Donna Epps
Vice President
Federal Regulatory Affairs

FILED/ACCEPTED
OCT - 7 2009
Federal Communications Commission
Office of the Secretary

verizon

1300 I Street, NW, Suite 400 West
Washington, DC 20005

Phone 202 515-2527
Fax 202 336-7922
donna.m.epps@verizon.com

October 7, 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 05-25 - REDACTED VERSION

Dear Ms. Dortch:

On October 6, 2009, Edward Shakin, Maggie McCready and the undersigned of Verizon met with Paul de Sa, of the Office of Strategic Planning, and Sharon Gillett, of the Wireline Competition Bureau, to discuss the actions the Commission should take in the above-captioned proceeding.

Verizon explained that special access services represent only a subset of the high capacity services offered by many competitive service providers. Cable television companies, CLECs, fiber providers and fixed wireless companies are all providing high capacity services that compete with the incumbent carriers' special access services. For example, Cablevision's COO, Tom Rutledge, claims that Cablevision already has fiber service to twice as many buildings in its Metropolitan New York footprint than incumbent phone company Verizon Communications.[1] Verizon also provided the enclosed maps that illustrate the stiff competition that Verizon faces from competitive providers of high capacity services. *See* confidential attachment. Because these maps are based on information from third-party sources, they understate the actual scope of competitive facilities.

Verizon explained that in urban and suburban areas, where demand for special access services is concentrated and where Verizon has existing special access facilities, competition is intense with multiple competing providers of high capacity services. This is equally true for wireless backhaul in urban and suburban areas. For example, Comcast states that it can provide backhaul services using the facilities that Comcast "already [has] out there" and that Comcast will be able to provide backhaul "cheap[er] than the typical alternative."[2]

---

[1] Farrell, Mike, "Cablevision Eyes Commercial Phone," Multichannel News, 9/20/06, http://www.multichannel.com/article/125275-Cablevision_Eyes_Commercial_Phone.php.

[2] *Comcast Corporation at Merrill Lynch Media Fall Preview-Final*, Fair Disclosure Wire, Transcript 090908a1928849.749 (Sept. 9, 2008) (statement by Steve Burke, President and Chief Operating Officer, Comcast).

0+1

Verizon also explained that in less concentrated, more rural areas, there is emerging demand. For example, as wireless providers have upgraded to third generation (3G) and soon to fourth generation networks (4G), wireless traffic volumes have increased exponentially, boosting demand for backhaul services. Because no carrier has existing facilities to meet this exponential growth in demand, no carrier has an inherent advantage in the marketplace. A host of providers – including cable companies, CLECs, fiber providers, and fixed wireless companies – are competing to provide these high capacity services in the first place. Clearwire has said that it is investing in microwave equipment so it can self-provision facilities to meet "roughly 80 percent of its [wireless] backhaul . . . from microwave links,"[3] and that it "will make its metro wireless backhaul networks available to Sprint at preferred rates, creating additional revenue opportunities for Clearwire and reducing costs for Sprint."[4]

Verizon noted that competition has driven down the prices customers pay for incumbent carriers' special access services. Between 2002 and 2008, the rates customers pay for Verizon's DS1 and DS3 services have declined and in 2008 were 24 percent lower than in 2002. In addition, competitors have also noted the low prices for these special access services. For example, Sprint's Chief Technology Officer said that T-1 lines, the most common type of high-capacity connection to cell sites, are "[r]elatively abundant and inexpensive" in the United States.[5] Likewise, Don McCullough, Ericsson's head of marketing for IP Broadband, said that "[i]n the U.S. the ability to lease T1s has retarded microwave: it's always been less expensive to lease T1s."[6]

Verizon also explained that special access services (*i.e.*, DS1s and DS3s) provided by incumbent carriers are subject to Title II dominant carrier regulation and must be provided pursuant to tariffs. Higher speed services, such as OCn and Ethernet, are subject to Title I regulation and are provided under private contracts, rather than tariffs. The rates charged by price cap incumbent carriers for DS1 and DS3 special access services are currently subject to two pricing regimes – price caps and pricing flexibility.[7] Price cap rates apply everywhere except in those MSAs or non-MSA areas where the carrier satisfies the Commission's competitive triggers designed to measure the extent to which competitors had made irreversible, sunk investment in collocation and transport facilities.[8] In those areas where the competitive triggers are satisfied, the carrier has the pricing

---

[3] John Hodulik, UBS Investment Research, *Clearwire Corp.* at 13 (Dec. 19, 2008).

[4] Sprint Nextel /Clearwire WiMax Call-Final, Fair Disclosure Wire, Transcript 050708a1844939.739 (May 7, 2008) (statement by Ben Wolff, Chief Executive officer, Clearwire).

[5] S. Lawson, *Sprint Picks Wireless Backhaul for WiMAX,* Industry Standard, http://www.thestandard.com/news/2008/07/09/sprint-picks-wireless-backhaul-wimax (July 9, 2008)(citing Sprint CTO Barry West).

[6] *See Anne Morris, Total Telecom, Microwave to Retain Key Role In Wireless Backhaul, As Fibre Waits In Wings (Sept. 2, 2009).*

[7] *See Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 98-63, 98-157, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14227 ¶ 10 (1999) ("*Pricing Flexibility Order*"), *aff'd WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

[8] *Id.*, 14 FCC Rcd at 14261, ¶¶ 77-83.

flexibility to offer special access services at unregulated rates through generally available and individually negotiated tariffs (*i.e.*, contract tariffs).[9]

Pricing flexibility may be obtained by price cap carriers in two separate phases. Under Phase I relief, a price cap carrier may offer volume and term discounts and contract tariffs for interstate special access services unconstrained by the Commission's Part 61 rate level rules and Part 69 rate structure rules, but must continue to offer its generally available, price cap constrained (*i.e.*, subject to both Part 61 and Part 69) tariff rates for these services.[10] Under Phase II relief, a price cap carrier may file individualized special access contract tariffs, subject only to continuing to make available generalized special access tariff offerings. Under Phase II relief, neither the contract tariffs nor the general offerings are constrained by Part 61 or Part 69 of the Commission's rules.[11]

Verizon has only obtained very limited pricing flexibility relief because the Commission's competitive triggers only consider collocated fiber providers and do not recognize the full extent of competition. The Commission has already acknowledged that "evidence of collocation may underestimate the extent of competitive facilities within a wire center, because it fails to account for the presence of competitors that do not use collocation and have wholly bypassed incumbent LEC facilities."[12] *Id.* ¶ 95; *see WorldCom, Inc. v. FCC*, 238 F.3d 449, 459 (D.C. Cir. 2001). As a result, Verizon lacks needed flexibility in many highly competitive urban areas, as well as numerous smaller markets where wireless backhaul is an issue. For example, Verizon has not received *any* pricing flexibility for end user channel terminations in Houston and Los Angeles. And Verizon has received only Phase I relief for these facilities in Boston, New York, Philadelphia, Baltimore, and Washington, D.C., even though, there are many known non-collocated alternative fiber providers (with dozens, hundreds, or even thousands of miles of fiber) in each of these MSAs, plus additional intermodal alternatives.

Sincerely,

Donna Epps

Attachment

cc: Paul de Sa

---

9 *Id.*, 14 FCC Rcd 14287-94, 14301-02, ¶¶ 122-33, 153-55.

10 *Id.*, 14 FCC Rcd at 14235-36, ¶ 24.

11 *Id.*, 14 FCC Rcd at 14235, 14301-02, ¶¶ 25, 153-55.

12 *Id.*, 14 FCC Rcd at 14235, 14274, ¶ 95; *see WorldCom, Inc. v. FCC*, 238 F.3d 449, 459 (D.C. Cir. 2001).

REDACTED
FOR PUBLIC
INSPECTION