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June 18, 2009

**EX PARTE**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25**

Dear Ms. Dortch:

On June 17, 2009, Edward Shakin, Frederick Moacdieh and the undersigned of Verizon met with Julie Veach, Donald Stockdale, Marcus Maher, and Randy Clarke to discuss the actions the Commission should take in the above-captioned proceeding.

Consistent with US Telecom's April 27, 2009 ex parte letter, Verizon explained that it would be appropriate for the Commission to close this proceeding based on ample evidence in the record demonstrating that there is extensive competition to provide high capacity services. Verizon also emphasized its support for the Commission to collect additional data from competitive providers of high capacity services, a position recently advocated by the International Brotherhood of Electrical Workers ("IBEW"),<sup>1</sup> in the event the Commission decides to take action short of closing this proceeding.

Consistent with US Telecom's letter, Verizon explained the importance of obtaining data from competitive providers concerning the location of high capacity transmission facilities that they own, lease or otherwise obtain from others and the geographic scope of their retail and wholesale high capacity service offerings. Specifically, Verizon stressed that the Commission require competitors to provide: 1) data or maps that show the location of all transmission facilities, whether wireline or wireless, that an entity or its affiliates owns, leases or otherwise obtains that are capable of providing high capacity transmission for their own use or for their retail or wholesale customers; 2) data or maps that show the number and geographic coordinates of all locations (*e.g.*, buildings, cell sites, etc.) that an entity or its affiliates serve using wireline or wireless high capacity transmission facilities that they own, lease or otherwise obtain; 3) data or maps that show the geographic areas where an entity or its affiliates currently offers retail or wholesale high capacity services, whether wireline or wireless, and information identifying the

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<sup>1</sup> See IBEW's May 28, 2009 ex parte letter.

nature and type of such services; 4) data or maps that show the geographic areas where an entity or its affiliates plans to offer retail or wholesale high capacity services, whether wireline or wireless, in the near future (*i.e.*, next 2 years) , and information identifying the nature and type of such services; and 5) data or maps that show cell site and Mobile Switching Center (MSC) locations that are connected by high capacity backhaul circuits, whether wireline or wireless, obtained from an entity or entities other than the incumbent LEC serving the area, including circuits obtained through self-provisioning.

Consistent with US Telecom's *ex parte*, Verizon stressed that the Commission use some mechanism to compel additional data from competitive providers that refuse to provide it voluntarily. As described below, Verizon also addressed the recent *ex parte* filed by the Computer & Communications Industry Association and others (the "Coalition") proposing their own list of data to be collected from ILECs and competitors. Verizon also agreed with others that a short notice and comment period could help the Commission ensure that the right questions are asked when it issues specific requests for additional data from competitive providers.

First, the Coalition suggests that special access prices be compared to unbundled network element rates. But these rates offer no basis of comparison to market rates. Unbundled network element rates –*i.e.*, TELRIC rates – have been challenged and found not to be competitive market rates. For example, the Ninth Circuit noted that "the *below-market* TELRIC prices are highly favorable to CLECs." *Qwest Corp. v. Arizona Corp. Comm'n*, 2009 U.S. App. LEXIS 12333, page 9 (9th Cir. June 8, 2009) (emphasis supplied). Likewise, the First Circuit held that Section 271 elements can be priced at "the potentially *higher* just and reasonable rates, in order to limit subsidization and to encourage investment by the competitors, [rather than] the *lower* TELRIC rates." *Verizon New England, Inc. v. Maine PUC*, 509 F.3d 1, 9 (2007) (emphasis supplied). The Commission itself has recognized that market rates are distinct from and higher than Section 251 TELRIC rates. *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 18 FCC Rcd 16978, ¶¶656-664 (2003) (finding that Section 271 elements can be priced at the rate at which [the BOC] . . . has entered into arms-length agreements with other, similarly situated purchasing carriers to provide the element").

Second, the Coalition suggests that the Commission collect ARMIS data concerning incumbent LECs' special access costs and compare such costs to special access prices. The availability of high capacity services from competitors is a better indicator of competition than any price/cost comparison. If the Commission obtains additional data concerning competition, there is no need to look at prices or earnings as a proxy for competition, making cost data unnecessary. So long as customers have the ability to obtain high capacity services from multiple providers, there is competition for high capacity services and the rates charged by those providers are, by definition, the product of competition.

Regardless, neither ARMIS nor any other data source has service-specific special access cost data. In a multi-product firm with large fixed costs, there is no direct correlation between

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costs and prices for individual services, and no meaningful way in which to allocate costs between services. On the contrary, any attempt to develop special access costs from existing cost data would require arbitrary allocations of shared network costs and provide no legitimate information for the Commission to evaluate. In fact, the Commission has already recognized that the data reported in ARMIS “do[] not serve a ratemaking purpose.” *Policy and Rules Concerning Rates for Dominant Carriers*, Order on Reconsideration, CC Docket 6 FCC Rcd 2637, ¶ 199 (1991). Moreover, the Commission has rejected the use of regulatory accounting data for determining rates of return for special access services, noting that “high or increasing rates of return calculated using regulatory cost assignments for special access services do not in themselves indicate the exercise of monopoly power.” *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers and AT&T Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, 20 FCC Rcd 1994, ¶ 129 (2005).

Finally, the Coalition suggests that company-specific data be made available only to Commission staff and Commission-contracted consultants. This proposal would deprive the Commission of the benefit from allowing the parties’ to conduct a meaningful review of company-specific data. For example, the parties could identify gaps in the data and provide explanations of apparent inconsistencies.

Moreover, such information could be protected, consistent with the Commission’s prior practice. The Commission issued a protective order in this proceeding on June 5, 2005, that is more than adequate to protect the confidentiality of competitively-sensitive data. 20 FCC Rcd 10160. That protective order limits disclosure to counsel and their staff and outside consultants and experts retained to assist counsel. It also prescribes that parties shall “use the information solely for the preparation and conduct of this proceeding before the Commission . . . and, except as provided herein, shall not use such documents or information for any other purpose, including, without limitation, business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings.” *Id.*, Appendix A ¶ 2.

Sincerely,

A handwritten signature in black ink that reads "Donna Epps". The signature is written in a cursive, flowing style.

cc: Julie Veach  
Donald Stockdale  
Marcus Maher  
Randy Clarke