



Federal Communications Commission
Washington, D.C. 20554

May 29, 2002

Mr. Jeffrey Ward
Senior Vice President – Regulatory Compliance
Verizon
1310 North Courthouse Rd. – 4th floor
Arlington, VA 22201

Dear Mr. Ward:

This letter addresses requests for interpretations and/or issues that have arisen in the context of audits relating to Verizon Communications, Inc.'s (Verizon) compliance with the *Bell Atlantic/GTE Merger Conditions* ("Merger Conditions"). We reiterate three audit requirements with which Verizon must comply pursuant to the *Merger Conditions*. First, Verizon's general merger conditions audit¹ must examine Verizon's entire performance measurements collection process. Second, Verizon's general merger conditions audit must examine Verizon's compliance in all states, even if Verizon has obtained section 271 approval in a state. Finally, Verizon's Genuity conditions audit must examine Verizon's special access service quality data for potential discrimination.

We also extend the audit report deadline for the portions of the audits addressed in this letter from June 1, 2002 to October 1, 2002 to allow Verizon's independent auditor time to complete the necessary audit work. All existing Enforcement Bureau ("Bureau") oversight procedures will apply. For example, the independent auditors will submit their preliminary audit programs to the Bureau's Audit Staff for review prior to beginning audit work and shall seek any rule interpretations necessary to complete the audit.²

1. Accuracy and Completeness

The *Bell Atlantic/GTE Merger Conditions* require Verizon to submit an audit report that contains "a statement regarding the accuracy and completeness of the performance data provided

¹ *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd 14032, at Appendix D, ¶ 56 (2000) (*Bell Atlantic/GTE Merger Order* or *Bell Atlantic/GTE Merger Conditions*). By "general merger conditions audit," we mean the audit required by paragraph 56 of Appendix D of the *Bell Atlantic/GTE Merger Order*. This audit covers Verizon's compliance with all the merger conditions except Condition I, Advanced Services Affiliate, and the Genuity conditions.

² *Bell Atlantic/GTE Merger Order* at Appendix D, ¶ 56(a)-(b).

to telecommunications carriers and regulators under these Conditions.”³ The *Merger Conditions* require Verizon to follow the business rules for the performance measurements to ensure that the performance data are complete and accurate.⁴ In order to make a statement regarding the measurements’ “accuracy and completeness,” the audit must determine whether Verizon adhered to the business rules. This testing necessarily requires an examination of Verizon’s entire performance measurements collection and reporting process, including a determination that all the relevant data available within the Operations Support Systems are collected completely. For example, the audit must determine whether Verizon time-stamps all orders at the point prescribed by the business rules, whether Verizon includes and excludes all the activity required by the business rules, and whether Verizon calculates the performance result using all the data according to the business rules. As the Bureau has found previously, performance data accuracy depends entirely on correct application of all the business rules.⁵

Verizon’s independent auditor has informed the Bureau that it has only tested a portion of Verizon’s performance measurement process (*i.e.*, from what Verizon calls the “pull-point” stage to the reporting stage). Omission of the initial stages of Verizon’s performance measurement process from the audit, *e.g.*, time-stamping incoming competitive LEC orders or coding orders as “exclusions,” makes it impossible for the independent auditor to make a statement on the completeness and accuracy of Verizon’s performance data. As a result, the audit as currently structured will not satisfy the *Merger Conditions*’ “accuracy and completeness” requirement. We therefore direct Verizon to ensure that the audit examine Verizon’s entire performance measurement process as described above.

2. State Performance Measurements for UNE/Line Sharing Audit

Paragraph 28(a) of the *Merger Conditions* requires Verizon to submit an audit report regarding its compliance with the Commission’s UNE and line sharing requirements.⁶ Those requirements include Verizon’s obligation to provide UNEs in a non-discriminatory manner.⁷ As part of this engagement, the independent auditor must assess whether Verizon provides UNEs throughout its service territory in a non-discriminatory manner. Verizon’s independent auditor has informed the Bureau that it will not consider Verizon’s UNE performance measurement data

³ *Bell Atlantic/GTE Merger Order* at Appendix D, ¶ 56(f).

⁴ “Business rules” means the *Bell Atlantic/GTE Merger Conditions* requirements for collecting relevant performance data and applying relevant performance standards. The business rules also allow Verizon to exclude from the reported data certain specific types of data. The business rules for the Condition V carrier-to-carrier performance data, for example, are contained in Appendix D, Attachments A-2a and A-2b. The “accuracy and completeness” requirement applies to Verizon’s Condition V local carrier-to-carrier performance data; Condition XIX special access performance data; and Condition XIX NARUC White Paper service quality data.

⁵ *See, e.g., Order of Forfeiture, In the Matter of SBC Communications Inc.*, File No. EB-00-IH-0432, 16 FCC Rcd 5535, 5542-44, ¶¶ 19-20 (Enf. Bur. rel. Mar. 15, 2001).

⁶ Although the *Merger Order* refers to the requirements as “UNE” and “line sharing,” we refer to these requirements collectively as “UNE rules.”

⁷ *See, e.g.*, 47 C.F.R. §§ 51.311, 51.313, 51.321.

in its evaluation of Verizon's compliance for those states in which Verizon has received section 271 authority.⁸ Specifically, Verizon's auditor states that an evaluation of Verizon's performance measurement data is unnecessary in states where Condition V's performance data reporting requirement has sunset with Verizon's receipt of section 271 authority.

Verizon's obligation to comply with the audit and the Commission's UNE rules is unrelated to its obligation to comply with Condition V's Carrier-to-Carrier Performance Plan ("Performance Plan"). In fact, the Commission expressly stated in the *Merger Order* that the Performance Plan is not intended as evidence of Verizon's compliance with the Commission's UNE rules.⁹ Therefore, the sunset of the Condition V in a given state is irrelevant to the requisite assessment of Verizon's compliance with the Commission's UNE rules.

As the Commission has stated many times, performance data are the best evidence of a BOC's compliance with the Commission's section 271 checklist, which includes provision of UNEs pursuant to section 251(c) of the Act and the Commission's implementing rules.¹⁰ Verizon's audit of its compliance with the UNE rules must therefore include an analysis of performance data for all Verizon states. Because state-approved performance data is readily available to assist in evaluating Verizon's compliance for the purposes of the audit, we expect the independent auditor to use such performance data to evaluate Verizon's compliance with the UNE rules in states where no federal performance data is available. We direct Verizon to ensure that its audit contain an evaluation of performance data for UNEs throughout Verizon's service territory. This evaluation may be based on performance data Verizon reported to state commissions during the engagement period.¹¹

3. Genuity Performance Data

On March 14, 2002 and March 25, 2002, Verizon informed Bureau staff that it does not believe that an assessment of potential discrimination based on the special access performance

⁸ See Letter from John Horan, PricewaterhouseCoopers, to Anthony Dale, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, at 1 (Apr. 23, 2002).

⁹ See *Merger Order*, 15 FCC Rcd at 14146, ¶ 253 ("Nor are the conditions that we adopt today intended to be considered as an interpretation of sections of the Communications Act, especially sections 251, 252, 271 and 272, or the Commission's rules . . . For example, the Carrier-to-Carrier Performance Plan is not meant to substitute for any enforcement mechanisms that the Commission may adopt in the section 271 context (i.e., anti-backsliding measures), nor substitute for state performance measure plans. All of the conditions that we adopt today are merger-specific and not determinative of the obligations imposed by the Act or our rules on Bell Atlantic, GTE or any other telecommunications carrier.")

¹⁰ See, e.g., *Application of Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services, Inc., for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order, 16 FCC Rcd 17419, 17432, ¶ 24 (2001).

¹¹ These audit requirements enabling the assessment of past conduct are unaffected by the recent decision of the United States Court of Appeals for the District of Columbia Circuit in *United States Telecom Association v. FCC*, 2002 WESTLAW 1040574 (D.C. Cir. 2002).

data is within the scope of the Genuity audit.¹² We disagree. The *Merger Conditions* require Verizon to provide to the Commission an audit report assessing the comparative service quality levels of its provisioning of special access services to Genuity and to other companies.¹³ To the extent that there is any ambiguity in the *Merger Conditions* on this point, the explicit text of the *Merger Order* clarifies it.¹⁴ The Commission states unequivocally in the *Merger Order* that it expects Verizon's auditor to examine Verizon's special access performance data to detect any discrimination in favor of Genuity.¹⁵ Moreover, we note that, on November 8, 2001, the Common Carrier Bureau directed Verizon's auditor to evaluate Verizon's special access data for potential discrimination.¹⁶ Therefore, we conclude that Verizon's Genuity audit must include the independent auditor's review and assessment of Verizon's special access performance data to determine if Verizon discriminates in favor of Genuity compared to other special access customers.

Verizon's independent auditor has asked the Bureau how it should evaluate whether Verizon has discriminated in the provisioning of special access services.¹⁷ As the Commission has mentioned previously, section 202(a) of the Act provides the proper standard to evaluate special access discrimination.¹⁸ As the Commission has noted, evaluating discrimination under section 202(a) is a three-step process: (1) determining which services are "like" services; (2) determining whether there are service quality differences for like services; and (3) determining whether those differences are unjust or unreasonable.¹⁹ Verizon's independent auditor has informed the Bureau's Audit Staff that to compare like services consistent with section 202(a), it requested a disaggregation of Verizon's performance data by service-level (*i.e.*, DS-0, DS-1, DS-

¹² See Letter from Jeffrey Ward, Senior Vice President, Regulatory Compliance, Verizon, to Anthony Dale, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission at 1 (Mar. 25, 2002) (Verizon March 25th Letter).

¹³ See *Merger Conditions* at Appendix B, ¶ 23 (requiring Verizon to provide an audit regarding its compliance with the "these conditions"); Appendix D, ¶ 53 (requiring Verizon to provide to auditor service quality performance data showing "the service levels it provides to Genuity as compared to other companies purchasing its high-speed special access and regular special access services"); Appendix D, ¶ 56.

¹⁴ See, *e.g.*, *Bell Atlantic/GTE Merger Order* at ¶¶ 5, 71-72 (stating that discrimination in the provision of special access services should be readily detectable by the independent auditor), 74, 339, n.791.

¹⁵ See n.12 *supra*.

¹⁶ See Letter from Carol Matthey, Deputy Chief, Common Carrier Bureau, Federal Communications Commission, to Christopher Brown, Mitchell & Titus, LLP, at 1-2 (Nov. 8, 2001) ("The *Bell Atlantic/GTE Merger Order* on its face contemplates that the independent auditor will review Verizon's performance data for potentially discriminatory conduct.") (citing *Bell Atlantic/GTE Merger Order* at ¶¶ 70-75).

¹⁷ See Letter from Christopher Brown, Mitchell & Titus, LLP, to Anthony Dale, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, at 3 (Feb. 25, 2002).

¹⁸ See 47 U.S.C. § 202(a); *In the Matter of Performance Measurements and Standards for Interstate Special Access Services*, CC Docket No. 01-321, Notice of Proposed Rulemaking, 16 FCC Rcd 20896 at ¶¶ 8-9.

¹⁹ See *Total Telecommunications Services, Inc. v. Atlas Telephone Company*, Memorandum Opinion & Order, 16 FCC Rcd 5726 at ¶ 33 (2001); see also *MCI Telecommunications Corp. v. FCC*, 917 F.2d 30, 39 (describing the Commission's three-step inquiry for evaluating discrimination under 47 U.S.C. § 202(a)).

3, OC-n). Verizon has not provided a full response to the auditor because Verizon believes the request is "outside the scope" of the Genuity audit.²⁰ As stated above, the request is within the scope of the audit because the requested data is necessary for the independent auditor to detect special access discrimination consistent with section 202(a). As a result, we direct Verizon to respond fully to its auditor's data request within 20 days of the date of this letter.

If, after performing this 3-step analysis, Verizon's independent auditor still cannot provide an opinion, it must include performance data in the report so that the Commission may evaluate Verizon's performance. In addition, the independent auditor must document its work effort to determine discrimination in its workpapers. In the absence of these measures, Verizon's audit report will not be in compliance with the requirements of the *Merger Order* and the *Merger Conditions*.

If Verizon disagrees with any of the decisions or directives included in this letter, it may file an application for review with the Commission pursuant to section 1.115 of the Commission's rules.²¹

If you have any questions concerning the issues raised in this letter, please contact Mark Stone of my staff at (202) 418-0816. Thank you for your cooperation.

Sincerely,



Maureen F. Del Duca
Deputy Chief
Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission

cc:

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²⁰ See Verizon March 25th Letter at 1.

²¹ 47 C.F.R. § 1.115.