Before the
Federal Communications Commission
Washington, D.C. 20544

In the Matter of	)	File No. EB-03-IH-0245
	)	
Verizon Telephone Companies, Inc.	)	NAL/Acct. No. 200332080014
	)	
Apparent Liability for Forfeiture	)	FRN No. 0008988438

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 6, 2003 **Released:** September 8, 2003

By the Commission: Commissioner Copps and Commissioner Adelstein concurring and issuing a joint statement.

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that the Verizon Telephone Companies ("Verizon")[1] apparently violated section 32.27(c) of the Commission's rules, which regulates accounting practices for transactions between Verizon's New York Bell Operating Company ("BOC") and its affiliates established pursuant to section 272(c) of the Communications Act of 1934, as amended ("the Act"). This rule is important because it helps to ensure that Verizon's affiliates do not receive better treatment than Verizon's competitors. We find that Verizon is apparently liable for forfeiture in the amount of $283,800 under section 220(d) of the Act for its apparent violations of section 32.27(c). We also admonish Verizon for violating section 272(b)(5) of the Act and section 53.203(e) of the Commission's rules by failing to post on the Internet accurate and timely descriptions of all transactions between the BOC and its section 272 affiliates.

II. BACKGROUND

2. Section 271 of the Act prohibits BOCs from providing in-region interLATA services without Commission authorization.[2] To receive such authorization, a BOC must, on a state-by-state basis, show the Commission that it satisfies the 14-point competitive checklist, that authorization is in the public interest, convenience, and necessity, and that it will carry out its long-distance operations through a separate affiliate in accordance with section 272.[3] Section 272 establishes certain structural, transactional, and nondiscrimination safeguards that govern the

[1] "Verizon" means the Verizon Telephone Companies, which include Verizon Delaware Inc., Verizon Maryland Inc., Verizon New England Inc., Verizon New Jersey Inc., Verizon New York Inc., Verizon Pennsylvania Inc., Verizon Virginia Inc., Verizon Washington, DC Inc., Verizon West Virginia Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions, and Verizon Select Services Inc., and their successors and assigns.

[2] 47 U.S.C. § 271.

[3] 47 U.S.C. §§ 271(d)(3).

relationship between a BOC and its section 272 affiliate. These statutory safeguards and the Commission's rules thereunder are designed to prevent BOCs from giving unfair, anti-competitive advantage to their own long distance affiliates to the detriment of unaffiliated carriers.[4]

3. In a series of orders, the Commission implemented the section 272 separate affiliate safeguards by designing rules to deter BOCs from unfairly favoring their in-region interLATA operations by cross-subsidizing or otherwise discriminating in favor of their long-distance operations to the detriment of unaffiliated long-distance competitors.[5] For example, the rules at issue in this case ensure that BOCs do not provide services to their affiliates at rates lower than those available to unaffiliated competitors, and that all rates and other terms between a BOC and its affiliate are available for public scrutiny. In short, the rules prohibit a BOC from providing to its affiliate in the long distance market an advantage that the BOC derived from its dominant position in local markets. To help the Commission determine if a BOC is complying with section 272 and the Commission's implementing rules after receiving section 271 authority in a state, section 272(d) requires the BOC to obtain a joint Federal/State audit conducted by an independent auditor.[6] In the *Accounting Safeguards Order*, the Commission also adopted rules governing the joint Federal/State audit of the BOCs' compliance with section 272. These rules address, *inter alia*, oversight of the independent auditor and the filing of the audit report.[7]

4. The Commission authorized Verizon to provide in-region interLATA service in New York on December 22, 1999, effective January 3, 2000.[8] At the time of the authorization, Verizon stated that it had established three New York section 272 affiliates.[9] Pursuant to the requirements of section 272(d), Verizon retained an independent auditor to perform a section 272(d) biennial audit for its first full year of in-region long-distance operations, *i.e.,* January 3,

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[4] *See also* S*eparation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities; Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Companies To Provide Nonregulated Activities and To Provide for Transactions Between Telephone Companies and Their Affiliates*, Report and Order, 2 FCC Rcd 1298 (1987) ("*Joint Cost Order*"), *modified on recon*., 2 FCC Rcd 6283 (1987), *modified on further recon*., 3 FCC Rcd 6701 (1988), *aff'd sub nom. Southwestern Bell Corp. v. FCC,* 896 F.2d 1378 (D.C. Cir. 1990).

[5] *See Accounting Safeguards under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539, 17546, ¶ 13 (1996) ("*Accounting Safeguards Order*"), Second Order on Reconsideration, 15 FCC Rcd 1161 (2000); *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914, ¶¶ 15-16.

[6] *See* 47 U.S.C. § 272(d).

[7] *See Accounting Safeguards Order*, 11 FCC Rcd at 17628-32, ¶¶ 197-205; 47 C.F.R. §§ 53.209-213; *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22061, ¶ 323.

[8] *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, ¶ 458 (1999) ("*Bell Atlantic New York Order*"), *aff'd sub nom. AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

[9] These affiliates include Bell Atlantic Communications, Inc. ("BACI"), NYNEX Long Distance ("NLD"), and Bell Atlantic Global Networks, Inc. ("BAGNI"). *See Bell Atlantic New York Order*, 15 FCC Rcd at 4153-54, ¶ 405. According to Verizon, it planned to offer long distance services to residential customers through BACI and business customers through NLD. *See id.* Verizon stated that the third affiliate, BAGNI, would "build the telecommunications network and serve BACI and NLD." *Id.* For simplicity, we refer to these affiliates collectively as the "section 272 affiliates" or individually using the generic "section 272 affiliate."

2000 through January 2, 2001.[10] Verizon's independent auditor submitted a publicly-available audit report on February 6, 2002 that, among other things, identified the apparent violations discussed here.[11] Verizon responded, and, after a public notice,[12] WorldCom and AT&T filed comments proposing enforcement action, and Verizon responded to those comments.

III. DISCUSSION

5. Under section 220, any carrier subject to the Act that fails to keep its accounts, records, and memoranda on the books in the manner prescribed by the Commission, or fails to submit such accounts, records, memoranda, documents, papers, and correspondence to the inspection of the Commission or its authorized agents, is liable for forfeiture.[13] To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and send it to the person against whom the notice is issued.[14] The Commission must then give the person against whom the notice has been issued an opportunity to show, in writing, why a forfeiture penalty should not be imposed.[15] The Commission will then issue a forfeiture if it finds that the person has violated the Act or a Commission rule.[16] As set forth in more detail below, we conclude that Verizon is apparently liable for a forfeiture under section 220(d) for its apparent violations of section 32.27(c) of the Commission's rules.

6. The fundamental issues in this case are whether Verizon violated section 32.27(c) of the rules by failing to estimate fair market value for certain transactions and failing to record

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[10] *See Report of Independent Accountants on Applying Agreed-Upon Procedures*, filed in CC Docket No. 96-150 (Feb. 6, 2002) (*"Verizon Audit Report*"). The audit was an agreed-upon procedures engagement ("AUP"). An AUP requires the auditor to perform specified procedures upon which the users agree. *See* Statement on Standards for Attestation Engagements No. 10 at § 2.03 (American Inst. of Certified Pub. Accountants 1999). The independent auditor presents the results and/or findings in its report without regard to materiality. *See id.* at §§ 2.24, 2.25.

[11] The audit report covered the Verizon section 272 affiliate operations in New York only. Therefore, this Notice of Apparent Liability is limited to Verizon's operations in that state.

[12] *See Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Order, 17 FCC Rcd. 2488 (Com. Car. Bur. 2002). On December 23, 2002, the Commission issued a *Public Notice* stating that, pursuant to section 272(f)(1), the section 272 provisions (except section 272(e)) sunset for Verizon in New York, effective that day. *See Section 272 Sunsets for Verizon in New York State by Operation of Law on December 23, 2002 Pursuant to Section 272(f)(1)*, WC Docket No. 02-112, Public Notice, 17 FCC Rcd 26864 (2002). In an accompanying order, however, the Commission warned that BOCs remain "obligated to cooperate fully in the completion of the section 272(d) audits addressing section 272 compliance for all time periods prior to the statutory sunset even though these independent audits may be completed after the sunset date." *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Memorandum Opinion and Order, 17 FCC Rcd 26884 (2002).

[13] A carrier is subject to forfeiture under section 220(d) if it fails to comply with the Commission's accounting rules. Section 32.27 is such a rule; therefore, failure to comply makes a carrier liable for section 220(d) penalties. The statute of limitations for such offenses is five years. 47 C.F.R. § 1.80(c)(2).

Unlike section 503, section 220(d) does not require that a violation be willful or repeated before the Commission can impose a forfeiture. In any case, however, the apparent violations here are clearly repeated and, in the case of the 34 transactions for which Verizon decided not to estimate market value, willful.

[14] *See* 47 C.F.R. § 1.80(f)(1), 1.80(f)(2).

[15] *See* 47 C.F.R. § 1.80(f)(3).

[16] *See* 47 C.F.R. § 1.80(f)(4).

the correct value for certain other transactions, and whether Verizon violated the Commission's Internet posting rules, section 53.203(e), by failing to post accurate and timely affiliate transactions descriptions. Based on the record in this case, which includes the February 6, 2002 report of Verizon's independent auditor, as well as the comments of WorldCom and AT&T and Verizon's reply, we find that Verizon apparently failed to comply with the Commission's affiliate transactions rules as set forth in section 32.27(c) of the Commission's rules.[17] Based on the record, we also find that Verizon apparently failed to post on the Internet accurate and timely descriptions of its affiliate transactions between its BOC and section 272 affiliates contrary to the requirements of section 272(b)(5) of the Act and section 53.203(e) of the Commission's rules.[18]

A. Verizon's Apparent Violations

1. Section 32.27(c)

7. Section 32.27(c) of the Commission's rules requires a BOC to record transactions with its section 272 affiliate at the tariffed rate, prevailing company price, or the higher or lower of cost or fair market value, in that mandatory order of preference (depending on the direction of the transaction).[19] If there is no tariffed rate or prevailing company price, the BOC must make a good faith estimate of fair market value.[20] For transfers from the BOC to its section 272 affiliate,

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[17] In addition to the apparent violations of the affiliate transactions rules, Verizon apparently failed to retain the documentation required under our rules. Section 220(c) of the Act places the burden of proof to justify questioned accounting entries on carriers. 47 U.S.C. § 220(c). The *Accounting Safeguards Order* further requires BOCs "to maintain records sufficient to support [its] value determination" for situations in which making a good faith estimate of fair market value may be difficult. The independent audit report states that Verizon failed to retain documentation to support its valuations. Verizon apparently violated these record retention requirements for both groups of transactions described in sections III.A.1.(a) and (b), *infra*. These apparent violations of the record retention requirements are further indication of Verizon's apparent failure to comply with the substantive affiliate transactions requirements.

[18] We note that both AT&T and WorldCom complain that Verizon's section 272(e) performance measurements results indicate that Verizon discriminated in favor of its affiliates in the provision and maintenance of special access lines and other services. *See* AT&T Comments at 16-22; WorldCom Comments at 3-4. The independent auditor's report, however, does not disaggregate the services to a level sufficient to permit a service-by-service discrimination analysis. *See Verizon Audit Report* at 34-40. The joint federal-state section 272 audit team, including the Enforcement Bureau audit staff, has worked with and continues to work with the section 272 independent auditors to ensure that such disaggregation takes place in future audits.

[19] 47 C.F.R. § 32.27. In implementing section 272(c)(2), the Commission relied on its existing affiliate transaction rules. *See Accounting Safeguards Order*, 11 FCC Rcd at 17620, ¶ 176 ("[w]e therefore adopt our tentative conclusion that we should apply our affiliate transactions rules to transactions between each BOC and any interLATA telecommunications affiliate it establishes under section 272(a), such as an affiliate providing in-region services, and order that the BOCs treat such services like nonregulated activities for accounting purposes.") The affiliate transactions rules, adopted pursuant to section 220 of the Act, are codified in section 32.27 of the Commission's rules. 47 C.F.R. § 32.27.

[20] *See* 47 C.F.R. §§ 32.27(c) ("For purposes of this section, carriers are required to make a good faith determination of fair market value for a service when the total aggregate annual value of that service reaches or exceeds $500,000."); 53.203(e). The former Common Carrier Bureau has stated that the good faith determination of fair market value is neither difficult nor burdensome. *See, e.g., Puerto Rico Telephone, Petition for Waiver of Section 32.27 of the Commission's Rules*, ASD File No. 98-93, Memorandum Opinion and Order, 15 FCC Rcd 7044, 7047, ¶ 8, n.19 (Com. Car. Bur. 1999). The affiliate transactions requirements are sufficiently clear to allow Verizon "to identify, with ascertainable certainty, the standards with which the [Commission] expects [it] to conform . . . ." *Trinity Broadcasting*, 211 F.3d at 628. We note that the rules governing the cost-market comparison for services changed effective September 28, 2000. *See* 2000 WL 1450766 (FR) (Federal Register notice of *Phase 1 Order*'s effective

the BOC must then record the *higher* of cost or fair market value in its books of account.[21] For transfers from the section 272 affiliate to the BOC, the BOC must record the *lower* of cost or fair market value in its books of account.[22] Based on the independent auditor's report, we find that Verizon apparently violated this affiliate transactions rule.

(a) Verizon Failed to Record the Correct Value for Transactions

8. We find that Verizon apparently failed to book nine transactions, approximately 13 percent out of a sample of 70, at either tariffed rate, prevailing company price, or the higher of cost or fair market value as section 32.27(c) of our rules require it to do.[23] The independent auditor's report shows that Verizon recorded the costs of the transactions at some different amount.[24] Verizon's arguments that it did not violate our rules are unpersuasive. According to Verizon, it contracted with its affiliates at appropriate rates, but then failed to bill them at the contract rates "due to administrative error."[25] But the rule, which is designed to ensure that carriers do not charge their affiliates less than market value for services, thereby giving their affiliates a competitive advantage over unaffiliated carriers, has apparently been violated, regardless of whether the violation may have been caused by "administrative error." Strict enforcement will help ensure that the Commission can detect any anticompetitive behavior. Thus, we find that Verizon apparently violated section 32.27(c) of our rules.

(b) Verizon Failed to Make a Good-Faith Estimate of Fair Market Value

9. Verizon booked 34 of 70 sampled transactions (apart from the nine above) at cost, without engaging in the mandated comparison of cost versus market. Verizon apparently failed to make a good faith estimate of fair market value for the 34 transactions in the independent auditor's sample.[26] As a result, Verizon failed to perform the required comparison between fair market value and fully distributed cost for the 34 transactions, which totaled $15,177,531 when measured at cost.[27] Instead, Verizon simply booked the 34 transactions at cost.[28] Thus, Verizon apparently violated section 32.27(c), and is therefore apparently liable for forfeiture under section 220(d). As a result of Verizon's failure to follow the Act and rules when

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date); *Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 1*, CC Docket No. 99-253, Report and Order, 15 FCC Rcd 8690 (2002) ("*Phase 1 Order*"). In the *Phase 1 Order*, the Commission relaxed the rule to require BOCs to estimate fair market value only where the annual value of the transactions for the relevant service is greater than $500,000. *See id.,* 15 FCC Rcd at 8700-01, ¶¶ 18-20.

[21] *See* 47 C.F.R. § 32.27(c).

[22] *See id*. "Cost" varies depending on whether the transaction involves assets or services. For affiliate transactions involving assets, "cost" means "net book cost." For services, "cost" means "fully distributed cost." *See id*.

[23] *Verizon Audit Report* at 23. The value of these transactions was $991,509. *See id*.

[24] *See id.*

[25] *Verizon June 11, 2001 Response* at 5. Verizon also states that it corrected the bookings in April, 2001, *i.e.,* as much as 13 months after Verizon booked the transactions. *Id.*

[26] *See Verizon Audit Report* at 21; *see also* AT&T Comments at 34.

[27] *See id.*

[28] *See* Letter from Joseph DiBella, Regulatory Counsel, Verizon, to Joseph Paretti, Accounting Safeguards Division, Common Carrier Bureau, Federal Communications Commission, at 17 (June 11, 2001) ("*Verizon June 11, 2001 Response*").

booking the cost of these transactions, it may have charged its section 272 affiliate less than market value for the services, giving the affiliate a competitive advantage over unaffiliated long-distance carriers.

10. Verizon argues that it nevertheless complied with the Act and the Commission's rules. Verizon asserts that: (1) it could not obtain fair market valuations from third parties; (2) the services at issue are unique, precluding a fair market value analysis; and, (3) the Act and the Commission's affiliate transactions rules require Verizon merely to make a good faith attempt at obtaining fair market value but do not require Verizon to arrive at an estimate of fair market value.[29] We reject all of Verizon's contentions. Although the Commission's rules do not prescribe a specific method for determining fair market value,[30] they do require a BOC to make a good faith estimate, not merely a good faith *attempt* at making an estimate.[31] As the Commission stated in the *Accounting Safeguards Order,* carriers have a variety of ways to estimate fair market value, *e.g.,* appraisals, catalogs listing similar items, competitive bids, replacement cost of an asset, and net realizable value of an asset.[32] The Commission has also recognized that not all transactions can be valued using such independent valuation methods. The Commission has not exempted such transactions from the fair market value requirement, but has said that "[w]hen situations arise involving transactions that are not easily valued by independent means, we require carriers to maintain records sufficient to support their value determination."[33] Therefore, even if a third-party consultant reports that it cannot estimate fair market value for the BOC, the BOC may not ignore its obligation to do so, and to keep supporting records.[34] Based on the record before us, we also disagree that the services – most of which are some form of telemarketing or call center operations – are sufficiently unique to justify Verizon's departure from the Commission's rules. In any event, while the unique nature of services might serve as a basis for a waiver of the rule, Verizon did not even ask for such a waiver, let alone receive one. Finally, Verizon is incorrect that it can satisfy its obligation by merely making a good faith attempt at obtaining faith market value. Nothing in the rule or the *Accounting Safeguards Order* so suggests. Rather, its failure to provide the requisite estimate constitutes an apparent violation of section 32.27(c) of the Commission's rules.

2. Section 272(b)(5)

11. Section 272(b)(5) of the Act requires that all transactions between a BOC and its section 272 affiliates be "reduced to writing and available for public inspection."[35] The Commission's rules implement this requirement by directing BOCs to post all transactions with their section 272 affiliates on the Internet within 10 days of their occurrence.[36] The postings must include a "detailed written description of the asset or service transferred and the terms and

[29] *See Verizon Audit Report* at 21; *Verizon June 11, 2001 Response* at 5; Letter from Gerald Asch, Director, Federal Regulatory, Verizon, to Marlene Dortch, Secretary, Federal Communications at 17 (June 11, 2002) ("*Verizon June 11, 2002 Response*").

[30] *See Accounting Safeguards Order*, 11 FCC Rcd at 17609-10, ¶ 153.

[31] *See* 47 C.F.R. § 32.27(c); *Accounting Safeguards Order*, 11 FCC Rcd at 17610, ¶ 154.

[32] *See Accounting Safeguards Order*, 11 FCC Rcd at 17610, ¶ 154.

[33] *Id.*

[34] *See* AT&T Comments at 34 (arguing that benchmark prices should be available on an "inter-industry basis").

[35] 47 U.S.C. § 272(b)(5).

[36] *See* 47 C.F.R. § 53.203(e); *Accounting Safeguards Order*, 11 FCC Rcd at 17593-94, ¶ 122.

conditions of the transaction."[37] The audit results show that Verizon failed to comply with this requirement in numerous cases. Specifically, of 839 postings reviewed, the independent auditor identified the following errors: 129 web postings that did not match the underlying agreements, including 44 with multiple errors; four missing postings; 51 late postings; and 68 postings that did not contain all of the required disclosures.[38]

12. Verizon states that: (1) these transactions are "complex";[39] (2) the postings represent only one percent of Verizon's total postings;[40] and (3) the errors were clerical in nature.[41] Verizon's contentions are not persuasive. It is not clear whether Verizon believes the purported complexity of the transactions means that we should not consider the audit findings violations of the Commission's rules or that we should use discretion in not pursuing the violations. To the extent Verizon argues that complexity should compel us to not find a violation, we disagree. The purported complexity of the transactions does not excuse the large number of errors uncovered by the audit. To the extent Verizon argues that we should use our discretion, we address the proper enforcement action below. Although the identified errors may represent a small fraction of Verizon's total postings, they represent a large percentage of the transactions sampled. And even if the errors were "clerical," they nevertheless constitute a failure to comply with our rules. Therefore, we find that Verizon violated section 272(b)(5) of the Act and section 53.203(e) of the Commission's rules.

B. Proposed Action

13. As we explained above, we find that Verizon apparently violated section 32.27(c) of the Commission's rules by failing properly to account for affiliate transactions. In particular, Verizon failed to record a total of 43 transactions according to the methods specified in section 32.27(c). Based on this information, we find that Verizon has apparently failed to justify its accounting entries for approximately $16 million in services provided to its section 272 affiliates in 2000. For the reasons discussed below, these apparent violations justify a forfeiture. In addition, because we are barred by the one-year statute of limitations from imposing a forfeiture for Verizon's Internet posting violations,[42] we admonish the company.

14. We acknowledge that, as of December 23, 2002, Verizon is no longer obligated to comply with the section 272 safeguards in New York, other than section 272(e).[43] Enforcement action is important nevertheless for several reasons. First, and obviously, section 272 was effective in New York at the time Verizon committed these apparent violations. In addition, section 32.27 of the Commission's rules remains in effect. Verizon must continue to comply with the affiliate transactions rules when dealing with nonregulated affiliates. Moreover, a large percentage of the transactions sampled by the auditor indicate apparent violations. Finally,

[37] *Accounting Safeguards Order*, 11 FCC Rcd at 17593-94, at ¶ 122. The BOC must also make this information available for public inspection at its principal place of business. *See id*.

[38] *Verizon Audit Report* at 16-18; *see also* Letter from Joan Marsh, Director, Federal Government Affairs, AT&T, to Marlene Dortch, Secretary, Federal Communications Commission, at 2 (May 23, 2002); AT&T Comments at 32.

[39] *See Verizon June 11, 2001 Response* at 2.

[40] *See id.*

[41] *See Verizon June 11, 2002 Response* at 15-16.

[42] We note that the statute of limitations for forfeiture action for these violations is one year, not five years as with a section 220 forfeiture. 47 U.S.C. § 503(b)(6)(B). *Compare* 47 C.F.R. § 1.80(c)(2).

[43] *See* n.12 *supra*.

Verizon operates the same section 272 affiliates in its other BOC states. Thus, Verizon and its section 272 affiliates must continue to comply with section 272, and enforcement action here should help deter future violations.

1. Forfeiture Amount

15. In light of Verizon's apparent repeated violations of section 272(c)(2) of the Act, and associated Commission rules, we find that a proposed forfeiture is warranted pursuant to section 220(d).[44]

16. Section 220(d) provides that "[i]n the case of failure or refusal on the part of any such carrier to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, memoranda, documents, papers, and correspondence as are kept to the inspection of the Commission or any of its authorized agents, such carrier shall forfeit to the United States the sum of [$6,600] for each day of the continuance of each such offense."[45] The affiliate transactions rule that Verizon has apparently violated constitutes the "manner prescribed by the Commission" for Verizon to keep its books. Accordingly, Verizon is apparently liable for forfeiture under section 220(d) for violating section 32.27(c) of the Commission's rules.

17. Based on our review of the facts and circumstances of this case, we find that Verizon is apparently liable for a forfeiture of $283,800. We find that all 43 apparent accounting violations occurred within the five-year statute of limitations because they occurred in calendar year 2000. We note that Verizon allowed the apparent violations to go uncorrected for eight to 28 months.[46] Forty-three apparent violations multiplied by the then-effective statutory amount of $6,600 per violation produces $283,800. Our total proposed forfeiture is therefore $283,800. We do not propose that the forfeiture amount for each of the 43 violations also include the $6,600 per day amount because, under the circumstances of this case, we believe the result would be excessive.[47]

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[44] Although we find here that these apparent violations were repeated and, in the case of the 34 transactions for which Verizon made a decision not to estimate market value, repeated, it is not clear that section 220(d) has a willful or repeated requirement.

[45] 47 U.S.C. § 220(d); 47 C.F.R. § 1.80(b)(4) (2000). Effective November 13, 2000, the Commission raised the statutory per violation maximum from $6,600 to $7,600 to account for inflation. *Amendment of Section 1.80(b) of the Commissions Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221, 18225 (2000); 65 FR 60868; *In the Matter of the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, CI Docket No. 95-6, Report and Order, 12 FCC Rcd 17087, 17117 (noting that maximum liability for each section 220(d) violation was $6,600). Verizon's apparent continuing violations began before the date the $7,600 maximum took effect. Although some of Verizon's apparent violations occurred after the effective date, we will use the $6,600 amount to calculate Verizon's apparent liability here for simplicity.

[46] The duration of the 43 apparent violations is based on two factors. For the nine apparent violations for which Verizon failed to book the transactions at either fully distributed cost or fair market value, the end month is April 2001, when Verizon states that it cured the violation. *See* n.22 *supra*. For the 34 transactions for which Verizon failed to perform a good faith estimate of fair market value, the end month is June 2002, when Verizon last argued that it had not violated the Commission's affiliate transactions rules. June 2002 is the last month at which it is clear Verizon had not cured these apparent violations.

[47] *See generally* 47 C.F.R. § 1.80(b)(4); 47 U.S.C. § 504(b).

2. Admonishment

18. Based on our review of the facts and circumstances in this case, we also admonish Verizon for failing to comply with the Internet posting requirements of section 272(b)(5) and section 53.203(e) of the Commission's rules. We therefore expect that Verizon will take steps to ensure that it complies with these requirements for the states in which it remains subject to section 272. Although section 272(b)(5)'s requirements have sunset for Verizon in New York,[48] admonishment is nevertheless warranted in light of the fact that the section 272(b)(5) Internet posting requirements and other non-discrimination safeguards remain in effect in Verizon's other BOC states for at least three years from the date of section 271 approval.

IV. CONCLUSION

19. We find Verizon has apparently violated section 32.27(c) of the rules in transactions with its affiliates and we propose a forfeiture of $283,800. We also admonish Verizon for not accurately and timely posting affiliate transactions on its Internet site in violation of section 272(b)(5) of the Act and section 53.203(e) of the rules.

IV. ORDERING CLAUSES

20. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 220(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 220(d), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that the Verizon Telephone Companies are hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of two hundred eighty-three thousand, eight hundred dollars ($283,800) for violating section 32.27(c) of the Commission's rules in transactions with its affiliates.

21. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, within thirty days (30) of release of this NOTICE OF APPARENT LIABILITY, the Verizon Telephone Companies SHALL PAY the full amount of the proposed forfeiture currently outstanding on that date or shall file a response showing why the proposed forfeiture should not be imposed or should be reduced.

22. Payment of the forfeiture may be made by check or money order drawn to the order of the Federal Communications Commission. Such remittance should be made to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above.

23. The response, if any, must be mailed to Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-B431, Washington DC 20554, and must include the file number listed above.

24. IT IS FURTHER ORDERED that the Verizon Telephone Companies ARE ADMONISHED for failing to make accurate and timely Internet postings in violation of 47 U.S.C. § 272(b)(5) and 47 C.F.R. § 53.203(e).

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[48] *See* n.12 *supra*.

25. IT IS FURTHER ORDERED that the Secretary shall send, by certified mail/return receipt requested, a copy of this Notice of Apparent Liability for Forfeiture to Susanne A. Guyer, Senior Vice President – Federal Regulatory Affairs, Verizon, 1300 I Street N.W., Room 400W, Washington, D.C., 20005.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

JOINT STATEMENT OF
COMMISSIONERS MICHAEL J. COPPS AND JONATHAN S. ADELSTEIN, CONCURRING

Re: *Verizon Telephone Companies, Inc. Apparent Liability for Forfeiture (File No. EB-03-IH-0245)*

We support today's Notice of Apparent Liability because it is an appropriate exercise of the Commission's enforcement authority. Nonetheless, we only concur because the timing of this decision sends the wrong signals concerning our oversight of section 272 affiliates. This is yet another illustration of how the Commission has fallen short of its statutory duties under Section 272. We need to do more to ensure that our oversight is of the kind and character that Congress intended.

Through Section 272, Congress required Bell companies to provide long distance and manufacturing services through a separate affiliate. In implementing these requirements, the Commission concluded that Congress adopted these safeguards because it recognized that Bell companies might still exercise market power at the time they enter long-distance markets. As part of these safeguards, Congress specifically required that Bell companies retain an independent auditor to review separate affiliate operations and produce a public report evaluating how they comply with the statute and the Commission's rules. Congress also provided that the long distance separate affiliate requirements would continue for three years, but could be extended by the Commission by rule or order.

On the three-year anniversary of its entry into the long distance market, the Commission allowed the Section 272 separate affiliate requirement for Verizon in New York to sunset. It did so without a crumb of analysis. We addressed neither the New York Public Service Commission's concerns that sunset was premature, nor the results of the independent audit report. Instead, we review the results of that audit in today's decision. This review takes place more than seven months *after* the Commission allowed the sunset of the New York Section 272 separate affiliate. This is backwards.

Despite the appropriateness of today's enforcement action, it highlights the shortcomings of our approach to section 272. By failing to use the statutory audit tool as part of a larger analysis *before* the decision to sunset is made, the forfeiture and admonishment we impose in this Notice of Apparent Liability are denied the context Congress intended.