

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)	File No. EB-03-IH-0245
)	File No. EB-03-IH-0550
)	
)	Acct. No. 200332080014
)	
Verizon Telephone Companies, Inc.)	FRN No. 0008988438

CONSENT DECREE

I. INTRODUCTION

1. The Federal Communications Commission (the “Commission” or “FCC”) and the Verizon telephone companies (“Verizon”) hereby enter into this Consent Decree for the purpose of terminating investigations into whether Verizon complied with certain structural, transactional, and nondiscrimination safeguards of section 272 of the Communications Act of 1934, as amended (“the Act”),¹ and sections 32.27² and 53.203³ of the Commission’s rules. These provisions apply to the relationship between Verizon’s Bell Operating Companies and its other incumbent local exchange carriers, on the one hand, and Verizon’s separate long-distance affiliates, on the other.

2. For purposes of this Consent Decree, the following definitions shall apply.

- (a) The “Commission” means the Federal Communications Commission and all of its bureaus and offices.
- (b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
- (c) “Verizon BOCs” means the former Bell Atlantic Telephone Companies, and their successors and assigns.
- (d) “Verizon 272 Affiliates” means Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Verizon Global Solutions Inc., Telecom New Zealand USA Limited, Verizon Select Services, Inc., Codetel International Communications Inc., TELUS

¹47 U.S.C. § 272. Section 272 requires Bell Operating Companies to provide certain types of competitive services, principally long-distance services, through separate affiliates and imposes various structural, transactional, and nondiscrimination safeguards in the provision thereof.

²47 C.F.R. § 32.27. Section 32.27 governs transactions, such as the sale or transfer of assets, between regulated and nonregulated affiliates, including Bell Operating Companies and their separate long-distance affiliates established pursuant to section 272 of the Act.

³47 C.F.R. § 53.203. Section 53.203 imposes various requirements for structural and transactional separation between Bell Operating Companies and their separate long-distance affiliates.

Communications, Inc., and TELUS Communications (Quebec) Inc., and their successors and assigns subject to section 272(b).

- (e) “Parties” means Verizon and the Bureau.
- (f) “Order” or “Adopting Order” means an order of the FCC adopting the terms of this Consent Decree without change, addition, or modification.
- (g) “Final Order” means an order that is no longer subject to administrative or judicial reconsideration, review, appeal, or stay.
- (h) “Investigations” means the investigations commenced by the Commission concerning matters raised in Verizon’s unredacted biennial audit reports filed by the independent auditor with the Commission on February 6, 2002 and December 12, 2003.
- (i) “Effective Date” means the date on which the Commission adopts the Adopting Order.

II. BACKGROUND

3. Section 272 of the Act requires a Bell Operating Company (“BOC”) that has received authority to provide in-region interLATA telecommunications service pursuant to section 271 of the Act⁴ to provide that service through a separate affiliate. Section 272 also establishes certain structural, transactional, and nondiscrimination safeguards that govern the relationship between a BOC and its 272 affiliates. In addition, section 272 requires a BOC to obtain a biennial audit to determine whether the BOC and its affiliates have complied with the safeguards.⁵

4. The Commission authorized Verizon to provide in-region interLATA service in New York effective January 3, 2000.⁶ Following that approval, and pursuant to section 272, the independent auditor filed its first biennial audit report on June 11, 2001.⁷ The Bureau initiated an investigation into

⁴47 U.S.C. § 271.

⁵The Commission rules implementing the section 272 separate affiliate safeguards are at sections 53.201-13, 47 C.F.R. §§ 53.201-13. In addition, affiliate transactions are governed by the Commission’s accounting rules at section 32.27, 47 C.F.R. § 32.27, and are applied to a BOC’s separate long-distance affiliate pursuant to section 272(c)(2) of the Act (requiring a BOC to account for transactions with its separate long-distance affiliate according to principles designated by the Commission).

⁶*Application of 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*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953, 4178, ¶ 455 (1999) (“*Bell Atlantic New York Order*”), *aff’d sub nom. AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

⁷*See Report of Independent Accountants on Applying Agreed-Upon Procedures*, CC Docket No. 96-150 (June 11, 2001); *Supplemental Report* (June 18, 2001) (redacted version). The independent auditor released an unredacted version of the audit report to the public on February 6, 2002. *See Report of Independent Accountants on Applying Agreed-Upon Procedures*, CC Docket No. 96-150 (February 6, 2002) (“*First Audit Report*”) (unredacted version). The Bureau invited interested parties to file comments on the *First Audit Report*. *See Public Notice, Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150 (February 15, 2002); Comments of AT&T Corp on Verizon’s Section 272 Compliance Biennial Audit Report, April 8, 2002; WorldCom Comments, April 8, 2002; Response of Verizon to Comments on Biennial Section 272 Audit Report, June 10, 2002.

the issues raised in the *First Audit Report*. As a result, on September 8, 2003, the Commission issued a Notice of Apparent Liability for Forfeiture to Verizon for various apparent violations of section 32.27(c) of the Commission's rules.⁸ The NAL proposed a forfeiture of \$283,000, pursuant to section 220(d) of the Act,⁹ and admonished Verizon for apparent violations of section 272(b)(5) of the Act¹⁰ and section 53.203(e) of the Commission's rules¹¹ that had occurred outside the statute of limitations.¹² Verizon filed its response to the NAL on October 8, 2003.¹³

5. During 2001 and 2002, the Commission authorized Verizon to provide in-region interLATA telecommunications service in several additional states.¹⁴ The independent auditor filed its second biennial audit report on June 12, 2003.¹⁵ The Bureau initiated an investigation into some of the issues raised in the *Second Audit Report*. Among other things, the *Second Audit Report* disclosed the following: (1) Verizon's non-regulated affiliate provided certain operations, installation and maintenance ("OI&M") functions to a Verizon 272 Affiliate, and the 272 Affiliate provided certain OI&M functions to a BOC affiliate;¹⁶ (2) the BOC obtained pre-paid calling card services from the Verizon 272 Affiliate without soliciting bids from other qualified firms;¹⁷ (3) Verizon's service representatives did not inform some customers of their right to choose a long-distance carrier other than the Verizon 272 Affiliate;¹⁸ and

⁸See *Verizon Telephone Companies, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 18796 (2003) ("NAL").

⁹47 U.S.C. § 220(d). Section 220(d) provides, in relevant part, that any carrier that fails or refuses to keep certain accounts, records, and memoranda on the books and in the manner prescribed by the Commission shall forfeit to the United States the sum of \$7,600 (formerly \$6,600) for each day of the continuance of each such offense.

¹⁰47 U.S.C. § 272(b)(5).

¹¹47 C.F.R. § 53.203(e).

¹²Both section 272(b)(5) and section 53.203(e) require that transactions between a BOC and its separate 272 affiliates be reduced to writing and available for public inspection.

¹³Verizon Response to Notice of Apparent Liability for Forfeiture, October 8, 2003.

¹⁴The Commission granted additional section 271 applications to Verizon for service in Massachusetts, Connecticut, Pennsylvania, Rhode Island, Vermont, Maine, New Jersey, New Hampshire, Delaware, and Virginia.

¹⁵See *Report of Independent Accountants on Applying Agreed-Upon Procedures*, EB Docket No. 03-200 (June 12, 2003) (redacted version). The independent auditor released an unredacted version of the audit report to the public on December 12, 2003. See *Report of Independent Accountants on Applying Agreed-Upon Procedures*, EB Docket No. 03-200 (December 12, 2003) ("*Second Audit Report*") (unredacted version). The Commission invited interested parties to file comments on the *Second Audit Report*. See *Section 272(d) Biennial Audit of Verizon Communications, Inc.*, EB Docket No. 03-200, Memorandum Opinion and Order, 18 FCC Rcd 25496, 25503 (2003); Comments of AT&T Corp. on Verizon's Second Section 272 Compliance Biennial Audit Report, February 10, 2004; Response of Verizon to Comments on Second Section 272 Biennial Audit Report, March 5, 2004.

¹⁶*Second Audit Report* at A: 2, B: 3, B-1: 2.

¹⁷*Id.*, at A: 30, B: 2.

¹⁸*Id.*, at A: 61-62.

(4) Verizon did not properly and/or timely post certain affiliate agreements on its website.¹⁹

III. AGREEMENT

6. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between Verizon and the Commission of the Investigations. In consideration for the termination of the Investigations in accordance with the terms of this Consent Decree, Verizon agrees to the terms, conditions, and procedures contained herein.

7. For purposes of settling the matters addressed in these Investigations, Verizon agrees to take the actions described below:

- (a) No later than 60 days after the Effective Date of the Consent Decree, Verizon will send a communication to all employees involved with section 272 contracts instructing them on the requirements of section 32.27 of the Commission's rules. Beginning not later than 60 days after the Effective Date of the Consent Decree, where the total aggregate annual value of a service provided by a Verizon BOC to a section 272 affiliate that is not required by section 272 to be made available to third parties reaches the \$500,000 threshold contained in section 32.27, Verizon will perform a comparison of fair market value to fully distributed costs. Verizon will provide the results of this analysis to the independent auditor in the current and all future biennial section 272 audits. If Verizon should contend that an estimate of fair market value can not be established by Verizon and/or an independent third party for any services, such as certain component parts of joint marketing, that are offered by the Verizon BOCs to their section 272 affiliates but that are not offered to third parties, Verizon will report to the independent section 272 auditor the reasons and provide documentation of the results of Verizon's and the independent third party's analyses.
- (b) No later than 60 days after the Effective Date of the Consent Decree, and annually thereafter, Verizon will provide refresher instructions to customer service representatives instructing them on compliance with the equal access notification requirements. Notification will be distributed through a service alert (electronic reference system or like communication).
- (c) No later than 120 days after the Effective Date of the Consent Decree, Verizon (1) will modify the automated voice response unit to ensure that every customer who is ordering new telephone service or moving service to a new location within Verizon's in-region service territory is notified before being connected with a representative taking the service order that the customer has a choice of long distance providers and that a list of providers is available; (2) will perform a sample test every 180 days after the Effective Date of the Consent Decree of the voice response unit to verify that the equal access announcement is heard before the customer is connected with a service representative; and (3) will submit the results of the tests to Verizon's Senior Vice President for Regulatory Compliance within 15 days of the test.
- (d) No later than 60 days after the Effective Date of the Consent Decree, the Verizon section 272 affiliates that sell prepaid calling cards will adopt procedures to prevent order forms

¹⁹*Id.*, at A: 31-34, A: 42, A: 45-48.

from being issued that would bill charges for prepaid calling cards directly or indirectly to the Verizon BOCs without a contract that was executed pursuant to competitive bidding in accordance with the Verizon BOCs' procurement guidelines. Verizon will inform the section 272 employees responsible for filling orders for prepaid calling cards that failure to use the procedures required by this condition will subject them to disciplinary action, with increasing penalties for repeated violations.

- (e) No later than 60 days after the Effective Date of the Consent Decree, Verizon will update its web posting procedures to include: (1) a template for verifying the content of each posting, with instructions that define fully distributed cost, and (2) a requirement for a second person to review each posting and certify completeness and accuracy when the item is posted. No later than 90 days after the Effective Date of the Consent Decree, and annually thereafter, Verizon will retrain its web posting teams on the revised web posting procedures and implement the procedure described in clause (2) of this subparagraph requiring review by a second person when posting.
- (f) No later than 60 days after the Effective Date of the Consent Decree, Verizon will send targeted communications to employees responsible for establishing services between the 272 Affiliates and the Verizon local exchange carriers and their affiliates instructing them on the need to execute a contract before providing service.
- (g) Starting in the first full calendar year quarter after the Effective Date of the Consent Decree, the Verizon Section 272 contract posting teams will submit a quarterly report to the Verizon Senior Vice President for Regulatory Compliance describing any services in the previous quarter that were provided prior to the effective date of a contract. This report will be completed on or before the 60th day after the close of each quarter.
- (h) The requirements of the remedial actions listed above will expire on a state-by-state basis upon sunset of the section 272 requirements pursuant to section 272(f)(1) of the Act.
- (i) The independent auditor shall review compliance with the requirements herein in all future section 272 biennial audits.

8. In express reliance on the covenants and representations contained herein, the Commission agrees to rescind the NAL and terminate the Investigations.

9. Verizon will make a voluntary contribution to the United States Treasury in the amount of \$300,000 within 10 calendar days after the Commission Order adopting this Consent Decree becomes final. Verizon must make this payment by check, wire transfer or money order drawn to the order of the Federal Communications Commission, and the check, wire transfer or money order should refer to "Acct. No. 200332080014" and "FRN No. 0008988438." If Verizon makes this payment by check or money order, it must mail the check or money order to: Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois, 60673-7482. If Verizon makes this payment by wire transfer, it must wire such payment in accordance with Commission procedures for wire transfers.

10. The Commission agrees that, in the absence of new evidence relating to incidents that Verizon has not disclosed to the Bureau through the Effective Date of this Consent Decree, the Commission will not use the facts developed in these Investigations, or the existence of this Consent Decree, to institute, on its own motion, any new proceedings, formal or informal, or to take any actions on its own motion against Verizon concerning the matters that were the subject of these Investigations. The

Commission also agrees that, in the absence of new evidence relating to incidents that Verizon has not disclosed to the Bureau through the Effective Date of this Consent Decree, it will not use the facts developed in the Investigations to institute on its own motion any proceeding, formal or informal, or take any action against Verizon with respect to its basic qualifications, including its character qualifications, to be a Commission licensee. Consistent with the foregoing, nothing in this Consent Decree limits the Commission's authority to consider and adjudicate any formal complaint that may be filed pursuant to section 208 of the Communications Act, as amended, and to take any action in response to such formal complaint.

11. Verizon waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Commission issues an Order adopting the Consent Decree without change, addition, or modification.

12. Verizon's decision to enter into this Consent Decree is expressly contingent upon issuance of an Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition, or modification.

13. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

14. If either party (or the United States on behalf of the Commission), brings a judicial action to enforce the terms of the Adopting Order, neither Verizon nor the Commission shall contest the validity of the Consent Decree or Adopting Order, and Verizon will waive any statutory right to a trial *de novo*.

15. The parties agree that this Consent Decree is for settlement purposes only and that it does not constitute an admission, denial, adjudication on the merits, or a factual or legal determination regarding any compliance or noncompliance with the requirements section 272 and the Commission's affiliate transaction rules.

16. Any violation of the Consent Decree or the Adopting Order will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

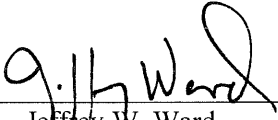
17. The Parties also agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Verizon does not consent) that provision will be superseded by such Commission rule or order.

18. This Consent Decree may be signed in counterparts.

FEDERAL COMMUNICATIONS COMMISSION

By: _____
Marlene H. Dortch
Secretary

VERIZON

By:  _____
Jeffrey W. Ward
Senior Vice President—Regulatory Compliance