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VIA HAND DELIVERY
Carol Mattey
Deputy Chief, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC, 20554

Re: Verizon Section 272 Compliance Biennial Audit Report in CC Docket No. 96-150

Dear Ms. Mattey:

On behalf of AT&T Corp., I am writing to oppose Verizon's Petition for Reconsideration and Request for Stay ("Reconsideration Petition"). The Commission was absolutely correct when it held that the express and unequivocal language of Section 272(d) requires Verizon and the other BOCs to submit an unredacted Audit Report for public review. Verizon has offered no legitimate reason for the Commission to now reconsider or modify that Order.

As a threshold matter, Verizon has not met the Commission's standard for granting a Motion for Reconsideration.[1] Verizon proffers no new evidence or evidence of changed circumstances, but instead is simply repeating arguments already considered and rejected. Second, Verizon's suggestion that AT&T's request in its August 7, 2001 letter to Mr. Boyle for access to the confidential information through a Confidentiality Order somehow "*concedes*" that Verizon's redactions were proper is absurd.[2] At the beginning of its letter, AT&T clearly stated its position that Verizon's redactions in the Section 272 Biennial Reports[3] were neither proper nor sustainable.[4] AT&T, however, sought to

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1 47 C.F.R. §1.106(b) and (c).

2 Verizon's Petition for Reconsideration and Request for Stay ("Reconsideration Petition") at 6, n. 4.

3 The Reports of Independent Accountants on Applying Agreed-Upon Procedures prepared by PricewaterhouseCoopers LLP (the "Auditor") and filed on June 11, 2001 ("Initial Biennial Report") and June 18, 2001 ("Supplemental Biennial Report") (collectively the "Verizon Section 272 Biennial Reports").

expedite resolution of the matter by offering to sign a Confidentiality Order *if* the Commission did not agree with AT&T's position and instead *required* confidentiality.

1. The Commission Correctly Held that Section 272(d) Does Not Allow for the Redaction of Necessary Data from the Biennial Audit Report

The language of Section 272(d)(2) could not be clearer – "The auditor … shall submit the results of the audit to the Commission … which shall make such results available for public inspection."[5] For the reasons set forth in the Commission's January 10, 2002 Memorandum Opinion and Order, making the results of the audit available for public inspection means public access to all of the audit results without redaction.[6] As the Commission noted in its decision,[7] this is particularly important in the context of an Agreed-Upon Procedures ("AUP") audit where the independent auditor must report all errors or discrepancies discovered and the public must comment on the significance of this data. Moreover, it would be unreasonable to construe "public inspection" as used in Section 272(d) to mean inspection pursuant to a Confidentiality Order.

First, Confidentiality Orders typically prohibit the use of the data disclosed in any other proceeding. That would defeat one of the purposes of the public inspection requirement here. The 272 audits are the primary policing mechanisms in a post-Section 271 world, and parties must be free to use evidence of discrimination in subsequent FCC proceedings under Sections 251 and 271 and other enforcement proceedings.

Second, the likelihood that the "Copy Prohibited" label will be improperly invoked in this proceeding is evident from Verizon's frivolous use of the "proprietary" label in the Section 272 Biennial Reports. For example, Verizon redacted the year of the month in which the Auditor tested National Directory Assistance database dip charges and found non-compliance with Section 272(e)(2)'s prohibition on discrimination (Objective IX), although there is no conceivable reason why the year is proprietary.[8]

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4 Letter from Aryeh S. Friedman to Hugh L. Boyle, dated August 7, 2001 (the "August 7 Letter") at 2.

5 47 U.S.C. § 272(d)(2).

6 Memorandum Opinion and Order, *In the Matter of Accounting Safeguards Under the Telecommunications Act of 1996: Section 272(d) Biennial Audit Procedures*, CC Docket No. 96-150 (rel. Jan. 10, 2002) ("*Non-Redaction Order*") ¶ 5.

7 *Id*. ¶ 6.

8 Initial Biennial Report, Appendix A, Objective X, Procedure 6. Another example is Verizon's redaction of the aggregate number of the number of employees employed by the affiliates, Initial Biennial Report, Appendix A, Objective I, Procedure 3, and its redaction of the *discrepancy* found by the Auditor between the fixed asset balance in the balance sheet and the "fixed asset list" compiled by the Auditor. (Initial Biennial Report, Appendix A and Supplemental Biennial Report, Appendix C, Objective I, Procedure 7). Verizon redacted the data even though it was necessary for the Auditor and others to evaluate Verizon's compliance with the "operate independently" requirement (Objective I), and the Affiliate Transaction Rules and Public Disclosure obligations (Objectives V and VI) of Section 272(b)(1).

Third, in determining whether Verizon complied with its Section 272 obligations, the Commission may reasonably consider the cost burden that a Confidentiality order may impose on smaller CLECs. Because of Verizon's proclivity to mislabel confidential information (and mislabeling such information as Copy Prohibited would require those authorized to review the data to travel long distances to review this data at a location designated by Bell Atlantic), smaller CLECs may effectively be prevented from seeking enforcement of their rights.

Finally, Verizon suggests that the Commission's decision will result in the audited BOCs being less cooperative with their auditors.[9] That is an amazing statement. Verizon's threat to violate its legal obligation to cooperate fully with the auditor is no reason to hold that audit results should be masked from the public when the statute calls for public disclosure. Verizon's assertion simply reflects its contempt, like others in the news recently, for their auditing obligations.

2. The Redacted Data Is Not Proprietary And Disclosure Is Critically Important To Foster The Goals Of The Act

As noted above in Section 1, Verizon redacted data in the Section 272 Biennial Reports as proprietary even though it is evident from the context of the redactions that the data are not proprietary. Indeed, Verizon, in its Motion for Reconsideration, does not even seek to defend any of its numerous redactions (which strategically appear in the context of a discussion of an apparent violation by Verizon) other than the redaction of the data contained in Tables 9-12 and 14.[10] Yet, it is apparent from the context of these redactions, which focus on Verizon's violations of the transactional and discrimination safeguards of Section 272, that the data are not proprietary and that public access to the data is necessary.

The redacted data in Tables 9-12 relate to the auditing of Verizon's failure to comply with the Commission's affiliate transaction rules. Those rules require BOCs to report transactions between regulated and non-regulated affiliates, and to value the cost of affiliate transactions in accordance with a hierarchy of valuation techniques – *inter alia*, Fully Distributed Cost ("FDC") or Fair Market Value ("FMV").[11]

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[9] Reconsideration Petition at 4-5.

[10] Reconsideration Petition at 7-10.

[11] Briefly, the hierarchy is: (1) tariffed rates if there is a tariff; (2) for non-tariffed services provided to or by the carrier pursuant to publicly filed agreements submitted to state commissions, at the rates appearing in the publicly filed agreements; (2) prevailing company prices if a substantial quantity of business (over 50% of a particular product or service) is conducted with unaffiliated third parties; or (3) at the higher of booked (for assets)/Fully Distributed Cost ("FDC") (for services) and estimated fair market value ("FMV") when the carrier is the transferor/provider, and at the lower of these measures of cost and estimated fair market value when the carrier is the transferee/customer. The carrier must use methods that are routinely used by the general business community in making a good faith fair market valuation. *See, Accounting Safeguards Order*, ¶144.

Verizon's redacted data include: (1) FDC data on 49 of 70 randomly selected transactions where the Auditor noted that Verizon's management was unable to provide it with the requisite FMV to allow the Auditor to compare it with FDC data in order to ascertain compliance with the affiliate transaction rules;[12] (2) data from the same sample relating to nine instances where Verizon charged non-FDC and non-FMV (and thus unlawful) amounts to its Section 272 affiliates for inbound and outbound telemarketing;[13] and (3) data relating to 14 fixed assets out of a random sample of 86 transferred to Verizon's Section 272 affiliates.[14]

Data derived from a few "randomly" sampled transactions cannot, despite Verizon's claims, be misused by a competitor to "determine the volumes of calls that are handled and the number of sales that are made through outbound and inbound sales efforts in the business offices and telemarketing services."[15] Nor, contrary to Verizon's claims, can a competitor determine what prices common vendors charge Verizon[16] based merely on a review of 14 asset transfers out of a random sample of 86 asset transfers selected by the Auditor. Although a random sample of data is useless in extrapolating the type of competitive data claimed by Verizon, it is "necessary" to evaluate Verizon's compliance with the Commission's affiliate transaction rules.

Finally, disclosure of the data in Tables 14a through 14c, related to Special Access, is necessary so that the Commission and others may determine whether Verizon has complied with its Section 272(e)(1) non-discrimination obligations. The redacted data relates to differences in Verizon's provisioning and repair intervals and PIC change intervals. The redacted data, however, is not proprietary because it is provided merely in aggregate form and discloses nothing more than the magnitude of Verizon's discrimination against unaffiliated carriers.

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AT&T was informed this morning that Verizon filed a number of documents late yesterday on this matter, including a proposed Protective Order. AT&T has not yet had an opportunity to review those materials and will review and provide comment as appropriate early next week.

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12 Auditor's Initial Biennial Report, Appendix A, Objective V & VI, Procedure 9, Tables 9 and 10.

13 *Id.,* Table 11 and accompanying text.

14 *Id*, Table 12.

15 Reconsideration Petition at 9.

16 *Id.* 9-10.

Thank you for your attention to this matter.

Sincerely,

Aryeh S. Friedman

cc: Chris Libertelli
Tim Peterson
Anthony Dale
Mark Stone