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July 14, 2011

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

Re: Data Requested in Special Access NPRM, WC Docket No. 05-25 and RM-10593

Dear Ms. Dortch:

On July 12, 2011, Margaret McCready, Katharine Saunders, Frederick Moacdieh, and I met with Deena Shetler, Deputy Chief of the Pricing Policy Division; Pam Arluk, Assistant Division Chief of the Pricing Policy Division; Steve Rosenberg, Chief Data Officer; and Ben Childers, Elizabeth McIntyre, Andrew Mulitz, Ken Lynch, Richard Kwiatkowski, and Raffi Melanson of the Wireline Competition Bureau to discuss the above referenced proceeding.

Specifically, we discussed Verizon's generally available discount plans and pricing flexibility contracts, using a corrected copy of the matrix previously filed with the Commission on August 16, 2010.¹ As Verizon has explained previously,² these generally available special access discount plans and pricing flexibility contracts are a competitive response to the extensive competition for the provision of high-capacity services. Special access discount plans and contracts are entirely voluntary; do not restrict customers' ability to obtain high-capacity services

¹ See Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, RM-10593, at Attachment A (Aug. 16, 2010) (the corrected matrix is attached hereto as Exhibit A).

² See Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, RM-10593 (Feb. 28, 2011); Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, RM-10593 (Aug. 16, 2010).

from Verizon's competitors or through self-supply; and contain a wide range of terms and conditions to meet the needs of many different types of special access purchasers. In fact, customers who participate in Verizon's discount plans and pricing flexibility contracts may, and in fact do, obtain high-capacity services from several different providers as well as through self-supply without penalty under Verizon's terms.

For example, customers may choose to enter into circuit-specific or "term" plans which provide customers with substantial discounts in exchange for a term (but not volume) commitment for specific circuits. These plans are tariffed, open to all customers, and may cover as little as one circuit. In the July 12 meeting, we discussed early termination liability for these plans, and explained that when a customer chooses to end a plan prior to completing their term, shortfall liability is calculated so they are generally no worse off than they would have been had they initially subscribed to a plan with a shorter term commitment.

Customers may also choose non-circuit specific or "term and volume" plans which provide customers with substantial discounts in all special access services purchased in the covered region in exchange for a term and volume commitment based on a percentage of the customer's Verizon special access purchases. The volume commitments in these plans apply only to the special access services that the customer decides to purchase from Verizon, and not the customer's overall high-capacity or special access usage. However, customers may swap circuits in and out of these plans so long as they maintain their overall volume commitment. Early termination liability for these plans is calculated in the same manner as for the term plans; customers who fail to meet their volume commitments are liable for the shortfall based on the difference between the number of circuits to which they committed and what they actually purchased.

We also explained that customers may enter into individualized pricing flexibility contracts in areas which have received pricing flexibility relief. Once negotiated, these contracts are available to all customers who meet the terms and conditions of the specific contract. These contracts provide a varying level of discounts and requirements based on the individual customer's needs and individual negotiations. These contracts may include term and volume commitments or term and revenue commitments.

We also discussed the Paperwork Reduction Act of 1995, Pub. L. No. 10413 (the "Paperwork Act"), which requires Office of Management and Budget (OMB) approval for a future data request. We explained that the Paperwork Act requires OMB approval even if the request is framed as "voluntary," since such approval is necessary for "any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information" regardless of "whether such collection of information is mandatory, *voluntary*, or required to obtain or retain a benefit." 5 C.F.R. § 1320.3(c) (emphasis added); *see also* 44 U.S.C. § 3506(c)(1)(B)(iii)(IV) (requiring agencies to explain "whether responses to the collection of information are *voluntary*, required to obtain a benefit, or mandatory.") (emphasis added). We also noted that while the Paperwork Act contains an exception for general solicitations of comments, the solicitation contemplated here is likely to go well beyond that exception, seeking defined data sets, "forms ...[and] surveys" and providing specific templates for use in

Marlene H. Dortch
June 14, 2011
Page 3

responding (as did the first set of data requests). 5 C.F.R. § 1320.3(c)(1). Nor will the Paperwork Act's exception for requests to fewer than 10 "persons" likely apply, since the Commission must count as individual "persons" both "separately incorporated subsidiaries or affiliates" and those "independent entities to which the initial addressee may reasonably be expected to transmit the collection of information during that period." 5 C.F.R. § 1320.3(c)(4); *see also Center for Auto Safety v. NHTSA*, 244 F.3d 144, 148 (D.C. Cir. 2001) ("OMB regulations specifically explain that '10 or more' includes any 'independent entities to which the initial addressee may reasonably be expected to transmit the collection of information.'").

Please contact me should you have any questions.

Sincerely,

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

Enclosure

EXHIBIT A

Generally Available Discount Plans		
	Circuit Specific	Non-circuit Specific
Description	<p>These discount plans are tariffed and open to all customers. They are not individualized for specific customers.</p> <p>The plans require term commitments (but no volume commitment) for each specific circuit enrolled in the plan. Depending on the provisions of the plan, each circuit may be enrolled for a different term of years.</p> <p>Discounts are provided on a per circuit basis.</p> <p>Discounts increase for longer terms.</p> <p>Customers can purchase a single circuit and receive a substantial discount.</p>	<p>These discount plans are tariffed and open to all customers. They are not individualized for specific customers.</p> <p>The plans cover and provide discounts for broad geographic areas (e.g., Nationwide; FCC No. 1, 11, 14 or 16). The discounts are based on a combined term and volume commitment. These plans do not prohibit purchases from non-Verizon providers or self-supply.</p> <p>Discounts generally increase for longer terms or greater volumes.</p> <p>The plans cover all of the customer's special access purchases from Verizon in the covered tariff region, which could span multiple states.</p> <p>Customers can purchase even relatively small volumes to qualify for discounts under some of these plans.</p>
Regulatory Limitations	The plans are available in price cap and pricing flexibility areas.	The plans are available in price cap and pricing flexibility areas.
Plan Names	DS1 and DS3 Term Pricing Plans (Verizon FCC Tariff No. 1), Service Discount Plan (Verizon FCC No. 11) and DS3 term plan (FCC Tariff Nos. 14 and 16).	National Discount Plan (all tariffs); Commitment Discount Plan (Verizon FCC Tariff Nos. 1 and 11); DS1 Term Volume Plan, Eight- and Ten-Year DS1 Term Volume Plans, and DS3 Term Volume Plan (FCC Tariff No. 14); and DS1 Term Payment Plan (FCC Tariff No. 16).
Customer-Specific Pricing Flexibility Contracts		
Description	<p>These contracts are individually negotiated contracts that provide substantial discounts based on a term of years and volume or revenue commitment.</p> <p>These contracts are filed in public tariffs.</p> <p>The contracts are tailored for a specific customer's requirements based on negotiations. Each contract, which is filed publicly in a tariff, is open to all customers that can meet the terms and conditions of the specific contract.</p> <p>Customers can negotiate for contract to cover broad (multiple states) or more narrow geographic areas (a single metropolitan statistical area).</p> <p>These contracts do not prohibit purchases from other non-Verizon providers or self-supply.</p> <p>The discounts are generally applied to Verizon's month-to-month tariffed rates or to the already discounted rates available under Verizon's generally available discount plans.</p>	
Regulatory Limitations	The discounts are only available for special access purchases in Phase I ("contract") and Phase II ("uncapped") pricing flexibility areas. Purchases in non-pricing flexibility areas can be counted towards any minimum annual revenue or volume commitment.	