Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION AND REQUEST FOR STAY

Pursuant to section 1.106(h) of the Commission's rules, Verizon[1] hereby files its reply to the oppositions filed by AT&T, CompTel, and WorldCom to Verizon's petition for reconsideration and request for stay of the Commission's January 10, 2002 order requiring disclosure of Verizon's confidential information in the section 272 biennial audit report.[2] The oppositions fail to present any legitimate reason why Verizon's confidential data should be made public. Indeed, some of the parties calling for public release have sought, and have obtained, protective orders for similar data of their own.

Verizon seeks, in good faith, the same protection for its confidential information that the Commission has provided in all audit proceedings up to this point, while giving interested persons a full opportunity to comment on the audit results. While Verizon does not agree that

[1] The Verizon telephone companies ("Verizon") are the affiliated local telephone companies of Verizon Communications Corp. These companies are listed in Attachment A.

[2] *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) ("*Order*").

any confidential information should have been included in the public report, use of a protective agreement is the best alternative if the Commission decides not to withhold Verizon's confidential information from public disclosure.

I. The Commission Should Reconsider Its Decision That The Unredacted Audit Report Must Be Made Public And It Should Reaffirm That Section 220(f) Nondisclosure Restrictions Apply To Section 272 Biennial Audits.

CompTel disagrees (at 8) with Verizon's request that the Commission reconsider its finding that the nondisclosure requirements of section 220(f) do not apply to section 272 audits. CompTel argues that the specific requirements of section 272 override the more general requirements of section 220. However, the fundamental flaw in its analysis is its assumption that there is some sort of conflict between the two sections. There is not. In fact, section 272(d) clearly upholds the section 220(f) general rule that the staff and the members of the Commission may not disclose information that may come to their knowledge during the course of an audit by extending this nondisclosure obligation to the state commissions that participate in the section 272 biennial audit. ***See*** 47 U.S.C. § 272(d)(3)(C). Since this is an agreed-upon procedures audit, the users could have specified that the audit report would not contain any confidential information from the workpapers, as they did in the original 1998 procedures. If that had been done, there would have been no issue about a conflict between sections 220 and 272. This can still be remedied, simply by having the users (i.e., the Commission, the state commissions, and Verizon) instruct the auditors to revise the audit report to include a description of the results of

each procedure that does not contain any confidential information.[3] Release of that report to the public would satisfy completely the requirements of section 272(d)(2).

As Verizon noted in its January 18, 2002 *ex parte* filing, the Commission initially found that section 220(f) safeguards apply to section 272 biennial audits. ***See*** *Implementation of the Telecommunications Act of 1996; Accounting Safeguards Under the Telecommunications Act of 1996*, 11 FCC Rcd 17539, ¶ 204 (1996). In the disclosure order, the Commission found that this only applies to the information in the workpapers, not to the audit report itself, and that the section 272 requirement for a public audit report supercedes the section 220(f) safeguard. ***See*** *Order*, ¶ 12 & n. 31. However, by deciding to put confidential information from the audit workpapers into the public audit report, the Bureau has created a conflict where none need exist. As the Commission notes, some of the information in the workpapers was aggregated and refined before being placed in the audit report. It could have been modified further to allow the results of the audit to have been reported without disclosing *any* confidential information. For instance, Table 12 need not have been included at all; the preceding narrative already stated that invoices could not be found for 14 of 86 selected fixed asset transfers. There was no need to list the specific equipment for which third party invoices could not be found. Likewise, the results

[3] Contrary to the Commission's statement in paragraph 6 of the *Order*, the public are not "users" of the report under AICPA Attestation Standards or the specific procedures of this audit. ***See*** General Standard Procedures for Biennial Audits Required Under Section 272 of the Communications Act of 1934, as Amended, ¶ 2 (Dec. 20, 2000 draft) ("The users include the federal and state regulators as well as the companies responsible for obtaining and paying for the biennial audits."). Since the public are not "users," the Commission is wrong in stating that "the AUP format necessarily requires disclosure of [otherwise confidential] facts" in the audit to the public. Therefore, section 272 does not require disclosure of this information to the public, despite the fact that the Commission chose to conduct this audit as an agreed-upon procedures audit. In addition, the Commission's statement in footnote 18 of the *Order*, which implies that the Commission may modify the agreed-upon procedures unilaterally, is inconsistent with accounting standards, which require the agreement of all users for changes in the agreed-upon procedures. ***See, e.g.,*** AICPA Attestation Standards, § 2.03.

of Tables 14a, 14b, and 14c could have been summarized without revealing the raw data. For this reason, the Commission should find, on reconsideration, that its general policy under section 220(f) applies in equal force to section 272 audits, and that confidential information will not be included in the version of the report that is provided to the public.

CompTel castigates Verizon for arguing that the Commission should adhere to its long-standing practice of keeping proprietary data in an audit confidential, claiming that Verizon threatens to withhold information and/or fail to retain information, "*a-la* Enron and Arthur Anderson." ***See*** CompTel, 8. AT&T is only slightly less intemperate, claiming that Verizon "threat[ens] to violate its legal obligation to cooperate fully with the auditor." AT&T, 3. As they well know, Verizon made no such threats, and CompTel's suggestion that Verizon would destroy relevant documents is nothing short of outrageous. As Verizon pointed out in its petition, it is the Commission, not Verizon, that found that its policy of keeping audit information confidential promotes voluntary assistance by the companies being audited above and beyond that which is legally compelled. ***See*** Verizon Petition, 2, ***citing*** *Scott J. Rafferty*, 5 FCC Rcd 4138, ¶ 5 (1990). Congress reaffirmed and promoted this policy by specifically assuring carriers that their confidential data would be protected in a section 272 audit. See 47 U.S.C. § 272(d)(3)(C). The carriers' *voluntary* assistance, which reflects the interest of both the carriers and the Commission in obtaining a fair and complete independent audit, will now carry an unforeseeable risk of competitive harm in section 272 audits solely as a result of the confidential information that finds its way into the auditors' workpapers, even if that information confirms the fact that the carrier did not violate any Commission rules. This makes the audit itself, rather than the carrier's conduct, a source of damage to the company. In these circumstances, parties will be confronted with the adverse effects that the Commission sought to avoid in all previous audits by keeping audit information confidential. Verizon's petition did

nothing more than ask the Commission to address this issue and explain why the Commission's previous findings should not apply to section 272 audits (which they should).

II. Verizon Complied Fully With The Commission's Rules In Requesting That Its Confidential Information Be Withheld From Public Disclosure.

CompTel argues (at 5-7) that Verizon, in "arrogant, and/or careless, disregard of Commission Rules," made no attempt to comply with section 0.459(a) and only the "barest attempt" to comply with section 0.459(b) in seeking confidential treatment of the redacted portions of the section 272 audit report. CompTel knows better than this. As it acknowledges, it obtained a copy of Verizon's July 11, 2001 request for confidentiality, which addressed each of the nine criteria listed in section 0.459(b). ***See*** CompTel, n.5. Although CompTel may disagree with Verizon's demonstration on each of these points, it cannot claim that the letter was a "casual request" that failed to comply with the Commission's rules. Moreover, in this case, Verizon was required to follow specific procedures laid out in the Common Carrier Bureau's December 20, 2000 draft of the audit procedures, which stated that;

> If Verizon requests that information be redacted from the report to protect from disclosure information that Verizon contends should not be available for public inspection, the practitioner shall submit its final report as follows: a public version with redactions, and a non-public version without redactions, under seal. In addition, the practitioner shall, at the request of Verizon, file with the final report a request that redacted materials be withheld from public inspection pursuant to 47 C.F.R. 0.459, such request to be prepared by Verizon.[4]

These procedures do not state whether the section 0.459 request must be submitted with the public (redacted) version of the "final report" or with non-public (non-redacted) version. PricewaterhouseCoopers, the "practitioner" under these procedures, submitted Verizon's section

[4] General Standard Procedures for Biennial Audits Required Under Section 272 of the Communications Act of 1934, as Amended, ¶ 30(g) (Dec. 20, 2000 draft).

0.459 request with the non-public version. This is consistent with the Commission's rules, which state that "a copy of the request shall be attached to and shall cover all of the material to which it applies" which, in this case, is the non-redacted version of the report, which contains the confidential information for which Verizon seeks protection. ***See*** 47 C.F.R. § 0.459(a). As is noted in the above procedures, this version of the report, including the letter, was submitted under seal. Verizon and PricewaterhouseCoopers scrupulously followed the Commission's general procedures for seeking confidential treatment as well as the specific procedures that the Bureau established for this audit.

III. Verizon Has Shown That The Information It Redacted Is Proprietary.

The commenters argue that Verizon has failed to show that the information for which it seeks protection is proprietary, with AT&T going so far as to characterize Verizon's claims as "frivolous." ***See*** AT&T, 2-4; CompTel, 9-11; WorldCom, 2-4. These accusations ignore or misstate the record.[5] AT&T's accusation is particularly galling, since this is the same type of information that AT&T itself jealously guards from disclosure. For example, AT&T claims that disclosure of the prices that Verizon pays vendors for equipment is not competitively harmful, yet when AT&T recently submitted data in an FCC proceeding on its own costs for purchasing power equipment, it sought and received confidential treatment under a protective order.[6] And

[5] As an example of such frivolity, AT&T points to the redaction of the "year" of the month in which the auditor tested National Directory Assistance database charges, arguing that there is no conceivable basis for considering the year proprietary. AT&T, 2 & n. 8, citing Audit Report, Objective X, Procedure 6. In fact, this information, which was redacted on page 47 and which appears on page 46 of the unredacted report, is the amount, in dollars, of NDA charges for the month of November, not the year. These revenues are confidential for the same reasons as the revenues in procedure 5 preceding. ***See*** Verizon Petition, 10.

[6] ***See*** *Bell Atlantic Telephone Companies Revisions to Tariff FCC Nos. 1 and 11, Transmittal Nos. 1373 and 1374, Verizon Telephone Companies Tariff Nos. 1 and 11, Transmittal Nos. 23*

these data were no less "stale" than the Verizon equipment prices that are listed in the audit report. Furthermore, if Verizon had allowed these data to be released in this proceeding without objection, there is no doubt that the commenters would argue in subsequent proceedings that Verizon could not make a claim of competitive harm from the release of similar data.[7] For this reason, Verizon, like the other carriers, objected to the release of any of its confidential "trade secrets and commercial or financial information" under Exemption 4 of the Freedom of Information Act. ***See*** 47 C.F.R. § 0.457(d). The commenters may disagree with Verizon's demonstration of competitive harm, but they cannot maintain that it is baseless without condemning their own efforts to protect similar data.

Contrary to the commenters' claims that Verizon submitted nothing new in its petition for reconsideration (***see*** AT&T, 1; CompTel, 9), Verizon provided additional explanations of the specific types of competitive harm that it would suffer from release of these types of data. Their responses do not show that Verizon's concern about competitive harm are unsubstantial. For instance, WorldCom and AT&T argue that competitors could not derive information about sales volumes from the information on total affiliate transaction billing for sales and marketing on Tables 9, 10, and 11. ***See*** WorldCom, 3; AT&T, 4. However, as Verizon showed in its January 18, 2002 *ex parte* filing, such volumes can be derived by dividing these amounts by the unit costs in the affiliate transaction contracts posted on Verizon's web site. They are also incorrect

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and 24, CC Docket No. 01-140, AT&T Opposition to Verizon's Direct Case (filed July 31, 2001).

[7] CompTel argues (at 9) that this implies that Verizon's objections to release of the amounts of exchange access services it provides to its long distance affiliates shows that it already has access to such information about its competitors. However, Verizon is prohibited from sharing this information with its section 272 affiliates. Therefore, publicly releasing information about its section 272 affiliates while not giving those affiliates similar information about their competitors puts them at a clear competitive disadvantage.

in claiming (at 3) that Table 12 does not provide unit prices for equipment – it does. More generally, the commenters simply disagree that competitors would use such information to Verizon's detriment, but their assurances do not refute Verizon's showing that such information *can* be used by a competitor for marketing or financial purposes. Moreover, their arguments that this information is "stale" are meritless. As Verizon demonstrated in its petition and in its *ex parte* filing, even "historic" information two years old may be useful to competitors because it could give them insights into the reasons for Verizon's success as it enters new long distance markets. This is highly relevant as Verizon enters the long distance markets in new States as it obtains section 271 authority in the future.

Most of the commenters' arguments relate not to the confidentiality of these data, but to the commenters' alleged need to use it to evaluate Verizon's compliance with section 272. ***See*** AT&T, 4; WorldCom, 4; CompTel, 10. However, the statutory scheme contemplated that the staff of the Commission and the State commissions would have access to all of the workpapers and supporting detail to make such evaluations. The public would necessarily have access only to the non-confidential data in the public audit report.[8] Consequently, the commenters can provide their views based on the public information in the redacted report, to supplement the regulatory staff's evaluation of the confidential information in the non-public report, as Congress intended. In any event, their alleged need to view these data is irrelevant to the issue of whether the data are confidential in the first place, which they are.

[8] As the Commission found in the *Accounting Safeguards Order* (at ¶ 204), "Section 272(d)(3)(C) limits access to audit workpapers and documents under section to representatives of the Commission and of the state public utility commissions. We will not extend this access to other parties as suggested by APPC. "

IV. If The Commission Releases The Confidential Data To The Public, It Should Do So Only Under A Protective Order.

As noted, the section 272(d)(2) requirement for a public audit report did not require that confidential data be included in the report for the auditor to report the results of the audit procedures, and section 272(d)(3) specifically contemplated that only the Commission staff and the State commissions would have access to these data. Moreover, the requirement to release a "public" report has been met by releasing the version of the report that contains only non-confidential data. Nonetheless, if the Commission decides to release the unredacted report, it should do so under protective order, as it has for similar information in countless other notice and comment proceedings. For this purpose, the Commission should adopt the protective order in Verizon's January 18, 2002 *ex parte* filing, which is modeled on AT&T's August 7, 2001 proposal.

The commenters do not show that a protective order would prevent them from providing an evaluation in this proceeding of Verizon's compliance with the section 272 safeguards. Rather, they argue that the use restrictions in the typical protective order would prevent parties from submitting information about Verizon's performance in other proceedings, such as section 271 applications or in section 208 complaints. ***See*** CompTel, 15-16; WorldCom, 5. However, the Commission has authority, under section 220(f), to release audit information in other proceedings if it is in the public interest. ***See*** *Order*, ¶ 9. A party could request discovery in such a proceeding, subject again to a protective order that would prevent that party from using the information for other purposes, such as business or marketing efforts.

Conclusion

The Commission should affirm its policy on the confidentiality of audit data by not disclosing the non-redacted version of Verizon's section 272 audit report. If the Commission decides, nonetheless, that the non-redacted version of the report must be made available to members of the public who wish to comment, the Commission should issue a protective order in the form attached to Verizon's January 18, 2002 *ex parte* filing.

Respectfully submitted,

By: _____

Joseph DiBella
1515 North Court House Road
Suite 500
Arlington, VA 22201-2909
(703) 351-3037
joseph.dibella@verizon.com

Attorney for the Verizon
telephone companies

Of Counsel
Michael E. Glover
Edward Shakin

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ATTACHMENT A

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.