

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

In the Matter of
Accounting Safeguards
Under the Telecommunications Act of 1996:
Section 272(d) Biennial Audit Procedures
CC Docket No. 96-150

ORDER ON RECONSIDERATION

Adopted: April 9, 2002

Released: April 11, 2002

By the Commission:

I. INTRODUCTION AND BACKGROUND

1. In this Order, we address the petition of Verizon Communications, Inc. (Verizon) for reconsideration of our order denying Verizon's request for confidential treatment of information contained in the section 272(d) audit report arising out of the first biennial audit. As explained below, we deny Verizon's request for reconsideration.

2. Section 272(d) requires a Bell Operating Company (BOC) (after receiving section 271 authorization) to obtain a joint Federal/State audit conducted by an independent auditor to determine whether the BOC complies with section 272 and the Commission's implementing regulations. In June 2001, Verizon submitted the first audit report arising out of the first section 272(d) audit and requested confidential treatment of significant portions of the audit report. On January 10, 2002, the Commission released its decision denying Verizon's request for confidential treatment. In the Section 272(d) Audit Order, the Commission concluded that the plain language of section 272(d)(2) mandated public disclosure of the results of the audit, which are contained in the final audit report. On January 15, 2002, Verizon requested a stay and filed a petition for reconsideration. SBC Communications, Inc. (SBC) supports Verizon's petition. AT&T Corporation (AT&T), the Competitive Telecommunications Association (Comptel), and Worldcom, Inc. (Worldcom) oppose Verizon's request.

1 Accounting Safeguards under the Telecommunications Act of 1996: Section 272(d) Biennial Audit Procedures, CC Docket No. 96-150, Memorandum Opinion and Order, FCC 02-1 (rel. Jan. 10, 2002) (Section 272(d) Audit Order).

2 Section 272 establishes certain structural, transactional, and nondiscrimination safeguards that govern the relationship between a Bell Operating Company (BOC) and its affiliate after the BOC receives authorization for providing in-region interLATA telecommunications services pursuant to section 271 of the Act. See 47 U.S.C. § 272; see also 47 C.F.R. §§ 32.27, 53.1-53.213, 64.901-64.904.

II. DISCUSSION

3. Except for one issue, Verizon raises no new arguments or demonstrates that the Commission's decision contained a material error or omission. In its petition for reconsideration, Verizon argues that the Commission should adopt a protective order to control access to the section 272(d) audit report.³ We conclude that a protective order would run counter to the statutory requirement to make the audit results contained in the final section 272(d) audit report available for public inspection and to allow any party to comment on the report. By its very nature, a protective order restricts access to information to certain personnel and restricts the ability of those personnel to use the information reviewed only for limited purposes.⁴ No restrictions or limitations on inspecting or commenting on the report are contained in section 272(d)(2). Indeed, the statute states that the report must be available for "public inspection" and that "[a]ny party" may comment on the final report.⁵ Moreover, a protective order could impose a burden on some parties (e.g., small companies or not-for-profit groups) who wish to inspect and comment on the section 272(d) audit report.

4. We reiterate our conclusion that this decision applies only to the section 272(d) audit reports and not to audit reports in general.⁶ Nothing about this decision changes or modifies the Commission's long-standing policy regarding the disclosure of detailed information and documentation obtained during an audit.⁷ We likewise reiterate that nothing about our decision releases the independent auditor's work papers for this engagement to the public.⁸

5. Our rules generally direct that the section 272(d) audit determine whether the BOC has met the statutory requirements.⁹ To accomplish this, our rules require the joint Federal/State audit team to oversee the planning and analysis of the audit.¹⁰ The rules thus provide flexibility to modify and tailor the precise audit procedures based on our experience. The audit program that led to the first Verizon section 272(d) audit report was developed well in advance of the first section 271 approval, at a time when the potential risk areas were theoretical at best. We have learned a lot from the actual implementation of this program, and now can adapt the program for future audits to ensure that information contained in the report is probative of whether the BOC has met the requirements of the statute and our implementing rules.¹¹ We expect that the Commission staff overseeing the independent audit will continue to revise the

³ Verizon Petition at 6; SBC Comments at 7.

⁴ See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, *Report and Order*, 13 FCC Rcd 24816, para. 21 (1998) (*Confidential Treatment Order*), *order on reconsideration*, 14 FCC Rcd 20128 (1999); see also Comptel Comments at 14-16; AT&T Comments at 2.

⁵ Section 272(d)(2) reads in pertinent part: "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) (emphasis added).

⁶ See *Section 272(d) Audit Order* at para. 12.

⁷ See *Confidentiality Order* at para. 54 (citing Scott J. Rafferty, 5 FCC Rcd 4138 (1990)).

⁸ *Section 272(d) Audit Order* at para. 11.

⁹ See 47 C.F.R. §§ 53.209(a)-(b).

¹⁰ See 47 C.F.R. §§ 53.209(d) (stating that the audit team "may direct the independent auditor to take any actions necessary to ensure compliance with the audit requirements listed in [the Commission's rules]."), 53.511 (requiring the audit team to review the independent auditor's work).

¹¹ Because the section 272(d) biennial audit is an "agreed-upon procedures" audit, the joint Federal/State team has the authority to modify the audit procedures, the information collected and deposited into the auditor's workpapers, and the format for the final report. See *Section 272(d) Audit Order* at para. 6.

general audit procedures based on the experience derived from past audits to ensure the Commission, the states, and the public receive a useful audit report that presents relevant information about the BOC's compliance.

6. As a final matter, we also deny Verizon's request for a stay. In its petition, Verizon briefly explains the four general factors for evaluating a request for stay, but provides scant explanation for how its request meets any of the factors.¹² We therefore conclude that Verizon did not demonstrate that it met the requirements for a stay. Further, we note that, under the Commission's rules, a request for stay will not be considered when combined with another petition.¹³

III. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 220, and 272(d) of the Act, 47 U.S.C. §§ 4(i), 220, and 272(d), that Verizon's petition for reconsideration and request for stay ARE DENIED for the reasons indicated in this Order.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

¹² Verizon Petition at 10-11 (citing *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d p21, 925 (D.C. Cir. 1958)); see Comptel Comments at 12-13.

¹³ 47 C.F.R. § 1.44(e). We note that the information at issue (i.e., the final audit report itself) has already been publicly released pursuant to the procedures provided in section 0.459 of our rules. See 47 C.F.R. 0.459(g); see also *Section 272(d) Audit Order* at paras. 23-24; Accounting Safeguards under the Telecommunications Act of 1996: Section 272(d) Biennial Audit Procedures, CC Docket No. 96-150, *Memorandum Opinion and Order*, FCC 02-13 (rel. Jan. 23, 2002).