



August 31, 2010

By Electronic Filing

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Re: *Ex Parte*: WC Docket No. 05-25 and RM-10593

Dear Ms. Dortch:

On June 1, 2010, COMPTEL filed with the Commission an analysis demonstrating that prices in areas granted Phase II pricing flexibility are systematically higher than the prices where the ILECs have not been granted Phase II pricing flexibility.<sup>1</sup> This analysis proved conclusively that the Commission's experiment with special access deregulation has failed to protect the nation's small businesses from excessive prices in one of the most important sectors of the economy.

On August 16, 2010, Verizon filed an *ex parte* which reinforces the competitive concerns documented by COMPTEL's analysis.<sup>2</sup> Specifically, the Verizon *ex parte* summarized the various generally available tariffed discount plans offered customers of special access services. Significantly, these plans apply *without regard* to the regulatory designation of an area (*i.e.*, whether the area is subject to Phase I, Phase II or price cap rules). Consequently, the underlying price differentials documented by COMPTEL

<sup>1</sup> Letter from Karen Reidy, Vice President, Regulatory Affairs, COMPTEL to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 and RM-10593, June 1, 2010.

<sup>2</sup> Letter from Donna Epps, Vice President, Federal Regulatory Affairs, Verizon to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 and RM-10593, August 16, 2010 ("*Verizon Discount Plan Ex Parte*").

remain when the discounts offered by Verizon's generally available tariffed discount plans are applied.<sup>3</sup>

In the *Pricing Flexibility Order*, the Commission adopted rules providing price cap carriers pricing flexibility where the Commission predicted the ILEC would not be able to exploit its market power and the Commission could rely on competition to produce just and reasonable rates. Unfortunately, the predictions were wrong and the rules failed. COMPTTEL has demonstrated a simple, compelling, and irrefutable fact: The special access prices (whether monthly or discounted) in Phase II areas are substantially higher than in other areas. As the Verizon *ex parte* made painstakingly clear, the generally available discounts it offers apply equally in capped and uncapped areas.<sup>4</sup> Therefore, directly comparing the generally-available, standard-offering prices between different areas is the simplest and most correct method of determining where prices are actually higher.

This latter point – that is, that the Commission can and should directly evaluate the generally-available, standard tariff rates (such as those addressed by the COMPTTEL and Verizon *ex partes*) – may seem too obvious to mention. There have been, however, suggestions that the Commission analyze *proxies* (such as the average revenue per unit or “ARPU”) to evaluate the market. For instance, the ILECs have used ARPU to claim prices have decreased over the past few years.<sup>5</sup> But a declining ARPU is to be expected by the combined effects of a growing market and the basic structure of special access tariffs that frequently offer a lower standard rate for higher levels of volume.<sup>6</sup> As the quantity purchased increases, the average revenue per unit should decline, whether or not tariff prices are themselves actually falling. This same mathematical property can produce different ARPUs for different geographic areas. Even in areas where the same schedule of tariffed prices apply, differing ARPUs can result from a differing mix of quantities demanded and/or term commitments.<sup>7</sup> The Commission's concern must be

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<sup>3</sup> The COMPTTEL analysis had shown that ILEC term discount plans produced higher prices in Phase II areas than non-Phase II areas, but did not comprehensively evaluate all discounting options in Verizon's tariffs.

<sup>4</sup> See *Verizon Discount Ex Parte* at 4 (“Verizon's circuit-specific discount plans provide discounts on a per-circuit basis and customers receive these discounts in both price cap and pricing flexibility areas.”); See also *Verizon Discount Ex Parte* at 5 (“Verizon's non-circuit specific discount plans offer discounts across broad geographic areas, including Verizon's entire footprint, Verizon's East Region and Verizon's West Region.”)

<sup>5</sup> Comments of AT&T, p. 31, Jan. 19, 2010; Comments of Qwest, p. 9, Jan. 19, 2010.

<sup>6</sup> For instance, Verizon's standard rates for a DS3 channel termination decline as the number of terminations increases (Verizon Telephone Companies Tariff F.C.C. No. 11 1<sup>st</sup> Revised Page 31-123).

<sup>7</sup> A wide range of factors can influence the average revenue per minute, including the proportion of demand under various discount programs, whether the areas being

with the *prices* themselves,<sup>8</sup> and it should take care to ensure that any analysis performed (and, if necessary, any data collected) do not rely on proxies which distort underlying pricing relationships.

COMPTEL does not believe that any further investigation or data collection is necessary to conclude that the Commission's regulatory policies with respect to special access prices are a failure. If, however, the Commission decides to collect additional pricing data, it is important that the data facilitate a valid analysis of special access prices, and not ARPU proxies that can provide distorted results due to different demand changes over-time or between different areas. Moreover, the Commission should collect data in a way that enables it to properly evaluate the prices paid by (1) the customers of Verizon's standard offerings (including its non-negotiated discount plans), separately from the prices paid by (2) customers of individually negotiated contracts; and (3) sales to affiliates.

The Verizon *Ex Parte* acknowledges the existence of 58 individual contracts that it has "negotiated" with some of its customers,<sup>9</sup> and prior filings have indicated that more than a third of its special access sales could be to its own affiliates.<sup>10</sup> There is no reason to believe that prices paid by contract-tariff customers are reasonable, especially when the anticompetitive terms and conditions contained in contract tariffs are considered. Nor are the prices paid by contract tariff customers or affiliates representative of the market at large. In all events, the prices paid by (and demand volumes associated with) these customer segments should have no role in determining the reasonableness of Verizon's (and the other ILECs') standard offerings. To the contrary, the fact that Verizon offers lower prices to only customers of contract tariffs with (what Verizon incorrectly claims is) "significant bargaining power," is a clear admission that customers of standard offerings have no choice but to pay the higher-priced standard offerings in their tariff. Such customers rely on the Commission's oversight to ensure just and reasonable rates – which the Commission's pricing flexibility rules are demonstrably not providing.

There is no question that the special access deregulation experiment has failed miserably and the nation's small businesses are paying for that failure with higher prices,

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compared have more than one set of zone prices that apply, the treatment of non-recurring revenues, differing interfaces (optical or electronic), and the treatment of revenues for optional features and functions.

<sup>8</sup> The Commission's statutory mandate under sections 201(b) and 202 is to ensure that all "charges, practices, classifications, and regulations" be just, reasonable and not unreasonably discriminatory.

<sup>9</sup> *Verizon Discount Plan Ex Parte* at 6.

<sup>10</sup> Verizon has previously shown that more than a third of its special access demand in markets where it has requested forbearance was nothing more than sales to its own affiliates. See Letter from Genevieve Morelli, Counsel to Broadview Networks, Inc., *et al.*, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 08-24, 08-49, p. 3 (filed May 11, 2009).

and its workers paying for it in fewer jobs.<sup>11</sup> The Commission should immediately issue a decision repealing its pricing flexibility rules.

Please feel free to the contact me if you have any questions.

Sincerely,  
/s/ Karen Reidy  
Vice President, Regulatory Affairs

cc: Sharon Gillett  
Paul De Sa  
Jonathan Baker  
Nicholas Alexander  
Don Stockdale  
Albert Lewis

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<sup>11</sup> See Economics and Technology, Inc., “Regulation, Investment, and Jobs, How Regulations of Wholesale Markets Can Stimulate Private Sector Broadband Investment and Create Jobs” Public Knowledge, *et al Ex Parte*, February 12, 2010; See also Letter from Karen Reidy, Vice President, Regulatory Affairs, COMPTTEL to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 and RM-10593, June 16, 2010.