

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
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Competition Data Request)	
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Special Access Rates for Price Cap Local Exchange Carriers)	WC Docket No. 05-25
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AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services)	RM 10593
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**COMMENTS OF VERIZON¹ ON THE SECOND SET OF DATA REQUESTED
FOR SPECIAL ACCESS NOTICE OF PROPOSED RULEMAKING**

As noted previously,² Verizon and other industry participants have encouraged the Commission to collect substantive and accurate data on the special access competitive landscape. The Commission has made important efforts in that direction by issuing its first voluntary Data Request³ in 2010, and this second voluntary *Competition Data Request* earlier

¹ The Verizon companies participating in this filing (“Verizon”) are the regulated, wholly owned subsidiaries of Verizon Communications Inc. and Verizon Wireless.

² See, e.g., Verizon Comments (Jan. 27, 2011) (“Verizon First Data Request Comments”).

³ *Data Requested in Special Access NPRM*, Public Notice, 25 FCC Rcd 15146 (2010) (“*First Data Request*” or, generally, “*Request*”).

this fall.⁴ The Commission’s continued efforts to seek market data are critical to understanding the state of competition, particularly given the dynamic nature of the marketplace. The Commission should continue to pursue all relevant data to develop a meaningful picture of the competitive landscape. While the *Competition Data Request* is another step in the right direction, it nevertheless fails to capture key data points that are essential to producing a complete or accurate picture of the dynamic marketplace that offers an array of competitive alternatives to ILEC special access services. Consequently, neither the data from the first Data Request or this *Competition Data Request*, even when taken together, are sufficient to produce a comprehensive picture of the marketplace, and thus they cannot form an adequate basis for any substantive changes in regulation. In particular, the *Competition Data Request* fails to seek information about all sources of competition and all competitors (including such areas as self-supply and planned and potential competition), thus ignoring important competitors and service offering. The *Competition Data Request* is also voluntary, not mandatory, and risks failing to garner responses from a representative sample of the market. Additionally, this *Competition Data Request* suffers from the same procedural defects as the *First Data Request* because the Office of Management and Budget (OMB) did not approve it.

In spite of these deficiencies, the data submitted show promising evidence of increased competition, and point to the need to gather more information to complete a thorough analysis. These data include information demonstrating a prevalence of generally available tariff discount plans and pricing flexibility contracts that provide substantial and meaningful

⁴ *Competition Data Requested in Special Access NPRM*, Public Notice, 26 FCC Rcd 14000 (2011) (“*Competition Data Request*”).

discounts off of rack rates, a general lack of penalties or prohibitions on switching providers once contractual terms are met, and a growing number of vendors who supply competitive services.

While this information is a promising indicator of substantial competition, the deficiencies in the data collection process to date mean that the Commission cannot draw complete or accurate conclusions based on the data it has received so far absent full participation and inclusion of all critical and viable competitive elements.

I. THE *COMPETITION DATA REQUEST*, EVEN COMBINED WITH THE *FIRST DATA REQUEST*, IS INSUFFICIENT TO CAPTURE AN ACCURATE OR REPRESENTATIVE PICTURE OF THE MARKETPLACE

Though the combined first and second *Requests* have sought substantial data, even taken together, the *Requests* will not garner sufficient representative data to accurately depict the array of competitive alternatives to ILEC special access services. The *Competition Data Request* does not remedy the deficiencies of the *First Data Request*, but instead continues to remain too narrow in scope. Like the *First Data Request*, response to the *Competition Data Request* is voluntary, not mandatory; as such, it will fail to capture important segments of the market and sources of competition; and it will not produce current data that will capture the ongoing change in the market.

First, the universe of data sought by the Commission still remains too narrow, despite Staff's efforts to craft an addition to the *First Data Request*. As a result, the data the Commission has received and will continue to receive in response will not fully reflect the existing substantial competition in this marketplace. To properly evaluate competition in this fast-changing industry, the Commission should evaluate data that encompass recent competitive activities and growth in demand, as well as planned future activities and projected

demand. But this *Competition Data Request* does not seek information that would ameliorate the deficiencies in the *First Data Request*. For example, the *Competition Data Request* continues to fail to seek information about self-provisioning, despite an increased use of or capability for self-supply for backhaul and other high capacity needs. Sprint, for example, has recently observed that it retained the ability to “build its own backhaul facilities, where the alternatives presented do not meet its requirements.”⁵ Additionally, while it asks for some information about Requests for Proposals (RFPs) and bids, the *Competition Data Request* still fails to seek information about planned service offerings or to pose questions that could capture data documenting planned competition. By not seeking information about competitors’ planned future activities and projected demand, the Commission’s *Requests* are not capturing forward-looking capacity. The continued focus on existing revenues, discounts, and circuits ignores plans for deploying increased capacity and offering nationwide service. By failing to seek this information, the *Competition Data Request* fails to track competitors’ ability or willingness to provide service in particular areas or locations beyond the existing connections. Moreover, the *Competition Data Request*, like the first, fails to seek information about other forms of substantial and viable competition already existing in the marketplace by not asking about competition using other providers’ facilities, another important piece of the market.

⁵ Carol Wilson, Light Reading, *Sprint to Reveal Backhaul Contract Winners Friday*, http://www.lightreading.com/document.asp?doc_id=213050 (Oct. 5, 2011) (last accessed Dec. 5, 2011).

Second, as with the *First Data Request*, response to the *Competition Data Request* is voluntary. As Verizon noted previously,⁶ a voluntary request risks yielding a non-representative sample of respondents, particularly when competitors may have a disincentive to provide data voluntarily. As is well established in the record, the market for these services is highly dynamic and demonstrates a fast-growing industry fueled by increasing demand. As demand grows, barriers to competitive entry fall and viable intramodal and intermodal competitors – including cable and fixed wireless – expand in number and capabilities. But, couched as voluntary, the *Competition Data Request* may fail to capture these rapidly changing areas, as new participants may not contribute meaningful data. Self-selected participation risks biasing the collected responses and providing only a narrow and non-representative view of the market.

Tellingly, in response to the *First Data Request*, a significant number of providers and cable operators did not provide responsive data, including a substantial majority of regional providers and fixed wireless providers. Similarly, some cable operators did not provide data. Even if some or all of these entities choose to provide some data in response to this *Competition Data Request*, their prior failure to participate means that the data received will be necessarily skewed. In a dynamic, rapidly-growing marketplace, with many current or emerging competitive providers, the failure of those providers to respond to a voluntary request means the Commission will have only insufficient and incomplete data for the MSAs at issue.

⁶ Verizon First Data Request Comments, at 14-15.

II. ALTHOUGH ADDITIONAL DATA REQUESTS WILL BE NECESSARY TO CAPTURE A COMPLETE AND ACCURATE DEPICTION OF THE MARKETPLACE, THE DATA SO FAR SHOWS SUBSTANTIAL COMPETITION IN THE MARKETPLACE

Notwithstanding these concerns, Verizon has submitted substantial data in response to both the *First* and the *Competition Data Requests*.⁷ These data highlight the need for further inquiry by demonstrating the existence of noteworthy competition, and the lack of restrictions that would impede customers from taking advantage of competitive offerings.

For example, the data will show a substantial – and growing – number of providers in the marketplace. In just one example, Verizon’s submission describes the large number of providers from which it purchases high-capacity service, demonstrating not only the growth of this market but the dynamic changes that have allowed a variety of providers to enter. Similarly, Sprint has observed that following its recent and planned contract awards for backhaul, it “will end up with 25 to 30 significant backhaul providers” that will likely be a mix of incumbent LECs, cable MSOs, and alternative carriers, all of whom will be expected to deliver Ethernet predominantly over fiber.”⁸

Similarly, the data will show that customers are able to take advantage of multiple widely-available discount plans which provide a substantial savings off of rack rates. These plans are entirely voluntary and do not restrict customers’ ability to obtain high-capacity

⁷ Verizon is submitting its data and accompanying exhibits subject to the protections of the First and Second Protective Orders issued in this proceeding: *Data Requested in Special Access NPRM*, WC Docket 05-25, RM-10493, Public Notice DA 10-2073 (rel. Oct. 28, 2010); *Special Access for Price Cap Local Exchange Carriers*, Second Protective Order, 25 FCC Rcd 17725 (2010). Verizon is also submitting certain data subject to protections it is seeking with its accompanying request for additional confidential and highly confidential treatment.

⁸ Wilson, *supra*.

services from Verizon, its competitors, or through self-supply. Further, available plans contain a broad range of terms and conditions that will meet the needs of a variety of special access purchasers. For example, some plans provide a substantial discount in exchange for a term (but not a volume) commitment for specific circuits; other plans offer discounts for all special access services the customer purchases under the plan in exchange for a term commitment or a term and volume commitment. Even if they subscribe to one or several plans, customers may continue to make additional purchases outside of their commitments with other providers.

These plans are highly attractive to customers for these services, large percentages of which purchase under generally available discount plans or through pricing flexibility contracts. Customers can receive meaningful discounts under these plans, and the large numbers who choose to subscribe to them demonstrate the real and tangible benefits that are offered through them. Indeed, over 85% of Verizon's ILEC DS1 and DS3 revenues are from customers who purchase pursuant to generally available discount plans, and nearly 60% of those revenues are for discounts of 40% or more off of rack rates.

The data will also show that customers are able readily to transition from one provider to another within the marketplace, taking advantage of new entrants or competitive offerings. Customers are free to purchase special access services from either Verizon or from the many competitive providers also offering services, and Verizon does not impede customers' ability to switch providers. Customers who choose to obtain substantial discounts by agreeing to a predetermined volume or term commitment may have termination charges or shortfall penalties assessed if they decide not to meet their contractual commitment, but those charges

are disclosed and agreed to upfront. Termination charges for term plans are usually calculated such that a customer is no worse off than it would have been had it initially subscribed to a plan with the shorter term commitment; termination charges for term and volume plans are typically based on the difference between the number of circuits to which the customer committed and the amount actually purchased and factor in the remaining time left in the plan. Importantly, the total amount of such penalties is small, particularly when compared to the overall revenues from purchases under available plans. And, only a small number of customers failed to meet volume and/or revenue commitments overall.

III. THE DATA REQUEST IS PROCEDURALLY UNSOUND

Like the *First Data Request*, the *Competition Data Request* raises procedural concerns. The Commission again fails to follow the appropriate procedures under the Paperwork Reduction Act of 1995, Pub. L. No. 10413, which requires OMB approval for requests such as these. Although the *Competition Data Request* states that it is not seeking the type of qualifying “information” that is subject to OMB review, that conclusion is belied by the detailed nature and expansive scope and nature of the second Request.

The Paperwork Reduction Act requires OMB approval for the “collection of information,” which is defined as the “obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.” 44 U.S.C. § 3507(a)(2); see also 5 C.F.R. § 1320.3(c). OMB regulations further define “information” to include “requests for information to be sent to the government, such as forms . . . written

reports . . . and surveys.” 5 C.F.R. 1320.3(h). The detailed, specific requests for information here fall within this definition. The Commission provides detailed instructions of the type and format of data to be provided, even providing “templates for responses,” including requests for information in granular detail.

The *Competition Data Request*’s position that its requests are excluded from these requirements as “general solicitations of comments,”⁹ pursuant to 5 C.F.R. §1320.3(h), misconstrues the purpose of that exception. The Data Requests are specific, extraordinarily detailed requests for defined data, provided in a predetermined format. Far from a general request for comments, these are highly specific requests for data akin to other types of requests that the Commission has previously concluded were subject to OMB review.¹⁰

CONCLUSION

While Verizon is providing responsive information to the data request that demonstrates the presence of significant competition within the market, the overly narrow scope of the request and failure of other providers to fully participate in the Commission’s data gathering process means that the evidence generated in response to the *First* and *Competition Data Requests* will not produce sufficient information on which to base substantive changes in regulation.

⁹ See, e.g., *Competition Data Request*, n. 8.

¹⁰ Compare, e.g., *Residential Fixed Broadband Services Testing and Measurement*, Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested, OMB Control Number 3030-1139, 75 FR 48334 (Aug. 10, 2010) (regarding the Commission’s request for voluntary submission of data regarding hardware based test and analysis of broadband connections).

Respectfully submitted,



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