppliers of telecommunications services. For example, Verizon was permitted to combine with GTE, and later MCI. Until recently, MCI was an active competitor to the incumbent Verizon. However, MCI is now missing from New York as a competitive LEC.

Another important reason for the lack of robust competition is the elimination of the Unbundled Network Element Platform ("UNE-P"). The figures in the FCC's Local Competition Report include competition through all three modes identified in the *Telecommunications Act of 1996.*[23] Specifically, the competitors' share includes activities: 1) by offering services with their own facilities; 2) through resale of incumbent LECs' services; and 3) by using unbundled network elements ("UNEs"). Among these three modes, UNEs have been the most often used, and the prospects for this mode of competition are dim. UNE–Ps had been used by competitors for a large part of their service to end users, but court and FCC decisions have resulted in eliminating the availability of UNE–P rates to competitors.

Moreover, Verizon's plan to grant the company virtually unlimited downward pricing flexibility will not improve the competitive environment. Verizon should certainly be encouraged to reduce prices in order to meet the prices offered by its competitors, because this action will also benefit consumers. However, Verizon should not be

22 Comments of DOD/FEA, June 7, 2007, p. 7, citing Federal Communications Commission, Industry Analysis and Technology Division, *Local Telephone Competition as of December 31, 2005,* Table 7.

23 Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56, codified at 47 U.S.C. § 151 *et seq.* ("*Telecommunications Act of 1996*").

permitted to set prices below its own incremental costs. Such "predatory" actions to drive away competitors will not benefit consumers, but simply increase Verizon's market power by further eliminating competitive options.

V. DEFICIENCIES IN VERIZON'S SERVICE QUALITY ALSO SHOW THE NEED TO MAINTAIN REGULATORY SURVEILLANCE.

A. ARMIS surveys show dissatisfaction among large and small business users.

Deficiencies in the quality of Verizon's services in New York State also show that competition has been inadequate. Reports to the FCC indicate dissatisfaction among end users, and frequent trouble reports demonstrate the need to maintain close regulatory surveillance of the company's activities.

The FCC initiated the Automated Reporting Management Information System ("ARMIS") in 1987 to collect data from carriers providing local telephone services throughout the U.S. All local carriers with annual revenues exceeding an established threshold that are under mandatory price cap regulation or make a non–revocable election to be under price cap regulation are required to file ARMIS reports with the FCC.

One of the ARMIS reports, the Customer Satisfaction Survey (ARMIS Report 43–06), displays the percentage of customers who are not satisfied with the company's services. Carriers must separately query customers regarding their "dissatisfaction" with installation activities, repair activities, and their contacts with the company's business offices.

Verizon submits separate Customer Satisfaction Survey results for each of the states where it provides local services as the incumbent LEC. For most jurisdictions, including New York, results are reported separately for large business customers, small business customers, and residence customers. Verizon's 2006 Customer Satisfaction Survey for New York State had the following results.[24]

- Installation Activities: 32.41 percent of large business users, and 9.90 percent of small business users were dissatisfied.
- Repair Activities: 17.59 percent of large business users, and 12.44 percent of small business users were dissatisfied.
- Business Office Contacts: 41.05 percent of large business users, and 6.79 percent of small business users were dissatisfied.

These high percentages of dissatisfied customers, particularly large business users, are a strong reason to deny the company's request for increased pricing flexibility for retail business services.

B. Another ARMIS report shows shortcomings in Verizon's service quality.

Another ARMIS report, the Service Quality Report (ARMIS Report 43–05), displays data concerning the quality of local services provided by carriers. Verizon submits this report annually, displaying services for each state where it provides local services as the incumbent LEC.

Measures in the ARMIS Service Quality Report include the number of Initial Trouble Reports and the Number of Repeat Reports for local service. For 2006, Verizon noted 360,113 Initial Trouble Reports and 73,057 Repeat Trouble Reports for its 3,061,117 Business Access Lines in New York State.[25] This equates to 14.15 reports per 100 business lines. The New York malfunction rate is high. As one basis of comparison, for the same year, Verizon's ARMIS report shows 17,726 Initial and Report Trouble reports for the company's 651,356 Business Access Lines in the District of

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24 <http://fjallfoss.fcc.gov/eafs7/paper/43-06/PaperReport06.cfm>.

25 <http://fjallfoss.fcc.gov/eafs7/paper/43-05/PaperReport05.cfm>.

Columbia.[26] The District of Columbia rate is 2.72 reports per 100 business lines, less than 20 percent of the New York rate.

Verizon's Service Quality Report also tabulates the number of formal complaints regarding jurisdictional services to business and residence customers. Possibly as a result of performance shortcomings such as those cited above, Verizon's operations in New York also fared badly on the basis of formal complaints in 2006. The ARMIS report shows that for 2006, there were 72 complaints by business users and 308 complaints by residence users concerning Verizon New York services.[27] This is an increase from 68 complaints by business users and 245 complaints by residence users during the previous year.[28]

VI. DESPITE VERIZON'S CLAIMS, MOST BUSINESS USERS CANNOT SUBSTITUTE OTHER TECHNOLOGIES FOR CONVENTIONAL WIRELINE SERVICES.

A. Intermodal alternatives are not a substitute for most business users.

Wireline competition has been constrained by mergers and by changes in the rules regarding the UNE–P. Consequently, much of the "new" competition is by firms using alternative platforms. However, when looking at intermodal competition, it is important to distinguish between services to residential users and services to business users. Unfortunately, business users often do not benefit as much as residential users from intermodal competition.

The Initial Comments of Conversent Communications of New York in Case No. 05–0616, presented a study by Economics and Technology, Inc. ("ETI") examining

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26 *Id.*

27 *Id.*

28 *Id.*

whether Intermodal competition can be considered a substitute by small and medium–sized business customers for wireline service by incumbent LECs.[29] In the initial paragraph of the Executive Summary, the ETI Report states, "Contrary to popular opinion, for the vast majority of business subscribers in the state of New York, Intermodal telecommunications services do not represent a viable *substitute* for the traditional landline offerings of the incumbent local exchange carriers and, as such, do nothing to diminish or to constrain the market power of the incumbent provider (which in most cases, is Verizon)."[30] DOD/FEA concurs with this statement.

B Wireless is often not suitable for business applications.

Verizon contends that networks providing mobile wireless coverage are available ubiquitously throughout the State.[31] However, mobile wireless is not replacing wireline for business users. Certainly, a large percentage of businesses in New York use wireless services. However, the percentage of businesses and government agencies that have "cut the cord" and abandoned wireline service is *de minimus*. Although people working in some occupations, such as sales, installation and maintenance, make extensive use of cell phones, most business users of any size require one or more wireline connections at their "home base."

Indeed, a wireline phone is regarded as essential for a place of work. Lack of directory listings which give information to customers and others, E911 service location differences, and "dead zones" with unreliable or low quality connections are among the factors that make wireless a "complement" instead of a "substitute" for wireline services

29 Case No. 05–C–0616, Initial Comments of Conversent Communications of New York, LLC, August 12, 2005, Exhibit A entitled "Hold the Phone: Debunking the Myth of Inter–Model Alternatives for Business Telecom Users in New York," published by Economics and Technology, Inc., Boston, Massachusetts, August 2005 ("ETI Report").

30 ETI Report, p. ii (emphasis in original).

31 Supplemental Filing of Verizon New York in Support of Increased Pricing Flexibility for Retail Business Services, p. 9.

needed by many business consumers. Moreover, for some business consumers such as federal agencies, reduced security because of the ability of other parties to monitor wireless transmissions is also an important consideration.

In addition, Verizon is largely competing with itself with respect to the cell phone market. Verizon Wireless is one of largest providers in the U.S. The market share of this company should to be particularly high in states such as New York where Verizon is the predominant wireline provider.

C. Cable services are primarily targeted to residential consumers.

Verizon states that "cable companies advertise themselves as being able to meet the needs of all segments of the business market."[32] However, services offered by cable companies are often not a significant part of the competitive marketplace for business and government users. Since cable companies have been providing entertainment services to families over the years, cable companies are better positioned to market telecom services to <u>residential</u> users through sales promotions. For example, cable companies often employ the "Triple Play" strategy of Entertainment, High-Speed Internet Access, and Digital Telephony as a combined service offering at a package price.

A user who does not want all of the elements of a package is paying for unneeded services. For example, many businesses and government agencies do not want to have commercial "television" in their facilities because of potential distractions to employees. Thus, packages with this component are not as attractive to business consumers.

Moreover, cable telephony has additional shortcomings for businesses. For example, as with wireless, there are no directory listings. Also, cable services, unlike

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32 *Id.*, p. 15.

traditional wireline telephone services, are disabled by localized power outages, making cable a questionable choice for businesses and government agencies that must have the highest possible availability.

D. VoIP also has shortcomings for many business users.

Similarly, "over-the-top" VoIP services have a number of shortcomings that many business users must consider. Deficiencies include lack of directory listings and susceptibility to localized electric power outages. Also, use of VoIP may depend on the operational status of the subscriber's computer, or in the case of a larger business customer, the subscriber's computer network. If there are "computer problems," VoIP service may be curtailed for a long time while the problems are addressed.

Moreover, if VoIP access is required at multiple locations, the business user would need to acquire multiple dedicated broadband connections, which would typically involve charges for each access point of two or three hundred dollars a month or more, depending on the distance between the user's location and the serving telephone company central office. Thus, VoIP is rarely a substitute for wireline telephone service for businesses, even if it were equivalent in functionality.

VII. CONCLUSION

WHEREFORE, the premises considered, the U.S. Department of Defense and All Other Federal Executive Agencies urge the Commission to adopt the recommendations in these Initial Comments.

Respectfully submitted,

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The U.S. Department Of Defense
and
All Other Federal Executive Agencies

Filing Date: October 22, 2007

ATTACHMENT B

BEFORE THE
COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION OF VERIZON VIRGINIA INC. AND VERIZON SOUTH INC. For a Determination that Retail Services are Competitive and Deregulating and Detariffing of the Same	Case No. PUC–2007–00008

POST–HEARING BRIEF

of

THE UNITED STATES DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES

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by

PETER Q. NYCE, JR.
General Attorney

September 14, 2007

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STATE CORPORATION COMMISSION

APPLICATION OF VERIZON VIRGINIA INC. AND VERIZON SOUTH INC. For a Determination that Retail Services are Competitive and Deregulating and Detariffing of the Same	Case No. PUC–2007–00008

POST–HEARING BRIEF
of
THE UNITED STATES DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES

I. INTRODUCTION

The United States Department of Defense and All Other Federal Executive Agencies ("DOD/FEA") participated throughout this proceeding to address an Application and testimony filed by Verizon Virginia, Inc. and Verizon South, Inc. ("Verizon") on January 17, 2007. In its Application and testimony, Verizon asked the Commission to find that nearly all of its retail services are "Competitive."[1] The company also requested that the Commission "deregulate" and "detariff" all of these Competitive services. The only services for which Verizon does not seek a "Competitive" classification are switched access, special access, E–911, and Lifeline services.[2]

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1 Order for Notice and Hearing, February 7, 2007, p. 1.

2 *Id.*

Verizon acknowledges that Virginia statutes do not define "deregulation."[3] However, Verizon states that it is basically asking the Commission to exempt services from any Alternative Regulation Plan.[4] Once so "deregulated", the services would be subject only to the safeguards that "the Commission deems necessary to protect consumers and competitive markets."[5]

According to Verizon, the necessary safeguards are few. The company contends that adequate surveillance would be provided by the Commission's complaint process, the Commission's dispute resolution process, federal rules regarding interconnection, and the company's Carrier–to–Carrier Guidelines and Performance Assurance Plan.[6] The only additional constraints that Verizon would continue are to tariff Lifeline and E–911 services, to keep the existing Service Quality Rules in effect, to mirror the cross–subsidy filing requirement that the Commission has imposed on competitive LECs, and to cap increases for residential dialtone with unlimited usage to no more than one dollar per year for three years.[7]

Verizon's proposals to virtually eliminate regulatory surveillance are a vital concern to DOD/FEA as a major user of telecommunications services provided by this carrier and other carriers in Virginia. Consequently, DOD/FEA pre–filed the direct testimony of its expert witness to provide conclusions and recommendations concerning Verizon's proposals.[8]

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3 Verizon Application, January 17, 2007, ("Exhibit No. 2"), p. 18.

4 *Id.*, p. 19.

5 *Id.*

6 *Id.*, pp. 20–21.

7 *Id.*

8 Direct Testimony of Harry Gildea, June 1, 2007, ("Exhibit No. 112").

II. DOD/FEA URGES THE COMMISSION TO REJECT VERIZON'S PROPOSALS.

In his direct testimony, DOD/FEA's witness recommended that the Commission reject Verizon's proposals for a number of reasons.[9] A primary reason for rejecting the proposals is that competition has been insufficient to constrain Verizon's prices. DOD/FEA's witness stated that in the past year and a half the company has applied to the Commission to change and restructure the rates and charges for many services offered by Verizon Virginia and Verizon South.[10] Verizon's recent rate proposals concerned message charges, measured charges, charges for directory assistance calls, and other charges.[11] DOD/FEA's witness explained that if there were a great deal of effective competition, as Verizon contends, the company would not be seeking to increase its rates, but would be forced to reduce them to match the charges for other carriers' offerings.[12]

DOD/FEA's witness also explained that in a number of instances, Verizon's pre-filed testimony exaggerates the extent of competition, focusing on competitive options which may or may not be suitable for end users.[13] He explained that much of the "new competition" is intermodal.[14] However, much of the intermodal service (such as wireless) is a complement rather than a substitute for wireline, and some of the intermodal service (such as Voice over Internet Protocol) is useful for certain users but not others.[15] Clearly, the extent of competition varies by location, by service, and by the size and nature of an end user's requirements, but whatever the level of competition

9 *Id*, p. 3.

10 *Id.*, p. 16.

11 *Id.*

12 *Id.*, p. 17.

13 *Id.*, pp. 9–10.

14 *Id.*, pp. 13–15.

15 *Id.*

that Verizon has experienced, the competition has not been sufficient to control the prices for the company's services.

Finally, DOD/FEA's witness explained that another reason for rejecting Verizon's Application is that the steps Verizon is proposing will not increase the amount of competition in Virginia.[16] The witness noted that in April 2007, two of Verizon's competitors filed Comments with the Commission concerning Verizon's Application.[17] Both of these companies noted that Verizon was taking steps to diminish competition. This is a very disappointing observation from the perspective of DOD/FEA, a Virginia consumer interested in increasing the extent of competition for services provided by all carriers to all types of users in the Commonwealth.

III. AS ENTERPRISE CUSTOMERS, FEDERAL AGENCIES HAVE A SIGNIFICANT STAKE IN THE OUTCOME OF THIS CASE.

A. Consumers who obtain telecommunications services through contracts are vitally concerned with the rates, terms and conditions for retail services.

Based on its discovery and the cross–examination of DOD/FEA's witness, Verizon's focus in this case has been more on DOD/FEA's business interests in this proceeding, rather than the substantive content of DOD/FEA's testimony. For example, Verizon's first step with respect to DOD/FEA in this proceeding was to propound a "First Set of Interrogatories to the Department of the Army" on April 19, 2007.

The "First Set of Interrogatories to the Department of the Army" consisted of 10 questions, VZ–ARMY–1 though VZ–ARMY–10, all dealing with competitive bids by the Army and the Army's competitive procurement process. Verizon later filed a "Second Set of Interrogatories to the Department of the Army" dealing with DOD/FEA's testimony. Then, on July 6, 2007, Verizon apparently came to the conclusion that

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16 *Id.*, pp. 18–21.

17 *Id.*, pp. 18–19.

DOD/FEA's participation in this case extended well beyond the Army, and accordingly filed its "First Set of Interrogatories to the Department of Defense and All Other Federal Executive Agencies" and a "Third Set of Interrogates to the Department of the Army". The "First Set of Interrogatories to the Department of Defense and All Other Federal Executive Agencies" consisted of 10 questions similar to those in the initial set to the Army, but focusing on the bidding process for the Department of Defense and the federal civilian agencies more broadly.

During its examination of DOD/FEA's witness at the evidentiary hearings on July 26, 2007, Verizon focused on the federal government's use of contracts for services obtained through a competitive bidding process. For example, Verizon introduced Exhibit Nos. 113, 114, 115, 116, 117 and 119, all dealing with the Army's competitive procurements at installations such as Fort Lee, Fort Monroe, Fort Eustis, and Fort Storey in Virginia. Also, Verizon introduced Exhibit No. 122, dealing with the recent nationwide procurement by the U.S. General Services Administration for telecommunications services to replace expiring Federal Telecommunications Service contracts and certain federal wireless contracts for services throughout the nation. Additionally, Verizon introduced Exhibit No. 121 concerning a procurement by the U.S Social Security Administration in a "Telephone System Replacement Project" for that agency.

DOD/FEA acknowledges that federal agencies procure telecommunications services, particularly services for larger quantities at major installations, through contracts obtained with competitive bids whenever possible. However, any claim that this procedure detracts from DOD/FEA's interest in this case could not be farther from the truth.

In the first place, this case is about <u>increasing competition</u>. More competition is critical to contract users, because the bidding process works best, resulting in lower

VIII. CONCLUSION

WHEREFORE, the premises considered, the U.S. Department of Defense and All Other Federal Executive Agencies urge the Commission to adopt the recommendations in this Reply Brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Post-Hearing Brief on behalf of the consumer interest of the United States Department of Defense and All Other Federal Executive Agencies and transmittal letter was sent to the parties on the attached service list by first class mail, postage prepaid, on September 13, 2007.

Dated at Arlington, VA on this 13th day of September, 2007.

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