

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

In the Matter of )  
 ) EB File No. EB-03-IH-0341  
Section 272(d) Biennial Audit of )  
Verizon Communications, Inc. )

**MEMORANDUM OPINION AND ORDER**

**Adopted:** August 7, 2003

**Released:** August 8, 2003

By the Chief, Enforcement Bureau:

**I. INTRODUCTION AND BACKGROUND**

1. In this Memorandum Opinion and Order, we deny Verizon Communications, Inc.'s ("Verizon's") request for confidential treatment of information contained in its audit report filed under section 272(d) of the Communications Act of 1934, as amended (the "Act").<sup>1</sup>

2. Section 272 of the Act requires Bell Operating Companies ("BOCs") offering in-region, interLATA service to do so through a separate affiliate.<sup>2</sup> Section 272 establishes certain structural, transactional, and nondiscrimination safeguards that govern the relationship between a BOC and its affiliate after the BOC receives authorization to provide in-region interLATA telecommunications services pursuant to section 271 of the Act. In addition, section 272(d) requires a BOC, after receiving section 271 authorization, to obtain a joint Federal/State audit conducted by an independent auditor to determine the BOC's compliance with section 272 and the Commission's rules.<sup>3</sup>

3. In a series of orders, the Commission implemented the separate affiliate safeguards mandated by the Act.<sup>4</sup> The Commission intended to deter conduct that would furnish an unfair competitive advantage to a BOC's in-region interLATA operations over other carriers,

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<sup>1</sup> 47 U.S.C. § 272(d).

<sup>2</sup> 47 U.S.C. § 272.

<sup>3</sup> 47 U.S.C. § 272(d).

<sup>4</sup> See *Accounting Safeguards under the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 17539 (1996) ("*Accounting Safeguards Order*"), Second Order on Reconsideration, 15 FCC Rcd 1161 (2000); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) ("*Non-Accounting Safeguards Order*"), First Order on Reconsideration, 12 FCC Rcd 2297 (1997), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997), *aff'd sub nom. Bell Atlantic Telephone Companies v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), Third Order on Reconsideration, 14 FCC Rcd 16299 (1999); see also 47 C.F.R. §§ 32.27, 53.1-53.213, 64.901-64.904.

such as cost misallocation or discrimination in favor of the BOC's section 272 separate affiliate.<sup>5</sup> In the *Accounting Safeguards Order*, the Commission adopted requirements governing the section 272(d) biennial audit, the oversight of the independent auditor, and filing the audit report.<sup>6</sup>

4. On June 11, 2001, Verizon submitted its first section 272(d) biennial audit report.<sup>7</sup> The final audit report provided facts concerning the compliance of several Verizon affiliates that were providing in-region, interLATA service in New York pursuant to Verizon's section 271 authorization. Verizon requested confidential treatment of certain financial and accounting information, including performance measurement data; the request was denied by the Commission.<sup>8</sup> The Commission observed that section 272(d)(2) provides that the independent auditor "shall submit the results of the audit to the Commission and to the State commissions of each State in which the company audited provides service, which shall make such results available for public inspection."<sup>9</sup> The Commission concluded that the plain language and the purpose of section 272(d)(2) mandates public disclosure of the results of the audit, which are contained in the audit report.<sup>10</sup> The Commission also found public disclosure consistent with the audit provisions of section 220 of the Act, the Trade Secrets Act, and Exemption 4 of the Freedom of Information Act.<sup>11</sup>

5. Similarly, on September 5, 2002, the Commission denied SBC Communications, Inc.'s ("SBC's") request for confidential treatment of information contained in its 272(d) audit report.<sup>12</sup> SBC had requested confidential treatment for financial and accounting information, performance data depicting quality of service, and other commercial information.<sup>13</sup> The Commission rejected SBC's request, observing that the performance data was aggregated summary information and that SBC did not provide adequate grounds for granting confidential treatment.<sup>14</sup>

6. On June 12, 2003, the independent auditor submitted Verizon's second section 272(d) audit report. By letter dated June 12, 2003, attached to the audit report, Verizon requests confidential treatment of the performance data, specifically for the volumes of special access services purchased by Verizon's affiliates and non-affiliates, as well as the number of

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<sup>5</sup> See *Accounting Safeguards Order*, 11 FCC Rcd at 17546, ¶ 13.

<sup>6</sup> See *id.* at 17628-632, ¶¶ 197-205; 47 C.F.R. §§ 53.209-53.213.

<sup>7</sup> See *Accounting Safeguards under the Telecommunications Act of 1996: Section 272(d) Biennial Audit Procedures*, Memorandum Opinion and Order, 17 FCC Rcd 1374 ("Verizon Confidentiality Order"), *recon. denied*, Order on Reconsideration, 17 FCC Rcd 6955 ("Verizon Reconsideration Order") (2002).

<sup>8</sup> See *Verizon Confidentiality Order*, 17 FCC Rcd at 1375, ¶ 4.

<sup>9</sup> *Id.* at 1375-76, ¶ 5.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 1380-83, ¶¶ 13-20.

<sup>12</sup> See *Accounting Safeguards under the Telecommunications Act of 1996: Section 272(d) Biennial Audit Procedures*, Memorandum Opinion and Order, 17 FCC Rcd 17012 (2002) ("SBC Confidentiality Order").

<sup>13</sup> *SBC Confidentiality Order*, 17 FCC Rcd at 17017-18, ¶ 17.

<sup>14</sup> *Id.* at 17018-19, ¶ 19.

presubscribed interexchange carrier (“PIC”) changes submitted by Verizon’s long distance affiliates and other carriers.<sup>15</sup> Specifically, Verizon seeks confidential treatment for the volumes contained in the performance measure results in Attachment A, pages A-3 through A-79 and the PIC changes data in Appendix A, pages 80 and 81.

## II. DISCUSSION

7. For the reasons stated in the *Verizon Confidentiality Order* and the *SBC Confidentiality Order*, we reject Verizon’s request for confidential treatment. Verizon here asserts the same arguments for confidential treatment of performance measurements and other data that the Commission addressed and rejected in the *Verizon Confidentiality Order*. As the Commission stated there, the plain language of section 272(d)(2) mandates public disclosure of the results of the audit, contained in the audit report.<sup>16</sup> Moreover, as the Commission observed in both the *Verizon Confidentiality Order* and the *SBC Confidentiality Order*, public disclosure of the audit results will promote meaningful comment on the audit results pursuant to section 272(d)(2) and thereby help the Commission determine compliance with section 272 and the Commission’s rules.<sup>17</sup>

8. As it did with the last 272 audit report, Verizon asserts that disclosure of this aggregated 2001 and 2002 information would likely substantially harm its competitive position. In the *Verizon Confidentiality Order*, the Commission rejected this argument, noting that Verizon only referred generally to redactions in the audit report and did not explain how specific information would cause competitive harm.<sup>18</sup> Under the Commission’s confidentiality rules, it is the submitter’s responsibility to explain the degree to which information is commercially sensitive (or contains trade secrets) and the manner in which the subject area could be used by competitors to inflict substantial competitive harm.<sup>19</sup> We therefore conclude that Verizon’s contentions here, without more, do not demonstrate how this information would likely substantially harm its competitive position.

9. Finally, we reject Verizon’s request to limit access to the audit information with a protective agreement. In the *Verizon Reconsideration Order* and the *SBC Confidentiality Order* the Commission rejected the same request, observing that a protective order would run counter to the statutory requirement to make the audit results contained in the final section 272 audit available for public inspection and to allow any party to comment on the audit report.<sup>20</sup>

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<sup>15</sup> See Letter from Joseph DiBella, Regulatory Counsel, Verizon to Marlene H. Dortch, Secretary, Federal Communications Commission (June 12, 2003) (“Verizon Confidentiality Request”).

<sup>16</sup> Section 272(d)(2) states that the auditor “shall submit the results of the audit to the Commission and to the State commission of each State in which the company audited provides service, which shall make such results available for public inspection. Any party may submit comments on the final audit report.” 47 U.S.C. § 272(d)(2). See *Verizon Confidentiality Order*, 17 FCC Rcd at 1375-76, ¶ 5.

<sup>17</sup> *Verizon Confidentiality Order*, 17 FCC Rcd at 1377-78, ¶ 8; *SBC Confidentiality Order*, 17 FCC Rcd at 17023, ¶ 33.

<sup>18</sup> *Verizon Confidentiality Order*, 17 FCC Rcd at 1381, ¶ 15.

<sup>19</sup> 47 C.F.R. §§ 0.459(b)(3), 0.459(b)(5).

<sup>20</sup> *Verizon Reconsideration Order*, 17 FCC Rcd at 6956, ¶ 3; *SBC Confidentiality Order*, 17 FCC Rcd at 17024, ¶ 35.

10. Therefore, for the foregoing reasons, we deny Verizon's request for confidential treatment of information contained in its section 272(d) audit report. As discussed below, an unredacted version of the section 272(d) audit report, in its entirety, will be available for public comment.

### III. ORDERING CLAUSES

11. ACCORDINGLY, IT IS ORDERED, pursuant to sections 4(i), 220, and 272(d) of the Act, 47 U.S.C. §§ 154(i), 220, and 272(d), that Verizon Communications, Inc.'s request for confidential treatment of the section 272(d) audit report, as noted and described herein, IS DENIED for the reasons indicated in this Order.

12. IT IS FURTHER ORDERED THAT, pursuant to sections 4(i), 220, and 272(d) of the Act, 47 U.S.C. §§ 154(i), 220, and 272(d), that the unredacted version of the final section 272(d) audit report be filed in this docket within ten days of the release of this Memorandum Opinion and Order, subject to paragraph 13 below. Interested parties will have 60 days from that date to file comments.

13. IT IS FURTHER ORDERED, pursuant to section 0.459(g) of the Commission's rules, 47 C.F.R. § 0.459(g), that Verizon has five working days from telephone notice of decision to file an Application for Review of this Memorandum Opinion and Order with the Commission. If Verizon files such an Application for Review, the materials will be accorded confidential treatment until the Commission acts on the Application for Review.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau