

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Petition of SBC for Forbearance From
The Prohibition of Sharing Operating,
Installation and Maintenance Functions
Under Sections 53.203(a)(2) and
53.203(a)(2) of the Commission's Rules
And Modification of Operating, Installation
and Maintenance Conditions Contained in
the SBC/Ameritech Merger Order

CC Docket Nos. 96-149, 98-141

COMMENTS OF VERIZON¹

Verizon supports SBC's petition for forbearance from the rules prohibiting the sharing of operating, installation, and maintenance ("OI&M") services between SBC's local exchange companies and their affiliates and their section 272 affiliates. SBC's petition confirms the points that Verizon made in its own forbearance petition, that the OI&M rule is not necessary to prevent misallocation of costs or discrimination against non-affiliated carriers. Moreover, SBC has confirmed that the costs of complying with this rule vastly outweigh any conceivable benefit. Unlike a waiver, which is based on special circumstances justifying an exception to a rule, a petition for forbearance under section 10 of the Act need not be based on unique circumstances, but it may demonstrate that enforcement of the rule with regard to all affected carriers is not

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

necessary to protect consumers or the public interest. For this reason, the Commission should grant both SBC's petition as well as Verizon's pending petition.

SBC's petition buttresses the showing that Verizon made in its petition, that forbearance from enforcement of the OI&M restrictions is warranted under the criteria set forth in section 10 of the Act. SBC demonstrated that the OI&M restriction imposes costs and inefficiencies that diminish competition and harm consumers. The restriction prevents SBC's local exchange carriers, long distance subsidiaries, and advanced services subsidiaries from providing the integrated provisioning and repair services that customers expect and that customers already receive from other carriers that are not subject to section 272 restrictions. It also imposes substantial costs due to duplication of work effort – SBC estimates that it could save \$78 million per year if its long distance, advanced services, and non-BOC affiliates could share OI&M services, and even more if these services could be shared between these companies and the BOCs. *See* SBC, 20 (filed June 5, 2003).

SBC also demonstrated that the Commission's original justification for adopting the OI&M restriction no longer applies. The restriction is not necessary to prevent cross-subsidization, since the price cap regulation has severed the last remaining links between rates and costs, and since the Commission's cost allocation rules provide an added layer of protection. *See* SBC, 11-12; *see also* Verizon Petition for Forbearance, Reply Comments, 17 (filed Sep. 24, 2002). It also is not necessary to prevent discrimination in the provision of access services, as such discrimination would be easy to detect and unlikely to succeed. The Commission also has several regulatory mechanisms for dealing with such discrimination, including sections 202, 251(c), 251(g), and 272(e) of the Act. *See* SBC, 15-16; Verizon Petition for Forbearance, Reply

Comments, 12-13. SBC also demonstrated that forbearance from enforcing the OI&M restriction is consistent with a long line of precedent in which the Commission found that the costs of structural separation outweigh the benefits. *See* SBC, 22-23.

For these reasons, SBC demonstrated that it has met the statutory standard for forbearance from the OI&M requirements under section 10 of the Act. The OI&M restriction is not necessary to ensure just and reasonable rates (section 10(a)(1)); it is not necessary for protection of consumers (section 10(a)(2)); and forbearance from enforcing the OI&M restriction is consistent with the public interest (section 10(a)(3)).

SBC's petition reinforces similar points made by Verizon in its petition for forbearance in this docket. *See* Verizon Petition for Forbearance, 2-8 (filed Aug. 5, 2002). It confirms Verizon's arguments and provides additional evidence on the record to support granting both petitions. Section 10 of the Act is explicit in *requiring* the Commission to forbear from enforcing any regulation or provision of the Act where, as here, applicants have made the necessary showing. The Act is not discretionary on this point – if the statutory criteria are met, the Commission “shall” forbear. *See* 47 U.S.C. § 160(a) (2003). And it must do so within the deadlines established by the statute. *See* 47 U.S.C. § 160(c) (2003).

In addition, the Commission is required to grant forbearance regardless of how many carriers may apply for similar relief. The statutory forbearance provisions are not like a waiver proceeding, where the applicant must demonstrate the existence of “special circumstances [that] warrant a deviation from the general rule.” *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). A petitioner under section 10 may seek forbearance just for itself (i.e., for “a [particular] telecommunications carrier or telecommunications service”) or for a “class of

telecommunications carriers or telecommunications services, in any or some of [the petitioner's] or [the carrier's] geographic markets." *See* 47 U.S.C. § 160(a) (2003). This demonstrates Congress' clear intent that the Commission should grant forbearance to all carriers for whom the record shows that the statutory criteria are met. SBC's petition reinforces Verizon's and it shows that both should be granted.

Conclusion

For the foregoing reasons, the Commission should grant the petitions of SBC and Verizon for forbearance from enforcement of the OI&M restrictions.

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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.