Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of	)	
	)	
Petition of Verizon for Forbearance	)	
From The Prohibition of Sharing	)	**CC Docket No. 96-149**
Operating, Installation, and	)	
Maintenance Functions Under Section	)	
53.203(a)(2) Of The Commission's Rules	)	

AT&T's OPPOSITION TO VERIZON PETITION FOR FORBEARANCE

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Pursuant to the Commission's Notice,[1] AT&T Corp. ("AT&T") hereby submits its opposition to the Petition of Verizon for Forbearance ("Petition") from the prohibition on sharing of operating, installation, and maintenance services.[2]

INTRODUCTION AND SUMMARY

In the *Non-Accounting Safeguards Order*, the Commission concluded "that allowing the same personnel to perform the operation, installation, and maintenance services associated with a BOC's network and the facilities that a section 272 affiliate owns or leases from a provider other than the BOC would create the opportunity for such substantial integration of operating functions as to preclude independent operation, in violation of section 272(b)(1)." *Non-Accounting Safeguards Order* ¶ 163. Relying on a principle established in 1983 when the BOCs were first created, the Commission stressed that section 272(b)(1)'s "operate independently" requirement

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[1] Public Notice, Wireline Competition Bureau Seeks Comment On Verizon's Petition For Forbearance From The Prohibition Of Sharing Operating, Installation And Maintenance Functions, CC Docket 96-149 (released Aug. 9, 2002).

[2] *See* 47 C.F.R. § 53.203(a); *Non-Accounting Safeguards Order*, 11 FCC Rcd. 21905, ¶¶ 158-70 (1996); *see also BOC Separations Order*, 95 F.C.C. 2d 1117, 1144 (¶ 70) (1983).

barred such sharing of operation, installation, and maintenance ("OI&M") services, in part because such shared service arrangements "would inevitably afford access to the BOC's facilities that is superior to that grant to the affiliate's competitors," and "would create substantial opportunities for improper cost allocation." *Id.* (citing *BOC Separations Order*). The OI&M prohibition is a vital tool to fulfill section 272's central purpose of "prohibit[ing] anticompetitive discrimination and cost-shifting." *Id.* ¶ 9; *see* 47 U.S.C. § 272(b) (establishing the "operate independently," "arm's length" dealing, and other accounting safeguards on the section 272 affiliate); *id.* § 272(c) (imposing broad and unqualified prohibitions against discrimination by the BOC).

The BOC's strongly objected to the Commission's OI&M safeguard and sought reconsideration. The Commission rejected these reconsideration requests, reaffirming that section 272 precludes shared OI&M services, and recognizing that any other ruling would "create a loophole around the separate affiliate requirement" and would provide for such "substantial integration of these essential functions . . . that independent operation would be precluded." *Non-Accounting Safeguards Third Order On Reconsideration*, ¶ 20.[3]

Verizon's forbearance petition rehashes the same arguments that the Commission has repeatedly rejected. Verizon points to no changed circumstances that could provide any reasonable basis for the Commission to change course and decide that the OI&M services restriction is no longer required by Section 272 and no longer is necessary to protect competition, consumers, and the public interest. The underlying basis for the OI&M rule, and for the operate independently and nondiscrimination requirements – the BOC's market power in the local exchange market and its ability and incentive to leverage this market power to undermine

[3] *Non Accounting Safeguards Third Order on Reconsideration*, 17 Comm. Reg (P&F) 920 (rel. Oct. 1, 1999).

competition in the long distance market – is as strong now as it was when the Commission first announced the rule.

Verizon claims that the Commission's concerns of improper cost allocation are misplaced, and that the OI&M services restriction results in a loss in efficiency and fewer new services. But these are the precise arguments previously presented by the BOCs and rejected by the Commission. *See*, *e.g.*, *Non-Accounting Safeguards Order*, ¶¶ 153, 163 (rejecting BOCs' claim that OI&M restriction is inappropriate because it will "result in a loss of efficiency and economies of scale, decrease innovation, and fewer new services").

Verizon now suggests that it has "new" information concerning the costs of the OI&M restriction, which the Commission did not have when it first announced the rule. But the conclusory claims of its costs of compliance with the OI&M services restriction are unsupported and unaccompanied by any documentation that could allow them to be independently verified. These assertions also are belied by Verizon's rapid growth in the market, and simply ignore the enormous competitive benefits in avoiding otherwise "inevitable" market power abuses.

In fact, if there was any error in the Commission's original balancing of costs and benefits in this area, it is that is that the Commission *underestimated* the competitive harm arising from shared BOC/272 affiliate services, and allowed *too much* sharing and too many opportunities for anticompetitive cost misallocations and discrimination. Verizon and other BOCs have clearly exploited these opportunities. Indeed, recent 272 audits have revealed pervasive violations of the sharing and other 272 rules that do exist. State commissions and competing carriers have likewise compiled a substantial record in the section 272 sunset proceeding showing that BOCs retain market power, even in states where they have long been offering long distance service – including in several non-BOC territories where section 271 authorization was not even required. As a result, there is still a substantial risk of discrimination and cost misallocation by the BOCs – the very conduct that the Commission has for years determined the OI&M prohibition is absolutely necessary to prevent. Indeed, the record in that section 272 sunset proceeding is rife with anticompetitive behavior and other BOC violations of section 272 safeguards. Given the substantial threat that BOCs can leverage local market power to re-monopolize the long distance market, the OI&M ban should be retained.

Verizon's claim that other accounting and non-accounting safeguards will adequately protect against anticompetitive conduct should the OI&M ban be lifted has been rejected by the Commission – in 1999 (*Non-Accounting Safeguards Third Order On Reconsideration*), in 1997 (*Non-Accounting Safeguards Second Order On Reconsideration*),[4] in 1996 (*Non-Accounting Safeguards Order*), and 1983 (*BOC Separations Order*). Moreover, Verizon's reliance on other section 272 restrictions to support OI&M forbearance is at best misleading, given Verizon's contention in the ongoing section 272 sunset proceedings that these restrictions should sunset at the end of this year.

Nor can there be any serious claim that the OI&M safeguard seriously handicaps the BOCs. Verizon, for example, claims that its 272 affiliate, with only 800 employees, has quickly gained up to 34.2% market share, more than other facilities-based and better-staffed competitors gained in many years. *See* Selwyn Section 272 Sunset Reply Dec. ¶ 6 (and cited materials).[5] The costs of the prohibition against joint OI&M remain critically necessary and clearly impose

[4] *Non-Accounting Safeguards Second Order On Reconsideration*, 12 FCC Rcd. 8653, ¶¶ 11-12 (1997).

[5] *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Reply Declaration of Dr. Lee Selwyn ("Selwyn Section 272 Sunset Reply Dec.") (filed Aug. 26, 2002). A copy of the Selwyn Section 272 Sunset Reply Dec. is attached hereto as Exhibit A.

no serious or unwarranted restriction on Verizon, given that it has already become one of the largest long distance carriers in the nation with the OI&M safeguards in place. The Petition should be denied.

I. VERIZON'S PETITION SEEKS TO PROVIDE VERIZON WITH UNIQUE ADVANTAGES OVER ITS NON-BOC COMPETITORS.

Verizon's Petition claims that forbearance is necessary to overcome "marketing handicaps" and other disadvantages allegedly caused by the prohibition on OI&M sharing. Petition at 6. In fact, precisely the opposite is true: if Verizon and its 272 affiliates are permitted to share OI&M functions, they will be uniquely positioned and will gain advantages available to no non-BOC carrier that will enable them to meet customers' demands for "service reliability and meeting deadlines." *See* McCully Dec. ¶ 3.

For example, under the current market conditions, if a customer seeks to subscribe to a bundle of services (*e.g.,* McCully Dec. ¶ 5), the carrier (whether a BOC affiliate or some other company) must order local facilities from the BOC in order to provide the services. With the OI&M services restriction, the BOC affiliate and unaffiliated carriers must go through the same processes to obtain repair services for the facilities used to provide such services. They both must call the BOC, schedule installation and maintenance, and pay tariffed rates – precisely the "handoffs of customer requests" (McCully Dec ¶¶ 4, 6) which Verizon claims are burdensome. Without the OI&M prohibition, however, the 272 affiliate would have unique advantages over its non-BOC competitors, because competitors would still confront the very same burdensome processes about which Verizon so vociferously complains. No longer forced to use the same installation and repair procedures that unaffiliated carriers now use, the 272 affiliate would be able to steer the customer directly to the BOC personnel responsible for performing OI&M functions.

Verizon asserts that the "OI&M restriction puts Verizon at a significant disadvantage in competing with carriers that are able to offer an integrated service platform using their own local and long distance facilities." Petition at 7. But Verizon can make such a claim only because it ignores the substantial market power that it and other BOCs retain over exchange access, even in markets where they have obtained section 271 authority. Because of that local market power, rival carriers of the BOCs are generally *not* able to offer integrated service platforms using their own local and long distance facilities because, in the vast majority of instances, rival carriers do not own local facilities. Accordingly, when Verizon complains that it and its section 272 affiliate "cannot respond as a single team that can maintain end-to-end service," Petition at 7, it is describing *precisely* what a competing carrier must do to offer such services. Because the BOCs' market power endures long after section 271 authorization, rival carriers (just like the BOC section 272 affiliate) generally must rely on the BOC for access to last mile access facilities. The prohibition against joint OI&M, therefore, is absolutely necessary to prevent the BOC section 272 affiliate from gaining an unfair advantage over rival carriers – and, consistent with Congress' purposes, to "ensure that BOCs compete on a level playing field." *Texas 271 Order* ¶ 395.[6]

As Dr. Selwyn discussed more fully in the Section 272 sunset proceeding, the "disadvantage" of which Verizon complains exists only in the rare circumstances that the BOC's competitors actually own their own local service or other "last mile" network assets. Selwyn Section 272 Sunset Reply Dec. ¶ 16. When, however, as is overwhelmingly the case, a competing IXC or CLEC is dependent on the BOC for such facilities, then it is in exactly the

[6] *Texas 271 Order,* 15 FCC Rcd. 18354 (2000) (citation omitted).

same position as a BOC's section 272 affiliate in providing "end-to-end service" to a customer. *Id.*

Thus, contrary to Verizon's claim (at 1-2) that the OI&M ban inhibits the section 272 affiliate from offering services in the same way as unaffiliated competitors, precisely the opposite is true – which is why the Commission adopted its rule in the first place, and why it cannot rationally abandon it now, before the BOCs' market power has fully dissipated and all carriers are on truly equal footing. *See Non-Accounting Safeguards Order* ¶ 9.

II. THE COMMISSION'S LIMITED BAN ON SHARING OF OI&M SERVICES SHOULD CONTINUE TO APPLY TO ALL BOCS

As the Commission has repeatedly found for years, the OI&M prohibition is also critical in preventing discrimination and cost misallocation. *Non-Accounting Safeguards Order* ¶ 163; *Non-Accounting Safeguards Second Order On Reconsideration* ¶ 12; *Non-Accounting Safeguards Third Order On Reconsideration* ¶ 20. Verizon claims that forbearance is justified because the Commission allows the BOCs and their 272 affiliates to share other services (like legal and human resources departments), and that the Commission's safeguards aimed at preventing cost misallocation of those shared services can be applied in the same fashion to shared OI&M services. Petition at 4. But even if that were true – and it is not, as described below – Verizon's Petition completely ignores the "inevitabl[e]" risks of discrimination that apply with much greater force to core network operations like OI&M services. *See Non-Accounting Safeguards Order* ¶ 163 ("allowing a BOC to contract with the section 272 affiliate for [OI&M] services would *inevitably* afford the affiliate access to the BOC's facilities that is superior to that granted to the affiliate's competitors") (emphasis added). As the Commission has found, BOCs retain significant ability and incentive to discriminate – particularly with the new services for which, Verizon claims (at 5), the OI&M prohibition is "anachronistic." The outright ban on OI&M is necessary to attempt to prevent the numerous and often subtle forms of discrimination that can occur if such services can be freely shared.

A. The OI&M Prohibition Is The Only Effective Way To Inhibit Discrimination.

Verizon claims that the Commission unfairly singled out and banned joint OI&M services, while it permitted BOCs to share other functions, such as "finance, human resources, legal and accounting." Verizon at 4. However, the Commission was well within its authority to ban joint OI&M, because, as the Commission found, such OI&M services would "inevitably" afford the affiliate with discriminatory access to the BOC's facilities, and "substantial integration" of such "essential functions" would preclude independent operation. *Non-Accounting Safeguards Order* ¶ 163; *Non-Accounting Safeguards Third Order On Reconsideration* ¶ 20. Verizon's Petition provides no basis for protecting against this discrimination if the OI&M prohibition is lifted.

There is ample reason to believe that BOCs retain the ability to discriminate against rivals, particularly when performing such core network functions as OI&M. Indeed, the Commission recently concluded that since 1996 the BOCs have an *increased* incentive and ability to discriminate against rivals as a result of their mergers. In approving mergers of the largest dominant LECs, the Commission found that the remaining large incumbent LECs "not only will have *more* incentive to discriminate against rivals, but also will have a *heightened* ability to inhibit competitors' provision of services."[7] *SBC-Ameritech Merger Order* ¶ 194 (emphasis added); *Bell Atlantic-GTE Merger Order* ¶¶ 173-78.[8] The Commission also stressed

[7] While the BOCs proposed conditions that were alleged to offset these harms, the BOCs have often failed meaningfully to fulfill (or have affirmatively violated) those conditions.

[8] *SBC/Ameritech Merger Order,* 14 FCC Rcd. 14712 (1999); *Bell Atlantic-GTE Merger Order*, 15 FCC Rcd. 14032 (2000).

in these recent orders that structural safeguards were required, rather than relying on rules of nondiscrimination, because BOCs can engage in a myriad subtle forms of discrimination, and it is "impossible for the Commission to foresee every possible type of discrimination." *SBC-Ameritech Merger Order* ¶ 206.

Moreover, the Commission found that the risks of discrimination were the greatest for new and advanced services, because there was little or no track record by which to gauge the BOC's performance. As the Commission explained, "With the increased network complexity, and the possibility for new types of discrimination, comes also an increased difficulty in detecting discrimination. In such a situation, past experience with the interconnection of plain vanilla, or POTS service, becomes increasingly less useful as a regulatory tool for preventing, detecting, and remedying discrimination." *SBC-Ameritech Merger Order* ¶ 220.

For that reason, Verizon's claims (at 5 & Diefenderfer Dec.) that the OI&M prohibition "imposes inefficiencies that raise the costs of introducing broadband service" is irrelevant, even if it were true. Because the risks of discrimination against rivals for such services is much greater, the prohibition on joint OI&M services is all the more important for broadband and other new and advanced services.

B. The OI&M Prohibition Also Reduces The Difficulties In Determining If The BOC Is Misallocating Costs

Although preventing discrimination is a goal more than sufficient to justify the OI&M rule, the rule also serves a vital role in preventing cost misallocation. Verizon claims that the Commission's existing accounting and other safeguards are adequate to prevent such allocations, and that the Commission has found those rules to be sufficient to protect against cost misallocation for other shared services like joint legal or human resources departments. Verizon at 4 (claiming there is "no fundamental difference between the cost allocations necessary to monitor sharing of OI&M" and other shared services). The Commission's previous orders necessarily rejected these very same contentions, however, and Verizon provides no basis for the Commission to overturn its prior judgment. *See Non-Accounting Safeguards Order*, ¶¶ 163, 167; *Non-Accounting Safeguards Third Order On Reconsideration*, ¶¶ 15, 20.

In addition, given the significant violations of section 272 that have occurred and that AT&T and other parties have catalogued, there is no basis to rely on Verizon's claims that the Commission's existing accounting safeguards are sufficient to detect, deter, and remedy cost misallocations related to the sharing of "ancillary" services like legal or human resources departments. *See* Section 272 Sunset Proceeding, AT&T Reply Comments, at 7.[9] For example, as AT&T explained its section 272 sunset comments, a recent ALJ decision in California found "clear[] . . . cross-subsidization" in Pacific Bell's provision of marketing information and customer databases to the 272 affiliate. Section 272 Sunset Proceeding, AT&T Comments, at 37-39.[10]

Even apart from these problems, however, the prohibition on OI&M functions serves a valuable and unique role in preventing cost misallocation. As the Commission concluded in 1996, "allowing the same individuals to perform such *core functions* on the facilities of both entities would create *substantial opportunities* for improper cost allocation." *Non-Accounting Safeguards Order* ¶ 163 (emphases added). The Commission has recognized since at least 1983 that "sharing of such services would require 'excessive, costly, and burdensome regulatory

[9] Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112, Reply Comments of AT&T Corp. ("Section 272 Sunset Proceedings, AT&T Reply Comments").

[10] In all events, AT&T has explained that some BOCs have manipulated those safeguards so that they no longer disclose any information regarding interaffiliate transactions. Section 272 Sunset Proceeding, AT&T Comments, at 40.

involvement in the operations, plans, and day-to-day activities of the carrier [in order] to audit and monitor the accounting plans necessary for such sharing to take place.'" *Id.* (quoting *BOC Separations Order*, 95 F.C.C.2d 1144, ¶ 70). Rather than attempt to engage in such oversight, the Commission properly determined to ban joint OI&M altogether. *See also Non-Accounting Safeguards Third Order On Reconsideration*, ¶ 20 (recognizing "the burdensome regulatory involvement that would be necessary to detect and deter such cost misallocation").

The operation, installation and maintenance of networks and network facilities represents the heart of a telecommunications company – and for the BOC, relates directly to the source of the BOCs' bottleneck control over local exchange and exchange access facilities. As the Commission has recognized, permitting joint OI&M gives rise to myriad joint and common costs that could easily and undetectably be misallocated. Contrary to the BOCs' claims, attempting to separate those costs between a BOC and its affiliate is difficult – and the consequences of error more severe – than attempting to separate the costs of ancillary services like an accounting or human resources department.

The sheer difference in magnitude of core OI&M activities relative to corporate overhead service functions such as legal and human resources also must not be overlooked. Even a small (percentage) misallocation in the case of OI&M could result in an orders-of-magnitude greater dollar cost shift than a large (percentage) misallocation of corporate overhead services. Moreover, allocation of overhead service functions can be accomplished through relatively straightforward and readily auditable processes: For example, human resources department costs can be allocated between the BOC and the 272 affiliate in proportion to the number of employees on each entities' payroll; legal services can be allocated on the basis of hours worked for each entity, as reflected on timesheets, in much the same manner as a private law firm would "allocate" its costs to its individual clients.

Core OI&M activities – and in particular the "joint" OI&M activities that would benefit both the BOC and the affiliate – present far more complex cost allocation challenges. For example, the same team of plant personnel might be dispatched to jointly perform a low-priority repair for the BOC entity and a high-priority function in the same vicinity for the affiliate. Strategic scheduling of work functions, coupled with creative cost allocation techniques, could result in a systematic shifting of costs away from the affiliate and over to the BOC, effectively producing precisely the type of cross-subsidy about which the Commission has on numerous occasions expressed concern. *See Non-Accounting Safeguards Second Order On Reconsideration* ¶ 12 (discussing unique opportunities for cost misallocation arising from shared facilities and OI&M services).

Even if the Commission could be confident that it could allocate the time spent by legal or accounting personnel on tasks for the 272 affiliate rather than the BOC, the appropriate allocation of joint and common costs (*i.e.*, the cost of the repair truck) incurred as a result of OI&M would be much more difficult. The Commission thus was correct when it determined that regulatory oversight in this area would be expensive, time consuming, and largely ineffective, and thus that the only meaningful method of inhibiting cost misallocation is through structural safeguards like the ban on shared OI&M services.

III. VERIZON VASTLY EXAGGERATES THE COSTS OF COMPLIANCE WITH THE OI&M BAN

Verizon claims that the OI&M prohibition creates "operational inefficiencies" on the BOCs, and is the "major factor in the additional costs caused by the section 272 separation rules." Verizon at 3. Verizon, focusing primarily on the costs of "hiring additional personnel" and "separate OSS," asserts that compliance with the OI&M services restriction will cost it a total of $495 million for the period from 1998 through 2006. Howard Dec. ¶ 5.

However, the declarations that Verizon submits are little more than conclusory statements that opine generally about costs, without any backup material that could be used to verify these claims. *See* Howard Dec. ¶¶ 4-5. Accordingly, these declarations should be given no weight. At the very least, Verizon must produce the back-up materials used to derive the cost figures reached before such figures could be considered.

Moreover, these Verizon declarations are on their face incomplete, because they contain no estimates for the costs of integrating their OI&M services, which would offset savings Verizon alleges would arise from such integration. As Dr. Selwyn has pointed out in the Section 272 Sunset proceeding, the BOCs have in other contexts commented that the costs of integration can be substantial. Selwyn Section 272 Sunset Reply Dec. ¶ 28. For example, Verizon's August 12, 2002 10-Q filing with the SEC identifies approximately $2 billion in costs through 2002 for "integrating systems," and "relocating employees," among other integration costs, arising from the GTE-Bell Atlantic merger that formed Verizon. Yet here Verizon provides no information on the inevitable costs of integrating the OI&M services function, making Verizon's calculations even more suspect and incomplete.

In addition, when evaluated in the context of the regulatory balancing that led to the OI&M services restriction, the costs of compliance with the OI&M ban are unlikely to be significant. The Commission's *Non-Accounting Safeguards Order* allowed BOCs and their affiliates to share numerous services and take advantages of efficiencies and economies of scale arising from such shared services. *Non-Accounting Safeguards Order* ¶ 168. Although these joint activities present significant risks of anticompetitive behavior, and could also easily have been prohibited entirely as inconsistent with the requirement that BOCs and their section 272 affiliates "operate independently," the Commission permitted such activities, which substantially reduced the BOCs' costs of compliance with section 272. *See*, *e.g.*, WorldCom 272 Sunset Proceeding Comments at 7-9; TWTC 272 Sunset Proceeding Comments at 17-20. In fact, it is obvious that the integration that the Commission has allowed provides significant benefits to the BOCs' section 272 affiliates – surely no other company but a BOC affiliate could only recently begin offering long distance services and capture significant market share by using just 800 employees, as Verizon has done. *See* WorldCom 272 Sunset Proceeding Comments at 8; *see also* Selwyn Section 272 Sunset Reply Dec. ¶¶ 6-8. These facts belie any notion that OI&M compliance costs are so significant that they impede Verizon's ability to compete effectively. Indeed, those costs have not deterred the BOCs from submitting many additional applications to provide long distance services through these allegedly costly separate affiliates. That is because the BOCs know the costs are insignificant compared to the benefits they can obtain by leveraging the power over bottleneck facilities into the long distance market.[11]

IV. THE FORBEARANCE STANDARD HAS NOT BEEN MET.

As Verizon acknowledges, the Commission cannot decide to forbear from applying the OI&M services restriction without finding that such forbearance meets each of the standards set

[11] Verizon has well-publicized its successes in the long distance market. For example, Verizon has reported that, as of the end of 2001, only two years after it began offering long distance service in New York, its long distance affiliate Verizon Long Distance had captured approximately 2.3-million residential customers in New York. Verizon Press Release, "Verizon Communications Reports Solid Results for Fourth Quarter, Provides Outlook for 2002," January 31, 2002. Similarly, Verizon reported a long distance market share of 17.9% in Massachusetts just ten months after receiving section 271 authority. Verizon Press Release, "Verizon Communications Reports Solid 3Q Earnings and Provides Outlook for Remainder of 2001," October 30, 2001. Verizon also recently reported that its long distance customer base has grown by some 800,000 customers in the second quarter of 2002 alone. Jane Black, "The Bells' Big Local Headache," *BusinessWeek Online*, August 21, 2002.

forth in Section 10 of the Act. *See* 47 U.S.C. § 160. Thus, the Commission may forbear from applying the OI&M services restriction only if it finds, among other things, that enforcement is "not necessary for the protection of consumers," "is consistent with the public interest," and will promote "competitive market conditions." *Id.* § 160 (a) & (b). None of these findings can be made here.

As an initial matter, in first imposing the OI&M services restriction, the Commission found that it was needed to promote full and fair competition, further the public interest, and protect consumers (and competition) from anticompetitive BOC conduct. *See Non-Accounting Safeguards Order*, ¶¶ 163, 167; *Non-Accounting Safeguards Second Order On Reconsideration*, ¶¶ 12, 53; *Non-Accounting Safeguards Third Order On Reconsideration* ¶¶ 15, 20. The Commission found that anticompetitive discrimination would be an inevitable consequence of lifting the ban on shared OI&M services. *Non-Accounting Safeguards Order*, ¶ 163. Similarly, the Commission determined that this ban was needed to avoid "improper cost allocation that Section 272 was designed to prevent." *Non-Accounting Safeguards Second Order On Reconsideration*, ¶ 12. Verizon's Petition presents no reasonable basis or cognizable evidence to justify the Commission changing its prior considered judgment.

In addition, as discussed above, the facts and market conditions compel this conclusion even if the Commission had not already ruled on these matters. As the Commission has long recognized, while the BOCs continue to have market power they will have both the incentive and ability to use their control over bottleneck local facilities to discriminate against competitors in long distance (and other) retail markets in order to favor their own competing retail operations. *SBC-Ameritech Merger Order* ¶¶ 12, 190. Requiring that the BOC and its Section 272 affiliate "operate independently," as required by section 272(b)(1), is fundamental to the Act's protections against anticompetitive discrimination and improper cost allocation. *See supra* pp. 7-12.

Under these circumstances, the OI&M restriction continues to be needed to protect competition, and hence consumers, from anticompetitive BOC conduct. Its elimination will impede, not accelerate, the development of competition in the local exchange market. And its elimination creates a substantial risk that the BOC will be able to improperly leverage its local market power to undermine existing competition in the long distance market.[12]

[12] Verizon's Petition fails to show how any benefits from the elimination of the OI&M restriction would offset these costs to consumers and competition. Even if its alleged cost savings were correct (which cannot be assumed because Verizon has provided no details other than unsupported, conclusory allegations), Verizon makes no case as to why these savings to Verizon and its section 272 affiliate will benefit consumers in the already-competitive long distance market, and does not even suggest that it would create benefits for consumers in the local exchange market. Verizon suggestion (at 5) that these cost savings would allow it to expand offerings in the small broadband market, besides being speculative and unverifiable, cannot outweigh the inevitable damage to competition and consumers in the local exchange and interLATA market.

CONCLUSION

For the foregoing reasons, the Commission should deny Verizon's Petition to forbear enforcement of the bar on shared OI&M services.

Respectfully submitted,

/s/ Aryeh S. Friedman

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September 9, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of September, 2002, I caused true and correct copies of the forgoing Opposition of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: September 9, 2002
Washington, D.C.

/s/ Peter M. Andros

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