Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Extension of Section 272 Obligations Of Southwestern Bell Telephone Co. In The State Of Texas	WC Docket No. 02-112

COMMENTS OF VERIZON[1]

AT&T's petition to extend the section 272 sunset for Southwestern Bell in Texas merely rehashes its comments in the pending rulemaking proceeding in this docket, in which it argued that the section 272 separate affiliate requirements should not sunset for any of the Bell Operating Companies ("BOCs") until the BOCs are found to be non-dominant in the local exchange market in each state. But the Act contains no such requirement, and it is contrary to the statutory presumption that the separate affiliate requirements will sunset in three years, as they already have in New York. AT&T's proposal is merely an attempt to handicap its BOC competitors by burdening them indefinitely with the costs and operational inefficiencies of operating through separate affiliates, to the detriment of competition in the long distance market. In any event, the arguments in the petition would apply as well in any other state, and therefore should be addressed (and rejected) in the ongoing rulemaking proceeding.

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

I. This Is Not A Petition To Address Unique Circumstances; It Is A Request To Establish A Completely Unjustified Rule That AT&T Has Already Proposed In The Section 272 Sunset Rulemaking Proceeding.

The Commission should not entertain AT&T's petition, which is not based on unique circumstances in Texas or on any need for specific action there. AT&T argues that the section 272 separate affiliate requirements, which will sunset in Texas in July 2003 (three years after SBC obtained section 271 authority), should be extended for at least an additional three years, because SBC allegedly retains market power in the local exchange market. ***See*** AT&T Petition, 2-5, 10-14). These are the same arguments that AT&T presented in its comments in the section 272 sunset rulemaking proceeding in this docket, where it advocated a general rule that would extend section 272 for three years or more for *all* BOCs in *all* states. ***See*** Comments of AT&T (filed Aug. 5, 2002); Reply Comments of AT&T (filed Aug. 26, 2002). Indeed, AT&T admits that the standard it asks the Commission to set for sunset of section 272 would not be met in *any* state, including New York. ***See*** AT&T Petition, 6. Since AT&T is advocating a general rule that would apply everywhere, the Commission should not consider such a rule in the context of a petition against a single carrier in a single state.

II. AT&T's Claims That Are Specific To Texas Are Unavailing.

Faced with the undeniable fact that the Commission faithfully followed congressional intent in allowing the section 272 separate affiliate rules to sunset in New York according to the statutory three-year limit, AT&T claims that certain factors warrant a different result in Texas. Its claims are misplaced.

First, it argues (s***ee*** AT&T Petition, 6) that there is less facilities-based competition in Texas than in New York. This argument assumes that the Commission adopted AT&T's

proposal for a market share test as a prerequisite for sunset of the separate affiliate requirements and found that New York met that test. There is absolutely nothing to support this assumption, as the Commission's Public Notice simply said that the section 272 rules sunset by operation of law on December 23, 2002, three years after Verizon obtained section 271 authority in New York. ***See*** Public Notice, *Section 272 Sunsets for Verizon in New York State By Operation of Law on December 23, 2002 Pursuant to Section 272(f)(1)*, FCC 02-235 (rel. Dec. 23, 2002). As Verizon demonstrated in its comments, Congress rejected the use of market share tests either for granting interLATA authority under section 271 or for sunset of the separate affiliate requirements under section 272. ***See*** Reply Comments of Verizon, 2-4 (filed Aug. 26, 2002). The Commission did not make any findings regarding market share or competition in New York, or even imply that such information was relevant to its decision. Nor is there anything in the Commission's contemporaneous order in this docket, which interpreted section 272(f)(1) as providing for a state-by-state sunset, that adopts, or even considers, AT&T's proposed market share test. ***See*** Memorandum Opinion and Order, *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, FCC 02-236 (rel. Dec. 23, 2002). The issue of what factors should be considered, if at all, in deciding whether to extend the section 272 requirements beyond the statutory three-year limit is still open in this rulemaking proceeding, and AT&T cannot presume that the Commission has adopted a market share test *sub silentio*.

Second, AT&T argues (***see*** AT&T Petition, 6-7) that the Texas PUC has asked the Commission to extend the section 272 obligations in Texas, while the New York Public Service Commission did not make a similar request. However, this presumes that the Commission would treat a state commission's request to extend the section 272 rules beyond sunset as a decisional factor, which it has not done. Nor could it under the terms of the Act, which expressly provides that only the Commission may extend the section 272 requirements beyond the sunset date. And it is axiomatic that the Commission could do so only after making an independent determination of the need for such an extension, and that determination would have to be based on substantial evidence sufficient to overcome the statutory presumption that the requirement will sunset.

Third, AT&T argues (***see*** AT&T Petition, 7) that Verizon stated that it had no plans to merge its separate long distance affiliate into the BOC in New York, while SBC has made no such commitment in Texas. This is wrong on the facts. Verizon stated in its January 13, 2003 letter that it intended to continue providing interLATA services in New York through its existing section 272 affiliates, but that it also "may choose to provide some or all of its intrastate and/or interstate, interLATA services originating in New York through a non-section 272 affiliate or through Verizon New York." ***See*** Letter from Gerald Asch to Carol Mattey, WC Docket No. 02-112 (dated January 13, 2003). This self-evidently is not a "commitment" to do anything. Furthermore, the date of the letter, coming three weeks *after* the public notice on the sunset in New York, makes it obvious that the letter could have had no part in the Commission's decision to allow the rules to sunset in New York in December.

III. AT&T's Argument That The Section 272 Requirements Should Be Extended Until A BOC Loses A Specific Share Of The Local Market Is Contrary To The Act.

In its reply comments in this docket, Verizon explained why AT&T's arguments that the section 272 requirements should be extended until the BOC loses a specific amount of market share are inconsistent with the Act and with congressional intent. There is no new substantive argument in AT&T's petition Verizon has already addressed these arguments and will only deal with them briefly here.

AT&T's primary point is that the Commission should extend the section 272 rules until a BOC has lost "dominance" or a specific share of the local exchange market. If Congress had wanted to adopt a measure of market power as a prerequisite to sunset of the section 272 requirements, it easily could have done so. It did not. Instead, it adopted a statutory presumption that the section 272 requirements would sunset in three years after a BOC obtained section 271 authority. Congress was aware that structural separation imposes inefficiencies and restrains competition, so it chose to employ this mechanism on only a temporary basis, relying on other safeguards that would continue after three years, including the non-discrimination requirements of sections 202 and 272(e)(1), the requirement for reasonable rates under section 201, and the requirement in section 272(e)(3) that the BOCs impute to their own long distance services the same access charges that they apply to non-affiliated interexchange carriers. Requiring the BOCs to demonstrate that they have no market power or have lost a specific amount of market share in the local exchange market before the separate affiliate requirement sunsets is inconsistent with the congressional scheme.

Moreover, at heart AT&T's argument is based on the erroneous premise that facilities-based competition in the local exchange market is uneconomic and therefore will never serve as an alternative to reliance on BOC facilities. ***See*** AT&T Petition, 4-5. This is contrary to the congressional scheme, which opens all telecommunications markets to competition, as well as being wrong as a factual matter. AT&T's belief that facilities-based competition is doomed to fail is belied by the fact that such competition is firmly rooted in the local markets and continues to grow. Indeed, the total number of lines served by facilities-based carriers has continued to increase, while the incumbent local exchange carriers' total lines and their market shares have declined for the last three years. ***See*** Reply Comments of Verizon, 7-10 (filed Aug. 26, 2002).

And the number of competitive lines unquestionably would be growing even faster if not for the availability of TELRIC-priced UNE platform, which has discouraged competing carriers from using their own facilities. Moreover, as Verizon pointed out in its reply comments, facilities-based competition in the local exchange market comes from a variety of sources, including not only services offered by competitive local exchange carriers, but also telephone services offered by cable companies and wireless services, which many customers are using as replacements, rather than additions, to traditional wireline telephone service. ***See*** id., 5-7. These facts prove that the local exchange markets are open and that there is no reason to extend the separate affiliate requirement beyond the three years mandated by Congress.

AT&T argues (s*ee* AT&T Petition, 8-14) that the separate affiliate requirements are needed to prevent discrimination and cross-subsidization of the BOCs' long distance services by their local exchange services. It is wrong. As Verizon demonstrated in its reply comments, the Commission has ample statutory authority to monitor and prevent discrimination without structural separation. ***See*** Reply Comments of Verizon (filed Aug. 26, 2002), 10-13. Competition has flourished without such separation in many markets, such as inside wire and customer premises equipment, where the BOCs' competitors depend on nondiscriminatory access to BOC facilities. In addition, the Commission's cost accounting rules and other safeguards prevent misallocations of costs, and its price cap rules and the increasing level of local competition ensure that the BOC has no ability to cross-subsidize other services.

For these reasons, there is no regulatory justification for continuing the section 272 separate affiliate requirements past the statutory three-year sunset.

IV. The Costs Of Extending The Section 272 Separate Affiliate Requirements Clearly Outweigh Any Alleged Benefits.

Because the separate affiliate rules are not necessary to safeguard competition, there are no benefits that outweigh the substantial cost burden and marketing handicaps that these rules place on the BOCs. AT&T argues (s***ee*** AT&T Petition, 20) that the costs are not substantial, because Verizon, for one, has been able to capture significant market share with relatively few employees. However, as Verizon demonstrated in its comments in the rulemaking proceeding, it has incurred and will incur approximately $1 billion in capital costs and expenses to comply with these requirements over nine years. ***See*** Verizon Comments, 9-11 & Howard Declaration (filed Aug. 5, 2002). This level of economic waste cannot be justified, and it merely serves to inhibit the competitive challenge to incumbent long distance carriers such as AT&T. In addition, the operational restrictions imposed by the separate affiliate requirements inhibit the BOCs' marketing efforts in the large business market, which AT&T continues to dominate. ***See*** Verizon Comments, 19-20 & McCully Declaration (filed Aug. 5, 2002).

AT&T argues (s***ee*** AT&T Petition, 19-20) that Verizon has not explained how these costs were derived and has not provided any backup material. However, in Verizon's reply to comments on its petition for forbearance from the restriction on sharing operating, installation, and maintenance ("OI&M") services, Verizon provided a step-by-step explanation of its costing methodology and the specific percentages of expenses in each category that could be saved if Verizon could provide long distance services on a non-separated basis. ***See*** Reply Comments of Verizon, CC Docket No. 96-149, Attachment A (filed Sept. 24, 2002). In addition, Verizon has filed, subject to confidential treatment, the data that it used to provide its estimates of the historic cost burden of maintaining separate affiliates. ***See*** Verizon *Ex Parte*, CC Docket 96-149, WC Docket No. 02-112 (filed May 12, 2003).

AT&T claims (s***ee*** AT&T Petition, 19-20) that Verizon has not taken into account the costs of re-integrating its long distance affiliates after sunset, but Verizon has already identified the potential *incremental* savings associated with eliminating the separate affiliates over time. Verizon demonstrated that it could save approximately $247 million over the next four years if the separate affiliate requirements were sunset today, even assuming that sunk costs could not be shed. Verizon assumed that not all of the duplicative costs could be eliminated immediately, but that it would be able to phase in the cost reductions over time. ***See*** Verizon Comments, Howard Declaration, ¶ 4 (filed Aug. 5,2002). These potential savings are significant and cannot be ignored.

In addition, as Verizon demonstrated, most of these wasted costs are due to the inefficiencies imposed by the OI&M restriction. ***See*** Verizon Comments, Howard Declaration, ¶ 5 (filed Aug. 5,2002). The OI&M restriction requires Verizon's long distance affiliates to employ duplicative personnel, systems, and outside vendors to perform operational functions that could be done with less incremental cost by BOC personnel. Verizon would potentially save approximately $183 million over the next four years if the OI&M restriction were removed today for all states, prior to the statutory sunset. This restriction was not mandated by Congress, and the Commission adopted it without a record showing how burdensome it would be. Regardless of whether the Commission allows the section 272 separate affiliate rules to sunset in three years as Congress intended (which it should do), the Commission should alleviate most of the cost inefficiencies imposed by the separate affiliate requirements by eliminating the OI&M rule *prior* to sunset for all BOCs.

Conclusion

AT&T's petition raises the same issues and presents the same arguments that it raised in its comments in the pending rulemaking proceeding in this docket. Since these arguments are not limited to the unique circumstances in Texas, they should be considered (and, ultimately, rejected) in the rulemaking proceeding.

Respectfully submitted,

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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.