

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**Investigation by the Department of Telecommunications )  
and Energy on its own motion, pursuant to G.L. c. 159, )  
§§ 12 and 16, into Verizon New England Inc. ) D.T.E. 01-34  
d/b/a Verizon Massachusetts' provision of )  
Special Access Services )**

**SURREBUTTAL TESTIMONY**

**of**

**KAREN K. FURBISH**

**On Behalf of**

**WORLDCOM, INC.**

**Submitted:  
April 3, 2002**

**Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

**A.** Verizon Massachusetts has made certain erroneous claims in its Panel Testimony (originally filed February 27, 2002, and subsequently corrected on March 19, 2002). The purpose of my surrebuttal testimony is to respond specifically to:

- ?? Verizon’s claims relating to the competitiveness of special access in Massachusetts and elsewhere;
- ?? Verizon’s mischaracterization of the New York Public Service Commission’s (“NYPSC”) findings of market dominance and discrimination;
- ?? Verizon’s criticisms of the Joint Competitive Industry Group (“JCIG”) metrics developed and submitted in connection with the FCC’s Special Access NRPM, and;
- ?? other regulatory policy and process issues raised by Verizon’s testimony.

**Q. IN LIGHT OF VERIZON’S TESTIMONY, DO YOU WISH TO CHANGE YOUR RECOMMENDATION THAT THE DEPARTMENT SHOULD MONITOR VERIZON’S SPECIAL ACCESS PERFORMANCE?**

**A.** No. In fact, Verizon’s own data reaffirm the need for the Department to measure Verizon’s special access performance in Massachusetts. Based on Verizon’s myriad versions of its self-reported data in discovery responses, the need for well-defined measurements and standards for all of Verizon’s Special Access services is evident.

To understand and draw reasonable conclusions about Verizon’s performance, the Department must be able to measure both intrastate and interstate Special Access performance provided by Verizon, and compare those results to Verizon’s Special Services performance to its retail customers. Only through such a comparison will the Department be able to monitor whether

Verizon's competing carrier-customers receive good quality, non-discriminatory performance in the provision and maintenance of Special Access Services.

As an interim measure, the Department should immediately order Verizon to begin reporting under the NY PSC's Special Services Guidelines, on both a "wholesale" basis, separately for affiliated and non-affiliated customers, and on a retail basis, for each circuit type. As I pointed out in my Direct Testimony, there should be no implementation issues for Verizon, since it has been reporting under these metrics for New York. The New York Guidelines can provide a reasonable interim proxy to measure Verizon's performance and would allow Verizon time to implement the JCIG measurements and standards.

**The Effect of Competition on Verizon's Special Access Performance**

**Q. VERIZON CONTENDS THAT THE FCC'S PRICING FLEXIBILITY "TEST" IS A "CLEAR DEMONSTRATION" THAT COMPETITION EXISTS WITHIN AN MSA. DO YOU AGREE?**

**A.** No. The FCC's "competitive tests" are insufficient to demonstrate that robust competition exists to the extent that an incumbent LEC's special access pricing and performance to its carrier-customers are constrained by market forces. Moreover, as the FCC acknowledged in the Special Access NPRM, its Pricing Flexibility Order "did not go so far as to find that incumbents do not have market power" with respect to the provision of special access services.<sup>1</sup> In fact, in the Pricing Flexibility Order, the Commission expressly refused to deem incumbent

---

<sup>1</sup> See NPRM at ¶ 14 (citing *Pricing Flexibility Order*, CC Docket No. 96-262, 14 FCC Rcd 14221 at 14225, ¶ 3 (1999)).

LECs non-dominant in the provision of special access services<sup>2</sup> and retained tariffing and other requirements to restrain abuse of market power.

Further, the FCC recognized that, even after receiving pricing flexibility, an incumbent LEC may still exercise market power, particularly in those areas of a Metropolitan Statistical Area (MSA) that lack a competitive alternative.<sup>3</sup>

**Q. PLEASE OUTLINE BRIEFLY THE DIFFERENT CLASSIFICATIONS OF MSAs FOR PURPOSES OF PRICING FLEXIBILITY.**

**A.** With respect to MSAs in which no authority for pricing flexibility has been sought or approved by the FCC, incumbent LECs are required to charge rates consistent with the FCC's price cap formula. Under Phase I authority, the rates that Verizon and other incumbent LECs charge are still subject to the FCC's price cap formula; the only "flexibility" granted by the FCC is the ability of the incumbent LEC to negotiate volume and term contracts with carrier-customers and end-users, which also have to be tariffed. Under Phase II authority, the incumbent LEC's special access services offered in that particular MSA are freed from any price regulation. Nevertheless, the FCC retained the requirement that incumbent LECs file generally available tariffs for special access services, even where Phase II pricing flexibility has been granted.

The FCC also made clear in the Pricing Flexibility Order that Phase II pricing flexibility was not tantamount to a finding that the incumbent LEC did not

---

<sup>2</sup> *Pricing Flexibility Order* at ¶ 151. *See also WorldCom Inc., v. FCC*, 238 F.3d 449 at 460 (D.C. Cir. 2001) ("the FCC did not engage in a thorough competition analysis" of the sort that would be expected in non-dominance proceedings).

<sup>3</sup> *Pricing Flexibility Order* at ¶ 151.

have market power.<sup>4</sup> Moreover, the FCC acknowledged that the Pricing Flexibility Order’s collocation-based “test” does not provide direct evidence of buildings served by competitive LECs; the FCC adopted the collocation-based test in spite of that “shortcoming” only because collocation was “the best option available” at the time.<sup>5</sup>

**Q. VERIZON ALSO CLAIMS THAT “THE COMPETITIVE NATURE OF THE SPECIAL ACCESS SERVICES MARKET AFFECTS VERIZON’S PERFORMANCE.” CAN YOU COMMENT?**

A. Verizon claims that competition in the special access services market drives Verizon to strive to provide high quality service to customers. In support of its contention, Verizon states:

This is because the same competitive pressures that ensure that Verizon will reasonably *price* special access services also ensure that Verizon will reasonably *provision* special access services.

Verizon Panel Testimony at 13 (emphasis in the original). Verizon thus seeks to link “competitive pressures” with “reasonable” prices, the obvious inference being that the availability of competitive alternatives prevents Verizon from raising rates to take advantage of its market dominance. However, obtaining Phase II “pricing flexibility” authority from the FCC does not necessarily result in price-driven competition. For instance, Verizon recently raised rates for special access services in areas where it has been granted Phase II pricing flexibility.<sup>6</sup> Moreover, Verizon’s prices for special access services in the price bands where it

---

<sup>4</sup> *Id.* at ¶ 151.

<sup>5</sup> Pricing Flexibility Order at ¶ 103.

has been granted pricing flexibility are higher than its rates for the same services in the corresponding rate zones where it is still subject to price caps.<sup>7</sup>

The fact that Verizon has not lowered its special access tariff rates in Phase II MSAs is a clear indication that the special access market is not sufficiently competitive to drive Verizon's rates down. So if, as Verizon asserts, the same competitive pressures are in fact operating on provisioning as well as pricing, then the relatively poor and discriminatory special access performance Verizon's competitive carrier-customers receive from Verizon is readily understandable. In a truly competitive market, Verizon would not be able to charge higher prices for unregulated services—unless those services were, in fact, superior to all other facilities-based alternatives. If that were so, then Verizon would certainly not be providing substandard service to its competitive carrier-customers.

**Verizon's Criticisms of the NYPSC Investigation's Process and Results are Unfounded**

**Q. THE NYPSC'S FOUND THAT VERIZON IS THE "DOMINANT" PROVIDER IN NEW YORK. VERIZON CONTENDS THAT THIS FINDING IS "FLAWED" AND NOT "CREDIBLE" BECAUSE THE DECISION WAS NOT BASED ON A "FORMAL ADJUDICATED PROCEEDING." DO YOU AGREE WITH VERIZON'S CRITICISMS?**

---

<sup>6</sup> See, e.g., Verizon Tariff FCC No. 1, § 7.5.16 (revised effective January 5, 2002) (showing an increase in monthly rates for DS-1 special access services in price bands 5 and 6).

<sup>7</sup> See, *id.* (offering monthly rates for special access ranging from \$142.20 - \$158.57 per DS-1 channel termination in rate zones where Verizon is still subject to price caps compared to rates ranging from \$146.66 - \$190.49 in the corresponding price bands where Verizon has been granted pricing flexibility).

A. No. Verizon asserts that the NYPSC's conclusion that Verizon remains "dominant" in the Special Services market in New York is "flawed" because it was based on data relating to "fiber route miles, number of buildings passes, and number of buildings actually connected to non-ILECs." Verizon Panel Testimony at 16. However, such data was actually submitted by Verizon itself as its evidence of non-dominance. Subsequently, the NY PSC requested additional data on these same indices, and the more complete, recast results still showed that Verizon was (and is) the dominant provider of special services in New York:

Its [Verizon] data demonstrates that Verizon dwarfs its competitors. In the 132 LATA for example, Verizon has 8,311 miles of fiber compared to a few hundred for most competing carriers; Verizon has 7,364 buildings on a fiber network compared to less than 1,000 for most competing carriers. In southern and mid-town Manhattan, where it is relatively easy for competitors to bring their own local loop facilities to large buildings, competition is concentrated. In other areas of New York City and throughout the rest of the state it becomes increasingly difficult for competitors to serve end users through the use of their own facilities because customers are more dispersed. As Verizon acknowledged, cost considerations force competitors to rely on Verizon's ubiquitous local loop facilities to reach most end users.<sup>8</sup>

As for Verizon's claim that the NY PSC reached its decision informally and without the benefit of an adjudicated proceeding, the NY PSC noted in its June 15, 2001 Order that "[n]o party requested formal evidentiary proceedings..."<sup>9</sup> Moreover, the NY PSC found that Verizon had presented no

---

<sup>8</sup> New York PSC, Case Nos. 00-C-2051 and 92-C-0665, Opinion and Order Modifying Special Services Guidelines for Verizon New York, Inc. Conforming Tariff, and Requiring Additional Performance Reporting, June 15, 2001 at page 7.

<sup>9</sup> Id. at p. 4.

new data in its petition for rehearing to support its claim that it did not have market dominance, nor did Verizon provide new data or show errors of law with respect to the discrimination issue.<sup>10</sup>

**Q. WHAT ABOUT THE EVIDENCE FOR VERIZON'S "DOMINANCE" IN MASSACHUSETTS?**

A. In my response to VZ-WCOM 2-2, I provided evidence showing that in Massachusetts, WorldCom has purchased 93% of its "off-net" special access needs from Verizon, versus only about 7% from other CLECs. In that response, WorldCom also clearly defined "off-net" as non-WorldCom facilities required to serve customers—that is, facilities provided either by Verizon or by other CLECs. However, Verizon's Panel Testimony avers "it is reasonable to assume that a large number of WorldCom's special access circuits—and an even larger proportion of its special access revenues—are 'on-net.'" Panel Testimony at 15-16. While to the best of my knowledge, WorldCom has never divulged publicly or to any regulatory body or court the percentage of its on-net facilities compared to Verizon, nor WorldCom's on-net special access revenues, I have been given permission to state publicly only that *less* than 50% of WorldCom's special access needs are provided "on-net"—that is, provided by WorldCom itself.

The fact is, Verizon and other incumbent LECs are the only providers with ubiquitous facilities, and that situation is not likely to change in the near future. In that regard, Verizon is at least partially correct that the decision to deploy facilities is an economic choice. However, in today's capital-constrained market,

---

<sup>10</sup> New York PSC, Case Nos. 00-C-2051 and 92-C-0665, Order Denying Petitions for Rehearing and Clarifying Applicability of Special Services Guidelines, December 20, 2001 at pp. 9-10.



and for the foreseeable future, facilities-based carriers cannot be expected to continue to expand their facilities, and Verizon is well aware of this fact, as I have read that Verizon it has itself curtailed its 2002 capital expenditures by \$1-2 billion dollars.

**Verizon's Assertions Regarding Its Differing Processes For Retail Versus Carrier Customers**

**Q. VERIZON CLAIMS (PANEL TESTIMONY AT 19-36) THAT THE DIFFERENCES IN ITS ORDERING AND PROVISIONING PROCESSES FOR RETAIL *VERSUS* CARRIER-CUSTOMERS CREATE A "MISLEADING APPEARANCE THAT ONE GROUP IS RECEIVING BETTER SERVICE, WHEN IN FACT VERIZON IS STRICTLY NEUTRAL." DO YOU AGREE?**

A. No. Verizon's explanation about the differing processes does not address the real issue. The fact that Verizon has established separate processes for its retail versus its "wholesale" competitive customers "because of the distinct demand of those particular customer groups" does not absolve Verizon from its legal obligations to show that it is providing non-discriminatory service to its competitive carrier-customers. For any regulatory body to ensure that favorable treatment is not being given to Verizon's own retail customers (and affiliated entities), Verizon must be able to measure and report in a manner that makes any actual differences readily apparent. Verizon's current measuring processes do not permit such an analysis and conclusion. The NY PSC Guidelines, which have been in place for years, and which were the basis for the NY *PSC's prima facie* finding that Verizon has been treating its retail customers more

favorably, are sufficient as an interim step to provide the Department with the necessary data upon which it can make such judgments or findings.

**Verizon’s Criticisms of the JCIG Metrics are Misguided**

**Q. PLEASE COMMENT ON VERIZON’S ASSERTION THAT THE JCIG METRICS OFFERED BY WORLDCOM ARE “BURDENSOME, DUPLICATIVE, MISLEADING AND DESIGNED TO MAXIMIZE THE POTENTIAL FOR PENALTY PAYMENTS.” (VERIZON PANEL TESTIMONY AT 44-47)**

A. I would first point out that WorldCom is not seeking the imposition of penalties for interstate special access at this time, only that Verizon report its performance so that it can be appropriately monitored. Any discriminatory performance detected in Verizon’s provision of interstate special access services can be reported to the FCC, and can include a request for shared FCC-state responsibilities for investigating and determining appropriate sanctions and/or penalties—similar to the type of shared or delegated jurisdiction that the FCC is already considering. See Furbish Direct Testimony at 14-15 (noting that the FCC has requested comments on such issues in its Special Access NPRM). However, WorldCom encourages the Department to adopt a remedy plan for poor or discriminatory intrastate performance.

As to Verizon’s erroneous claims about “duplication” and “flaws” in the JCIG metrics, it is clear that Verizon either misunderstands or has otherwise mischaracterized the nature and intent of the JCIG metrics.<sup>11</sup> The attached

---

<sup>11</sup> Verizon’s Panel Testimony invokes the tired mantra-- first developed as a defense against local performance metrics--of claiming “thousands of measures,” and purports the JCIG metrics would require Reporting on “7,800 measure each month.” However, Verizon’s calculation makes no sense, especially

excerpt from WorldCom's comments to the FCC in the Special Access NRPM (Attachment E) summarizes the precise rationale and intent of each of the eleven JCIG metrics, which capture essential elements of the special access ordering, provisioning and maintenance processes. As is readily evident from the attachment, neither the pair of metrics JIP-SA-1 (FOC Receipt) and JIP-SA-2 (FOC Receipt Past Due), nor the two metrics JIP-SA-4 (On Time Performance to FOC Due Date) and JIP-SA-5 (Days Late) are "mirror images of each other."

Moreover, the JCIG metrics in fact do take into account verifiable Customer Not Ready ("CNR") situations, to ensure that Verizon does not "game" the CNR process to avoid counting a missed date.

**Q. HAS THE ISSUE OF JCIG METRICS IMPLEMENTATION BEEN ADDRESSED IN ANY JURISDICTION?**

A. A version of WorldCom-proposed metrics, which formed the basis of the JCIG metrics submitted to the FCC in response to the FCC's NPRM, were just adopted by the Minnesota Public Utilities Commission. Pursuant to that order, Qwest will be required to report its inter- and intrastate special access performance. Qwest has moved for reconsideration and is required to raise any issues concerning the implementation of specific metrics in its motion.<sup>12</sup>

Further, in light of the unequivocal evidence that Verizon is providing more favorable performance for its retail customers over its wholesale competitor carrier customers, I reiterate my recommendation that the Department select a third-party auditor to investigate Verizon's current ordering, provisioning and

---

since there only 11 JCIG metrics, not 25 measurements as given in Footnote 21 on page 44 of the Verizon Panel Testimony.

maintenance policies, procedures and processes used to provide Special Access services to wholesale carrier customers and “specials” to retail end user customers. As previously noted, there is ample precedent for the Department to take this step, as evidenced in its decision to require an audit of Verizon’s local Performance Assurance Plan.

**Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

A. Yes, it does.

---

<sup>12</sup> Minneostoa PUC Docket No. P-421/M00-849, In the Matter of Qwest Wholesale Service Quality Standards, Order Setting Reporting Requirements and Future Procedures, March 4, 2002 (Attachment F).