

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of

2000 Biennial Regulatory Review  
Separate Affiliate Requirement of Section  
64.1903 of the Commission's Rules

CC Docket No. 00-175

**REPLY COMMENTS OF VERIZON<sup>1</sup>**

Predictably, the interexchange carriers oppose any streamlining of the separate affiliate requirement for facilities-based independent local exchange carrier providers of interexchange services, despite the fact that there is no evidence that this requirement is necessary to prevent harm to competition for long distance services. The accounting and non-discrimination safeguards that currently apply to resale-based independent local exchange carrier providers of interexchange services are more than sufficient to address concerns about potential misallocation of cost and discrimination, which have always been speculative at best. The Commission should eliminate the separate affiliate requirement for all independent local exchange carriers, regardless of size or geographic scope.

The comments overwhelmingly demonstrate that the separate affiliate requirement in section 64.1903 of the Commission's rules is not "necessary" to promote competition for long distance services, and therefore it *must* be eliminated pursuant to the biennial review

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<sup>1</sup> The Verizon telephone companies ("Verizon") are the affiliated local telephone companies of Verizon Communications Inc. These companies are listed in Attachment A. In addition, the Puerto Rico Telephone Company concurs in these comments.

requirements in section 11 of the Act, 47 U.S.C. § 161. *See* Joint Comments, 8-10; NTCA, 5-6; ALLTEL, 4-5; Sprint, 4-5; USTA, 2-4; Valor, 7-10. The commenters note that the Commission adopted this rule based “not on historical conduct or on record evidence, but rather on speculative ‘concerns’ about possible future conduct” which have never materialized. *See* Joint Comments, 11; NTCA, 4. As a result, the Commission imposed administrative costs and inefficiencies on the independent local exchange carriers that hamper their ability to compete with other providers of interexchange services. *See Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, Fifth Report and Order*, 98 FCC 2d 1191 (1984).

In similar contexts, the Commission has found that structural separation imposes additional costs and inefficiencies with no corresponding consumer benefit. It prevents the carriers from taking advantage of scope economies that the carriers could use to produce different services. *See, e.g., Amendment of Section 64.702 of the Commission’s Rules and Regulations (Third Computer Inquiry)*, 2 FCC Rcd 3035, ¶ 25 (1987). In addition, it inhibits the carriers from providing new services. *See, e.g., Computer III Remand Proceedings; Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*, 6 FCC Rcd 7571, ¶ 8 (1991). Where the Commission has eliminated such unnecessary restrictions, output has increased, prices have fallen, and consumers have benefited. For instance, the elimination of structural separation requirements for the provision of customer premises equipment and enhanced services has resulted in increased competition and it has given consumers a choice of a myriad of suppliers. *See Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 16 FCC Rcd 7418, ¶ 10 (2001). Similarly, a reduction in the regulatory restrictions

on the provision of interexchange services by independent local exchange carriers will promote increased competition and consumer choice.

In the *Second Reconsideration Order*,<sup>2</sup> the Commission decided that independent local exchange carriers that provide in-region, long distance services solely on a resale basis should not be subject to the separate affiliate requirement that applies to carriers that provide such services through their own switching or transport facilities. In making this distinction, the Commission alluded to concerns that facilities-based carriers might engage in improper cost allocation and discrimination. *See id.*, ¶ 11. However, if the separate affiliate requirement were eliminated, facilities-based carriers would still be subject to the safeguards applicable to resellers; (1) they would have to maintain separate books of account for their interexchange services; (2) they would have to acquire any services from their affiliated local exchange carriers under tariff or on the same basis as requesting carriers that have negotiated interconnection agreements pursuant to section 251 of the Act; and (3) they would have to comply with the section 32.27 affiliate transaction rules. *See id.*, ¶¶ 25-26; 47 C.F.R. § 64.1903(b)(1). These accounting and nondiscrimination safeguards are equally effective regardless of whether the long distance services are conducted through a separate affiliate or a separate corporate division.

The opposing parties provide no evidence to support their claims that the separate affiliate requirement is necessary to promote competition for interexchange services. *See* AT&T, 3-6; ASCENT, 6-7; 5-6. AT&T is the only commenter that raises specific complaints about the independent local exchange carriers' practices, but these examples have *nothing* to do

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<sup>2</sup> *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, Second Order on Reconsideration and Memorandum Opinion and Order*, 14 FCC Rcd 10771 (1999) ("*Second Reconsideration Order*").

with the separate affiliate rules applicable to independent local exchange carriers. For instance, AT&T argues that Verizon has engaged in a “price squeeze” by offering intraLATA toll services and intrastate interLATA services in the State of Missouri at rates that are insufficient to recover the access charges of the Verizon local exchange company in that state. *See* AT&T, 5.

However, neither of these services is subject to the section 64.1903 rules. First, those rules do not apply to intraLATA toll services. Second, Verizon does not offer intrastate interLATA services in Missouri through the Verizon local exchange carrier. Rather, Verizon offers these services through its section 272 affiliate, Verizon Long Distance, which obtains access services from Verizon’s local exchange companies on the same terms as other long distance carriers. The fact that AT&T had to go so far afield to find something to complain about demonstrates that no problems have occurred in the offering of interexchange services by independent local exchange carriers.

AT&T’s price squeeze allegations, in addition to being irrelevant, are simply wrong. AT&T complains about Verizon Long Distance’s “SmartTouch<sup>sm</sup>” pre-paid calling plan, which includes an 11 cent per minute intrastate long distance rate in Missouri. However, Verizon Long Distance is in no position to carry out a “price squeeze,” since, as noted above, it purchases access services from its local exchange affiliate under the same tariffs that are applicable to unaffiliated carriers.<sup>3</sup> The intrastate rates under the SmartTouch<sup>sm</sup> plan vary from state to state,

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<sup>3</sup> *See* 47 U.S.C. § 272(e)(3). A similar rule applies to the offering of interexchange services by independent local exchange carriers, whether through resale or on a facilities basis. *See* 47 C.F.R. § 64.1903(a)(3).

depending on the average level of access charges in each state.<sup>4</sup> Since Verizon Midwest serves only 20 percent of the access lines in Missouri, the 11 cent rate cannot be compared simply to the level of Verizon Midwest's access charges. This rate is also designed to allow recovery of the access charges of the SBC local exchange companies, which are substantially lower than Verizon's.<sup>5</sup> AT&T also complains that Verizon's intraLATA toll rate of 9 cents per minute is not high enough to cover Verizon's intrastate access rates. However, AT&T raised precisely the same "price squeeze" argument when it opposed Verizon's state tariff filing that introduced this rate. The Missouri Public Service Commission dismissed AT&T's argument out of hand, finding that "the tariff is consistent with the promotion of full and fair competition" based on the fact that Verizon Midwest filed this rate to match AT&T's 9 cent per minute rate.<sup>6</sup> AT&T cannot claim that Verizon created a price squeeze through a pricing practice that was created by AT&T in the first place. AT&T's efforts to paint itself as a victim of unfair pricing practices are nothing more than attempts to prevent other companies from competing with it.

Some of the commenters argue that the Commission should eliminate the separate affiliate requirement only for small and midsize independent local exchange carriers. *See, e.g.,*

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<sup>4</sup> *See* [http://www2.verizonld.com/residential/plan\\_smarttouch.jsp](http://www2.verizonld.com/residential/plan_smarttouch.jsp). The intrastate rates vary from a low of 5 cents per minute in California to a high of 16 cents per minute in South Dakota and New Mexico. The interstate rate for this plan is 8 cents per minute, reflecting the average level of interstate access charges.

<sup>5</sup> *See* <http://www.sbc.com/PublicAffairs/PublicPolicy/Tariffs2/1,3950,281,00.html>.

<sup>6</sup> *See* Missouri Public Service Commission, Case No. TT-2002-43, Tariff File No. 200101228, Order Denying Motion to Suspend and Approving Tariff, p. 3 (rel. July 31, 2001) *available at* <http://168.166.4.147/orders/0731243.htm>. In response to a petition for reconsideration filed by AT&T, the state asked Verizon to provide information to substantiate its representation that this rate is available for resale, which it is. *See id.*, Order Directing Filing (rel. Nov. 13, 2001) *available at* <http://168.166.4.147/orders/1109243.htm>.

Joint Comments, 26; NTCA, 5. However, as Sprint points out, there is no reason to distinguish among local exchange carriers based on size. *See* Sprint, 6-9. The Commission declined to make such a distinction in the *Second Reconsideration Order*, finding that a carrier's size is irrelevant to its ability to engage in cross-subsidization or discrimination. *See Second Reconsideration Order*, ¶ 17. The accounting and non-discrimination safeguards in section 64.1903 are equally effective regardless of a carrier's size. The Commission should permit all incumbent independent local exchange carriers to provide facilities-based interexchange services through a corporate division, including both large and small carriers and both rural and non-rural carriers.

In addition, the Commission should apply the section 64.1903 rules, rather than the more stringent rules implementing section 272 of the Act, to relationships between independent local exchange carriers and their interexchange affiliates who are subject to section 272 rules when they offer originating interexchange services in former Bell operating company regions. The Commission has found that its section 64.1903 rules are sufficient to protect against cross-subsidization and discrimination when an independent local exchange carrier provides interexchange services. This finding is equally relevant where an independent local exchange carrier has merged with a former Bell operating company that has been granted authority to offer in-region interexchange services. The merger does not change the fact that the independent local exchange carrier's interexchange operations outside of the former Bell operating company region do not pose any greater danger of cross-subsidization or discrimination simply because an affiliated company has obtained long distance authority within a Bell operating company region.

## Conclusion

For the foregoing reasons, the Commission should eliminate the separate affiliate requirement for interexchange services offered by independent local exchange carriers, and it should apply this rule regardless of the size or geographic scope of the local carrier, and regardless of whether the carrier is affiliated with a former Bell operating company that is subject to section 272 requirements for in-region services.

Respectfully submitted,

/S/

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States  
GTE Midwest Incorporated d/b/a Verizon Midwest  
GTE Southwest Incorporated d/b/a Verizon Southwest  
The Micronesian Telecommunications Corporation  
Verizon California Inc.  
Verizon Delaware Inc.  
Verizon Florida Inc.  
Verizon Hawaii Inc.  
Verizon Maryland Inc.  
Verizon New England Inc.  
Verizon New Jersey Inc.  
Verizon New York Inc.  
Verizon North Inc.  
Verizon Northwest Inc.  
Verizon Pennsylvania Inc.  
Verizon South Inc.  
Verizon Virginia Inc.  
Verizon Washington, DC Inc.  
Verizon West Coast Inc.  
Verizon West Virginia Inc.