Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	File No. EB-02-IH-0568
	)	Acct. No. 20033208000
Verizon Telephone Companies	)	FRN No. 0003708500

CONSENT DECREE

1. The Federal Communications Commission (the "Commission" or the "FCC") and the Verizon Telephone Companies ("Verizon") hereby enter into this Consent Decree for the purpose of terminating an informal Bureau investigation into whether Verizon provided, marketed or sold in-region, interLATA services prior to its receipt of authorization pursuant to section 271 of the Communications Act of 1934 ("the Act"), as amended. As part of this investigation, the Bureau has examined Verizon's compliance with section 272(g)(2) of the Act, 47 U.S.C. § 272(g)(2), which prohibits a Bell Operating Company ("BOC") from marketing or selling in-region interLATA services provided by an affiliate in states where it has not received authorization to provide such services pursuant to section 271 of the Act.[1]

2. For purposes of this Consent Decree, the following definitions shall apply.

(a) "FCC" or the "Commission" means the Federal Communications Commission and all of its bureaus and offices.

(b) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.

(c) "Verizon" means the Verizon Telephone Companies, which include Verizon Delaware Inc., Verizon Maryland Inc., Verizon New England Inc., Verizon New Jersey Inc., Verizon New York Inc., Verizon Pennsylvania Inc., Verizon Virginia Inc., Verizon Washington, DC Inc., Verizon West Virginia Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions, and Verizon Select Services Inc., and their successors and assigns.

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[1] *See* Letter from Maureen F. Del Duca, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Gordon R. Evans, Vice President, Federal Regulatory, Verizon, and Dee May, Assistant Vice President, Federal Regulatory, Verizon, dated July 9, 2002 ("LOI").

(d) "Parties" means Verizon and the Bureau.

(e) "In-region state" is defined at 47 U.S.C. § 271(i)(1), and for Verizon includes Maine, New Hampshire, Connecticut, Vermont, Massachusetts, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, West Virginia, Virginia and the District of Columbia.

(f) "Order" or "Adopting Order" means an order of the FCC adopting the terms of this Consent Decree without change, addition, or modification.

(g) "Final Order" means an order that is no longer subject to administrative or judicial reconsideration, review, appeal, or stay.

(h) "Investigation" means the investigation commenced by the Bureau on July 9, 2002 into allegations that Verizon provided, marketed or sold in-region, interLATA services prior to its receipt of authorization pursuant to section 271 of the Act during the period from January 1, 1999 to June 30, 2002.

(i) "Effective Date" means the date on which the Commission adopts the Adopting Order.

I. BACKGROUND

3. Verizon is prohibited from providing interLATA services originating in a particular in-region state (other than incidental interLATA services and certain services permitted under the Modification of Final Judgment) until it has received authorization to provide such services in such state pursuant to section 271 of the Act. To obtain authorization to provide in-region interLATA services under section 271, a Verizon BOC must show, among other things, that it has fully implemented a "competitive checklist" designed to give competitors nondiscriminatory access and interconnection to its network. 47 U.S.C. § 271(d)(3)(A).

4. Section 272(g)(2) of the Act prohibits a BOC from marketing or selling in-region interLATA services provided by an affiliate before it has satisfied the requirements of section 271. In particular, section 272(g)(2) states that "[a BOC] may not market or sell interLATA service provided by an affiliate required by this section within any of its in-region States until such company is authorized to provide interLATA services in such State under section 271(d)."[2]

[2] The legislative history for section 272(g)(2) includes the statement that "the ability to bundle telecommunications, information and cable services into a single package to create 'one-stop shopping' will be a significant competitive marketing tool. As a result, and to provide for parity among competing industry sectors, the Committee has included restrictions on joint marketing. . . ." S. Rep. No. 23, 104th Cong., 1st Sess. 22 (1995).

5. Prior to June 30, 2002, Verizon had received authorization pursuant to section 271 of the Act to provide long distance services in six of its in-region states. Verizon also provided long distance services in a number of out-of-region states that are not subject to the requirements of section 271. To ensure compliance with sections 271 and 272, Verizon states that it had established specific procedures to govern the introduction of its long distance services in its in-region states. In particular, Verizon states that it had controls in place for each aspect of the long distance process – marketing, sales, ordering, and provisioning – and states that these applied to Verizon as well as to the third-party vendors and suppliers.

6. In connection with its New Jersey section 271 application, Verizon voluntarily disclosed to the Commission four incidents in which, according to Verizon, it inadvertently marketed or sold long distance service in New Jersey, Connecticut, and Virginia. Once these incidents were identified, Verizon states that it immediately took steps to correct these problems and initiated an internal review to identify the causes of the errors. Among other steps, Verizon states that it imposed a moratorium on all advertising, direct mail, bill media, and outbound telemarketing in the former Bell Atlantic states, including states in which Verizon had section 271 approval, in order to ensure that all appropriate safeguards were in place. Verizon also states that marketing was phased in gradually only after Verizon completed a review of its practices and controls. As described below, Verizon states that it also adopted a series of additional controls.

7 Following these disclosures, on July 9, 2002, the Bureau began its Investigation. During the course of the Investigation, in a sworn response to the Bureau LOI, Verizon disclosed evidence of additional unrelated incidents it discovered during an internal review in which it had potentially marketed, sold or provisioned in-region, interLATA services in nine in-region states prior to receiving section 271 authorization for those states. The Bureau's investigation included review of the following incidents:

(a) Washington, D.C. Area Cable Television Advertisements. In February and March 2002, prior to receipt of section 271 authorization in Washington, D.C., Maryland, Virginia and West Virginia, Verizon ran a 30-second cable television advertisement campaign targeted to business customers on several Washington, D.C. area cable channels. During the ad, the phrase “Long Distance Savings” appeared on the screen for several seconds. Verizon indicates that this ad could have reached a total of approximately 660,000 viewers. Verizon maintains that this campaign ran in five media markets, Tampa, Boston, Philadelphia, New York, and Washington, D.C., and by mistake the text that mentioned long distance was not removed from the ad that ran in the Washington, D.C. area. Verizon also maintains no Washington, D.C. area customers received or paid for long distance service as a result of the ad.

(b) Bill Inserts. In June 2002, prior to receipt of section 271 authorization in New Jersey, Verizon announced the launch of Verizon long distance service by placing bill inserts in the bills of approximately 554,000 residential customers in New Jersey, which represents roughly 17% of Verizon’s residential subscriber base in the state. These bill inserts, which advertise Verizon’s “Timeless Long Distance Plan,” state that “Verizon Long Distance is available in New Jersey.” The bill insert also invites prospective customers to call a toll-free number to “sign up” for service. Verizon maintains that the bill inserts were distributed inadvertently as a result of a change in the launch date for Verizon long distance in New Jersey. When it became clear that the Commission was not going to approve Verizon's application on an accelerated schedule, as Verizon had originally anticipated after the Commission set an expedited pleading cycle, Verizon moved the date that it planned to launch its New Jersey long distance service but states that it inadvertently failed to send the appropriate notice to the personnel who managed the bill insertion process. Shortly thereafter, Verizon states that it sent a Western Union mailgram to each customer who received the bill insert stating that Verizon was not authorized to provide long distance services in New Jersey. Verizon also maintains that no customers received or paid for long distance service as a result of receiving the bill inserts.

<u>(c) Local Service "Winback" Letters</u>. Between March and June 2002, prior to receipt of section 271 authorization in the relevant nine states, Verizon sent local service "winback" letters to approximately 20,000 former business customers in New Jersey, Virginia, Washington, D.C., Maryland, West Virginia, Delaware, Maine, New Hampshire, and Vermont which reference, among other types of services, Verizon's long distance services. Approximately 15,000 of these letters did not include a disclaimer stating that not all services may be available in all areas. Verizon maintains that it inadvertently failed to include these disclaimers and that no customers in non-section 271 authorized states received or paid for long distance service as a result of these letters.

<u>(d) Virginia Business Solicitations</u>. On May 1 and May 9, 2002, prior to receipt of section 271 authorization in Virginia, Verizon Enterprise Solutions sent direct mail solicitations for Verizon long distance services to a total of approximately 2,250 business customers in Virginia. The letters offered certain customers "[a] discounted 7 cents per minute rate on all direct-dialed, state-to-state long distance calls," and invited interested customers to call a toll-free number. Verizon maintains that it intended to exclude from this mailing customers in Virginia, but the software program written to pull these customer names failed to exclude some former GTE small business customers in Virginia to whom Verizon provided local service. Shortly thereafter, Verizon states that it mailed a first class letter to each of these customers explaining that Verizon was not authorized to provide long distance services in Virginia. Verizon maintains that none of these customers received or paid for long distance service as a result of the mailing.

<u>(e) Exton BPC Correspondence</u>. During some time period between January and July 2002, prior to receipt of section 271 authorization in New Jersey, an account manager in Verizon's Exton Business Partnership Channel ("Exton BPC") (a center which manages accounts for certain small business customers in various in-region states) sent correspondence to approximately 400 New Jersey business customers which stated that Verizon long distance services were either "coming soon" or "coming in March." Verizon maintains that the letters were sent in error and that no customers received or paid for long distance service as a result of these letters.

8. In or after June 2002, Verizon states that it adopted a series of additional controls for each aspect of the long distance process, including marketing, sales, ordering and provisioning. Verizon states that these controls include the following measures: (1) creation of a compliance team that reviews the processes and controls for marketing and provisioning long

distance service; (2) additional training for service representatives on the requirements of sections 271 and 272; (3) adoption of enhanced controls on direct mail and bill media advertising; and (4) a June 2002 comprehensive review of telemarketing vendors operating in the former Bell Atlantic states. Verizon asserts that it will maintain these procedures until it receives authorization to provide interLATA services in all of its in-region states in accordance with section 271 of the Act.

II. AGREEMENT

9. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between Verizon and the Commission of the Investigation. In consideration for the termination of this Investigation in accordance with the terms of this Consent Decree, Verizon agrees to the terms, conditions, and procedures contained herein.

10. Verizon admits that, with respect to the incidents enumerated in paragraphs 7(a) to (e), *supra,* Verizon violated section 272(g)(2).

11. Verizon maintains that these violations occurred as a result of mistakes and were not deliberate. Verizon does not admit any noncompliance, violations, or liability associated with or arising from any alleged actions or failures, including any problems or failures described in the letters of inquiry, *ex partes,* or other information the Commission received on or before the Effective Date of this Consent Decree other than as stated in paragraph 7(a) to (e), *supra*.

12. In express reliance on the covenants and representations contained herein, the Commission agrees to terminate the Investigation.

13. As noted in paragraph 8, *supra*, Verizon represents that it has instituted a number of measures designed to improve controls in each aspect of the long distance process, including marketing, sales, ordering and provisioning. Verizon agrees that it will maintain these procedures until it receives authorization to provide interLATA services in all of its in-region states in accordance with section 271 of the Act.

14. Verizon will make a voluntary contribution to the United States Treasury in the amount of $5.7 million within 10 calendar days after the Commission Order adopting this Consent Decree becomes final. Verizon must make this payment by check, wire transfer or money order drawn to the order of the Federal Communications Commission, and the check, wire transfer or money order should refer to "Acct. No. 20033208000" and "FRN No. 0003708500." If Verizon makes this payment by check or money order, it must mail the check or money order to: Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois, 60673-7482. If Verizon makes this payment by wire transfer, it must wire such payment in accordance with Commission procedures for wire transfers.

15. The Commission agrees that, in the absence of new evidence relating to incidents that Verizon has not disclosed to the Bureau through the Effective Date of this Consent Decree, it will not use the facts developed in this Investigation, or the existence of this Consent Decree,

to institute, on its own motion, any new proceedings, formal or informal, or to take any actions on its own motion against the Company concerning the matters that were the subject of the Investigation. The Commission also agrees that, in the absence of new evidence relating to incidents that Verizon has not disclosed to the Bureau through the Effective Date of this Consent Decree, it will not use the facts developed in the Investigation to institute on its own motion any proceeding, formal or informal, or take any action against Verizon with respect to its basic qualifications, including its character qualifications, to be a Commission licensee. Consistent with the foregoing, nothing in this Consent Decree limits the Commission's authority to consider and adjudicate any formal complaint that may be filed pursuant to sections 208 or 271 of the Communications Act, as amended, and to take any action in response to such formal complaint.

16. Verizon waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Order adopts the Consent Decree without change, addition, or modification.

17. Verizon's decision to enter into this Consent Decree is expressly contingent upon issuance of an Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition, or modification.

18. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

19. If either party (or the United States on behalf of the Commission), brings a judicial action to enforce the terms of the Adopting Order, neither Verizon nor the Commission shall contest the validity of the Consent Decree or Adopting Order, and Verizon will waive any statutory right to a trial *de novo*.

20. Any violation of the Consent Decree or the Adopting Order will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

21. The Parties also agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Verizon does not consent) that provision will be superseded by such Commission rule or order.

22. This Consent Decree may be signed in counterparts.

FEDERAL COMMUNICATIONS COMMISSION

By: ________________________________

Marlene H. Dortch
Secretary

VERIZON

By: ________________________________

Michael E. Glover
Senior Vice-President and Deputy General Counsel
Verizon