

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Metro Teleconnect Companies, Inc.,	)	
	)	
Complainant,	)	
	)	
v.	)	File No. EB-02-MD-016
	)	
Verizon Maryland Inc.,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: April 30, 2003

Released: May 1, 2003

By the Chief, Enforcement Bureau:

1. In this Order, we deny a formal complaint that Metro Teleconnect Companies, Inc. (“Metro Teleconnect”), a reseller of telecommunications services in Maryland, filed against Verizon Maryland Inc. (“Verizon”) pursuant to section 208 of the Communications Act of 1934, as amended (the “Act”).<sup>1</sup> The Complaint alleges that Verizon has violated and is violating sections 201(b), 202(a), and 251(c)(4) of the Act<sup>2</sup> by failing to provide to Metro Teleconnect the same free call allowance for directory assistance calls that Verizon provides to its retail customers.<sup>3</sup>

2. We deny Metro Teleconnect’s claims under section 251(c)(4) for the reasons set forth in the recent *Maryland 271 Order*,<sup>4</sup> in which the Commission granted Verizon authority to

<sup>1</sup> 47 U.S.C. § 208. See Formal Complaint, Metro Teleconnect Companies, Inc. v. Verizon Maryland Inc., File No. EB-02-MD-016 (filed Apr. 23, 2002) (“Complaint”).

<sup>2</sup> 47 U.S.C. §§ 201(b), 202(a), 251(c)(4).

<sup>3</sup> The Complaint also alleged claims under sections 252(d)(3) and 271(c)(2)(B) of the Act, 47 U.S.C. §§ 252(d)(3), 271(c)(2)(B), but Metro Teleconnect later withdrew those claims with prejudice. Letter dated June 24, 2002 from Glenn S. Richards, counsel to Metro Teleconnect, to Marlene H. Dortch, Secretary, FCC, File No. EB-02-MD-016 (filed June 24, 2002).

<sup>4</sup> *Application by Verizon Maryland Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia*, Memorandum Opinion and Order, FCC 03-57, 2003 WL 1339419 (rel. Mar. 19, 2003) (“*Maryland 271 Order*”).

provide interLATA services in Maryland pursuant to section 271 of the Act.<sup>5</sup> In order to succeed on its section 271 application, Verizon had to show, among other things, that it provides access to directory assistance services and resells such services in accordance with the requirements of section 251(c)(4).<sup>6</sup> In determining whether Verizon had satisfied this requirement, the *Maryland 271 Order* analyzed the same directory assistance resale tariff challenged by Metro Teleconnect in its Complaint in this proceeding (“Maryland Tariff”).<sup>7</sup> After reviewing the Maryland Tariff’s directory assistance resale rates, the Commission in the *Maryland 271 Order* found that, “although resellers do not get the free call allowance provided to retail customers, they receive an analogous benefit in the form of a larger discount off other retail service.”<sup>8</sup> Thus, the Commission concluded that “we do not agree ... that Verizon’s refusal to provide a free call allowance in Maryland places resellers at any significant competitive disadvantage.”<sup>9</sup> The Commission summarizes its findings as follows: “Based on the record in this proceeding, we conclude ... that Verizon satisfied the requirements of this checklist item [*i.e.*, section 271(c)(2)(B)(xiv)].”<sup>10</sup> In sum, we deny Metro Teleconnect’s claims under section 251(c)(4) because the Commission in the *Maryland 271 Order* expressly found the same directory assistance resale rates at issue in the Complaint to comply with section 251(c)(4).<sup>11</sup>

3. We also deny Metro Teleconnect’s claims under sections 201(b) and 202(a). Section

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<sup>5</sup> See generally Letter dated April 4, 2003 from Sherry A. Ingram, counsel to Verizon, to Alexander Starr, Chief, Market Disputes Resolution Division, FCC, File No. EB-02-MD-016 (filed Apr. 28, 2003).

<sup>6</sup> 47 U.S.C. §§ 271(c)(2)(B)(xiv). As the *Maryland 271 Order* states, “[s]ection 271(c)(2)(B)(xiv) requires that a BOC make ‘telecommunications services ... available for resale in accordance with the requirements of section 251(c)(4) ... .’” *Maryland 271 Order*, 2003 WL 1339419 at 105, ¶ 153 (quoting 47 U.S.C. § 271(c)(2)(B)(xiv)).

<sup>7</sup> *Maryland 271 Order*, 2003 WL 1339419 at 106-110, ¶¶ 154-158.

<sup>8</sup> *Maryland 271 Order*, 2003 WL 1339419 at 109, ¶ 157.

<sup>9</sup> *Maryland 271 Order*, 2003 WL 1339419 at 109, ¶ 157.

<sup>10</sup> *Maryland 271 Order*, 2003 WL 1339419 at 105, ¶ 153.

<sup>11</sup> In Metro Teleconnect’s view, because the *Maryland 271 Order* rested on evidence indicating that retail and resale residential customers in Maryland make, on average, two directory assistance calls per month, the Commission left open the question whether Verizon provides resale in compliance with section 251(c)(4) with respect to resellers whose calling patterns exceed the average. Letter dated April 9, 2003 from Glenn S. Richards, counsel to Metro Teleconnect, to Alexander P. Starr, Chief, Market Disputes Resolution Division, FCC, File No. EB-02-MD-016 (filed Apr. 9, 2003) at 2 (citing *Maryland 271 Order* at 109, ¶ 157). We disagree. Implicit in the Commission’s reliance on data as to the average number of directory assistance calls per month is the recognition that some customers may place more than two directory assistance calls per month (and some may place fewer). Nevertheless, the Commission concluded that Verizon’s directory assistance resale rates (which, because they are set forth in a tariff, apply on an industry-wide basis) do not violate section 251(c)(4). Thus, as stated, the *Maryland 271 Order* vitiates Metro Teleconnect’s claims under section 251(c)(4).

251(c)(4) prohibits “unreasonable” and “discriminatory” conduct.<sup>12</sup> Metro Teleconnect has advanced no explanation as to how Verizon’s conduct could comply with section 251(c)(4), but still violate the reasonableness standard of sections 201(b)<sup>13</sup> and 202(a).<sup>14</sup> Given these circumstances, we deny Metro Teleconnect’s Complaint in its entirety.<sup>15</sup>

4. ACCORDINGLY, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 201, 202, 208, and 251 of the Act, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 202, 208, 251, and sections 1.720-1.736 of the Commission’s rules, 47 C.F.R. §§ 1.720-1.736, and the authority delegated by sections 0.111 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111, 0.311, that the above-captioned formal complaint is DENIED, and this proceeding is hereby TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>12</sup> Section 251(c)(4) prohibits incumbent local exchange carriers such as Verizon from “impos[ing] unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service ... .” 47 U.S.C. § 251(c)(4).

<sup>13</sup> Section 201(b) declares unlawful any “charge, practice, classification, or regulation that is unjust or unreasonable ... .” 47 U.S.C. § 201(b).

<sup>14</sup> Section 202(a) declares unlawful any “unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities or services for or in connection with like communication service ... .” 47 U.S.C. § 202(a).

<sup>15</sup> Given this result, we simply assume, without deciding, that sections 201(b) and 202(a) of the Act apply to the circumstances alleged; moreover, we need not and do not reach Verizon’s defense that Metro Teleconnect “waived” its claims in accordance with section 252(a)(1) of the Act, 47 U.S.C. § 252(a)(1).