



STATE OF NEW JERSEY
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VIA ELECTRONIC FILING

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Verizon Petition, in the Alternative, For Forbearance to Allow It to Exercise Pricing Flexibility For Advanced Services Where the Commission Has Granted Relief For Traditional Special Access Services.

**Verizon Petition for Forbearance Under 47 U.S.C. Section 160(C) from Pricing Flexibility Rules for Fast Packet Services.
WC Docket No. 04-246**

Dear Secretary Dortch:

The New Jersey Division of the Ratepayer Advocate ("Ratepayer Advocate") hereby submits this letter in lieu of more formal comments in the above-captioned proceeding.

The Ratepayer Advocate is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. The Ratepayer Advocate participates actively in relevant Federal and state administrative and judicial proceedings. The above-captioned proceeding is germane to the Ratepayer Advocate's continued

participation and interest in implementation of the Telecommunications Act of 1996.¹ The New Jersey Legislature has declared that it is the policy of the State to provide diversity in the supply of telecommunications services, and it has found that competition will “promote efficiency, reduce regulatory delay, and foster productivity and innovation” and “produce a wider selection of services at competitive market-based prices.”² The Ratepayer Advocate supports the customer benefits that will be realized through the introduction and expansion of competition in New Jersey and the Nation’s telecommunications markets. Competition should result in lower prices, greater consumer choices, and more rapid technological innovation and deployment.

The Ratepayer Advocate respectfully submits that the Federal Communications Commission (“Commission”) should deny and dismiss the Petitions filed by the Verizon Telephone Companies (“Verizon”) for the following reasons.³ Verizon is asking to be relieved of a restriction resulting from the waiver granted to Verizon regarding its advanced services group. Specifically, Verizon was granted a waiver by the Commission of Section 61.42(g) of the Commission’s rules so that Verizon would not be required to incorporate its advance services into annual access tariff price cap filings.

As a result of this waiver and under applicable rules, Verizon was prevented from placing these fast packet services within the pricing flexibility portion of the tariff filings according to Paragraph 173 of the Pricing Flexibility Order.⁴ Verizon sought the initial waiver because it voluntarily chose to undo the transfer of its advance services to a separate affiliate. Thereafter, Verizon sought and was granted additional waivers for the annual access filing for 2002, 2003, and 2004. Each of these waivers was premised on preserving the *status quo* pending resolution of the Commission’s *Wireline Broadband Classification Proceeding*.⁵ Essentially, Verizon is now asking the Commission to jettison the restrictions associated with the initial

^{1/} Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (“1996 Act”). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as “the 1996 Act,” and all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

^{2/} N.J.S.A. 48:2-21.16(a)(4) and 48:2-21.16(b)(1) and (3).

^{3/} *Public Notice*, DA 04-2116, issued on July 13, 2004, states that comments are requested on two petitions.

^{4/} *Access Charge Reform, Fifth Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 14221 (1999) (“*Pricing Flexibility Order*”); Paragraph 173 provides A[w]henver a price cap LEC can demonstrate in an annual access tariff filing that one of its new services would be properly incorporated in a basket or service band for which it has been granted Phase I or Phase II [pricing flexibility] in any MSA or MSAs, it will be granted the same relief in the same MSAs for that new service.”. See Section 69.729 of the Commission’s rules for which Verizon is asking that the Commission forbear from applying under Section 10 of the Act.

^{5/} *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Notice of Proposed Rulemaking*, 17 FCC Rcd 3019 (2002) (“*Wireline Broadband Classification Proceeding*”).

waiver grant and subsequent grant of additional waivers so that it can be treated as if it provided fast packet services through a separate affiliate or as if it made rate caps filings for the period from 2002 thru 2004.⁶ When, in fact, Verizon has not done either. According to Verizon, BellSouth has pricing flexibility because it complied with the applicable rules and SBC has pricing flexibility because they offer its services through a separate affiliate. But, Verizon ignores the fact that Bellsouth and SBC fully complied with the Commission's rules without waivers. As a result, Verizon wants the Commission to relieve it of its business decision and at the same time, exempt Verizon from making market-by-market showings for the advance services in question under the claim there is undue administrative burden.⁷ Such claims are not supported by any evidence, but only by arguments contained in its *Memorandum* filed in support of the Petitions. This alone justifies denial of the Petitions. In addition, Verizon's asserted rationale fails to meet the standard "for good cause shown" required under Commission's rules.

In an attempt to bootstrap its first argument, Verizon also asks for forbearance. However, Verizon's request for forbearance under Section 10 of the Act is based upon no empirical evidence and the mere unsubstantiated statements that the requirements of Section 10 are met. The Ratepayer Advocate submits that Verizon has failed even to offer a *prima facie* case that exercise of forbearance is warranted. As such, the forbearance petition should be dismissed. The Commission has previously rejected that forbearance is warranted even when pricing flexibility is appropriate.⁸

In the *BOCs Forbearance Petitions Order*, the Commission rejected that the BOCs' claim that forbearance was warranted when it concluded:

For the reasons stated herein, therefore, we conclude that the BOC petitioners have not demonstrated that our Part 61 rate level, Part 69 rate structure, and tariff rules are unnecessary to ensure that rates for the provision of special access and high capacity dedicated transport services are just and reasonable and unnecessary to protect consumers of these services at the markets at issue. Similarly, the BOC petitioners have not shown that forbearance is consistent with the public interest.⁹

^{6/} See *Memorandum of Points and Authorities In Support of Verizon's Petition for Waiver of Pricing Flexibility Rules and Contingent Petition for Forbearance* ("Memorandum") at 10.

^{7/} *Id.* at page 8.

^{8/} See *Petition of US West Communications, Inc. For Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA; Petition of the SBC Companies For Forbearance from Regulation as a Dominant Carrier for High Capacity Dedicated Transport Services in Specified MSAs; Petition of U S West Communications, Inc, for Forbearance from Regulation as a Dominant Carrier in Seattle, Washington MSA; Petition of Bell Atlantic Telephone Companies As Dominant Carriers in Delaware; Maryland; Massachusetts; New Hampshire; New Jersey; New York; Pennsylvania; Rhode Island; Washington D.C.; Vermont; and Virginia; Petition of Ameritech for Forbearance from Dominant Carrier Regulations of its Provision of High Capacity Services in the Chicago LATA, 14 FCC Rcd19947 (1999) ("Memorandum Opinion and Order"), FCC 99-365 ("BOCs Forbearance Petitions Order").*

^{9/} See *BOCs Forbearance Petitions Order* at ¶ 35.

Verizon argument that the Commission's prior grants of pricing flexibility satisfies the three criteria necessary in order to grant forbearance is simply inconsistent with the Commission's actions in the *BOCs Forbearance Petition Order*. Eligibility for pricing flexibility does not independently satisfy the forbearance standards because the Commission denied the BOCs' forbearance petitions even though the Commission opined that filing of pricing flexibility petitions were appropriate.¹⁰

In conclusion, the Ratepayer Advocate respectfully submits that the Commission deny and dismiss the Petitions for lack of proof and find that the granting of the Petitions are inconsistent with the public interest.

Respectfully submitted,

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^{10/} *Id.* at ¶ 36.