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August 4, 2004

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 02-112, Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; Verizon 272 Audit, EB Docket No. 03-200

Dear Ms. Dortch:

This is in response to AT&T's argument in its June 7, 2004 *ex parte* that the results of Verizon's section 272 biennial audit reports show that Verizon's proposals for reporting of performance metrics would produce unreliable data. AT&T makes several incorrect statements about the way that the audits were conducted. Its claims that Verizon unilaterally defined the performance metrics and reported only a small amount of unverifiable data simply are not true. In fact, Verizon reported a large amount of performance data at increasingly detailed levels and as specified in procedures adopted by the Federal-State Joint Oversight Team, not Verizon.

In the rulemaking proceeding, Verizon has proposed that the Commission define the types of performance metrics that the BOCs should report for purposes of monitoring compliance with section 272(e), but that the BOCs should provide the definitions and business rules for those metrics. Verizon has explained that this is necessary because the BOCs have different operating support systems and cannot report performance data in exactly the same way. AT&T incorrectly claims (at 4) that the BOCs would abuse such discretion, arguing that in the first section 272 audit report, Verizon unilaterally substituted its own performance metrics for those mandated by the Joint Oversight Team's *General Standard Procedures* and that the substituted metrics were too aggregated to permit an analysis of discrimination.

It simply is not correct that Verizon unilaterally altered the audit procedures. The section 272 audits were conducted as "agreed-upon procedures" audits, in which the users (the Federal-State Joint Oversight Team and Verizon) specified the procedures to be followed by the auditors and the approval of the Federal-State Joint Oversight Team was needed for any changes in the procedures. *See* General Standard Procedures For Biennial Audits Required Under Section 272, draft dated March 1, 2001, para. 3 ("Each team is responsible for reviewing the conduct of the

engagement and . . . directing the practitioner to take such action as the team finds necessary to achieve each objective.”) In addition, under section 53.211(b) of the Commission's rules, the Joint Oversight Team “shall review the preliminary audit requirements to determine whether it is adequate to meet the audit requirements of in § 53.209” and “determine any modifications that shall be incorporated into the final audit requirements.” 47 C.F.R. § 53.211(b). Therefore, the format for reporting performance data in the section 272 audits has always been under the Joint Oversight Team's control, and Verizon had no authority to unilaterally change the agreed-upon-procedures to be followed by the auditors.

The procedures described the categories of metrics Verizon was to provide. The format that Verizon used for the first audit, and that the Oversight Team reviewed, was consistent with the format described in Verizon's Massachusetts section 271 application. *See* Response of Verizon to Comments on Biennial Section 272 Audit Report, CC Docket No. 96-150, filed June 10, 2002, at 6. These data were at the same level of detail as agreed-to in the procedures. In the subsequent audit, the Joint Oversight Team built on its experience in the first audit to require a much greater level of detail in performance reporting in the second audit. Again, it was the Joint Oversight Team, not Verizon, that determined the level of detail to be reported for performance data.

AT&T also objects (at 5) to Verizon's proposal that the BOCs would be required to gather the data and submit the performance reports to the Commission, claiming that such “self-reporting” of results would not include the underlying data or be collected by an auditor. This complaint makes no sense. The Commission has always relied on the carriers to “self-report” performance data, such as the performance data in the ARMIS reports and the performance reporting requirements in the section 271 proceedings. *See, e.g., Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd 3953, ¶ 431, fn. 1290 (1999) (“Bell Atlantic demonstrates that it will provide accurate data regarding actual service intervals so that unaffiliated parties can evaluate the performance Bell Atlantic provides itself and its affiliates and compare such performance to the service quality Bell Atlantic provides to competing carriers.”). The Commission also found that it could rely on Verizon's self-reported performance data to monitor whether Verizon continued to “maintain market-opening performance after receiving section 271 authorization” because Verizon has provided “reasonable assurances that the reported data is accurate.” *Id.* ¶ 433. Even in an audit, the auditor normally relies on the carrier to generate the data. *See, e.g., General Standard Procedures For Biennial Audits Required Under Section 272*, draft dated March 1, 2001, Objective VIII, Procedure 2.

What AT&T is complaining about is Verizon's *response* to the findings of the audit, not the performance data collected in the audit. AT&T argues that in Verizon's second 272 audit, Verizon submitted “self-reported, unaudited” data for one month in two states to respond to apparent differences in performance for affiliates vs. non-affiliates. According to AT&T, it was not possible to determine if these data were accurate or representative of other states. But this objection is irrelevant to the issue of the reliability of the 77 pages of performance data that Verizon reported in that audit for 12 jurisdictions for a two-year period. AT&T is referring to the

Ms. Marlene H. Dortch

August 4, 2004

Page 3

portion of the audit report where Verizon responded to the auditor's findings, going *beyond* the required performance reports to investigate the potential reasons for differences in performance between affiliates and nonaffiliates. Verizon found several possible reasons, such as differences in customer requested due dates, availability of existing facilities, use of copper vs. fiber facilities, etc. *See Verizon Communications, Inc., Section 272 Biennial Agreed Upon Procedures Report for the engagement period January 2, 2001 to December 31, 2003*, filed June 12, 2003, Appendix A:71-7 ("*Verizon Second Audit Report*"). Of necessity, such an in-depth investigation would not include the entirety of the data, and it was explanatory rather than quantitative. And since it was in Verizon's response, rather than in the data collected by the auditor, it had nothing to do with the reliability of the data collected in the audit.

There is nothing in the results of the section 272 audits that supports AT&T's argument that the Commission should not rely, in the first instance, on the BOCs to report their performance data. These data would be produced in the normal course of business using the same operating support systems that the carriers use in filling orders from both affiliates and nonaffiliates. In the section 272 audits, when the auditors replicated samples of the Verizon reports using the underlying data, the results were almost identical. *See, e.g., Verizon Second Audit Report, A:778-81*. To the extent that the Commission requires performance reports to monitor compliance with section 272(e), it should continue to rely on the carriers to report these data.

Sincerely

/S/ Dee May

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