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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
) File No. EB-01-IH-0236
Verizon Communications, Inc.) Acct. No. 200132080058
)

ORDER

Adopted: September 10, 2001 Released: September 14, 2001

By the Chief, Enforcement Bureau:

1. In this Order, we adopt a Consent Decree terminating an investigation into possible violations by Verizon Communications, Inc. ('Verizon') of section 51.321(h) of the Commission's rules, in connection with Verizon's posting of notice of exhausted collocation space on its Internet website.

2. The Bureau and Verizon have negotiated the terms of a Consent Decree that would terminate the staff's investigation. A copy of the Consent Decree is attached hereto and is incorporated by reference.

3. We have reviewed the terms of the Consent Decree and evaluated the facts before us. In light of Verizon's commitment to be bound by various requirements to help ensure its compliance with section 51.321(h) of the Commission's rules, we believe that the public interest would be served by approving the Consent Decree and terminating the investigation.

4. Based on the record before us, and in the absence of material new evidence relating to this matter, we conclude that there are no substantial and material questions of fact as to whether Verizon possesses the basic qualifications, including its character qualifications, to hold or obtain any FCC licenses or authorizations.

5. Accordingly, IT IS ORDERED, pursuant to section 4(i) of the Communications Act, 47 U.S.C. § 154(i), and the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that the attached Consent Decree IS ADOPTED.

6. IT IS FURTHER ORDERED that the Commission staff inquiry into the matter described here IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau
Before th
Federal Communications Commission
Washington, D.C. 20554

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CONSENT DECREE

7. The Enforcement Bureau of the Federal Communications Commission ('`FCC'' or ``Commission'') and Verizon Communications, Inc. ('`Verizon'') hereby enter into a Consent Decree terminating an informal Bureau investigation into possible violations of section 51.321(h) of the Commission's rules. The investigation focused on whether Verizon had updated its Internet website listing premises that have exhausted collocation space ``within ten days of the date at which a premises runs out of physical collocation space.''

Statement of Facts

8. In the Bell Atlantic/GTE Merger Order, the Commission approved the merger of Bell Atlantic and GTE subject to certain conditions designed to mitigate potential public interest harms from the merger.² One of those conditions was that Verizon retain an independent auditor to develop and implement a comprehensive audit of the merged company's compliance with the Commission's collocation rules.³

9. On January 29, 2001, Verizon submitted its audit report to the Commission regarding Verizon's compliance with the Commission's collocation rules from July 1, 2000 through October 31, 2000.⁴ The auditor's report indicated that, in certain instances during the audit period, Verizon failed to post exhausted collocation space within 10 days of exhaustion.⁵ Additionally, the auditor's report noted that, in certain instances during the audit period, Verizon denied collocation applications for certain premises due to lack of space, yet did not post such premises as being exhausted.⁶ Rather, Verizon listed such premises as ``Pending Office Reevaluation,''

a term the company defines internally to mean that ``the premise cannot currently accommodate physical collocation but may be considered for reconfiguration to permit additional physical collocation space in the future.''

⁷ Based on the Bureau's review of the audit report, the Bureau commenced an investigation into whether Verizon may have violated the Commission rule requiring the timely posting of exhausted collocation space.⁸

10. The posting rule states that an incumbent local exchange carrier ('`ILEC'') must update its Internet website listing of premises that have exhausted collocation space ``within ten days of the date at which a premises runs out of physical collocation space.''9 The purpose of the posting rule is to ensure that competitors do not ``expend[] significant resources in applying for collocation space in an incumbent ILEC's premises where no such space exists.''10 Information provided by the auditors and Verizon indicates that there may have been a number of instances in which Verizon updated its website information more than 10 days after the date that space for physical collocation became exhausted in those premises.11 Information submitted to the Bureau by Verizon indicates that in some of these instances, competitive local exchange carriers may have submitted collocation applications for space at these premises, only to have the applications denied on the ground that no space was available.12 Verizon does not agree that the information provided by the auditors and Verizon prove that it failed to meet the 10-day posting requirement.

Terms of Settlement

11. For the purposes of this Consent Decree the following definitions shall apply:

- (a) ``Commission'' or ``FCC'' means the Federal Communications Commission;
- (b) ``Bureau'' means the Enforcement Bureau of the Federal Communications Commission;
- (c) ``Verizon'' means Verizon Communications, Inc. and any subsidiaries, including its incumbent LEC operating telephone companies, and any successors or assigns of Verizon Communications, Inc. or its incumbent LEC operating telephone companies;
- (d) ``Parties'' means Verizon Communications, Inc., and the Bureau;
- (e) ``Adopting Order'' means an Order of the Bureau adopting the terms and conditions of this Consent Decree;
- (f) ``Effective Date'' means the date on which the Bureau releases the Adopting Order; and,
- (g) ``Inquiry'' means the investigation initiated by the Bureau's April 5, 2001 letter of inquiry regarding Verizon's compliance with 47 C.F.R. § 51.321(h).

12. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in an Adopting Order of the Bureau.

13. The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Commission and any violation of the terms of this Consent Decree shall constitute a violation of a Commission Order entitling the Commission to exercise any and all rights and to seek any and all remedies authorized by law for the enforcement of a Commission Order.

14. Verizon admits the jurisdiction of the Commission for purposes of this Consent Decree and the Adopting Order.

15. The parties agree and acknowledge that this Consent

Decree shall constitute a final settlement between Verizon and the Bureau of the Inquiry. In consideration for the termination by the Bureau of its investigation into whether Verizon has violated section 51.321(h) of the Commission's rules, 47 C.F.R. § 51.321(h), and in accordance with the terms of this Consent Decree, Verizon agrees to the terms set forth herein.

16. Verizon agrees to initiate the following remedial actions, no later than 30 days from the effective date of this Consent Decree, to help ensure its compliance with section 51.321(h) of the Commission's rules: (1) adopt new methods and procedures to clearly indicate that a grant of an application for collocation space, or any other event that makes unavailable the last remaining usable physical collocation space, triggers the ten-day time period within which Verizon must post notice of exhaustion of space for physical collocation; (2) establish a centralized point of control to monitor and record Verizon's compliance with the posting requirements of section 51.321(h); and (3) eliminate the use of the phrase ``Pending Office Reevaluation'' on Verizon's Internet site that lists facilities with exhausted physical collocation space. Verizon agrees to continue to comply with each of these remedial actions for the entire time period in which the Internet posting requirement in section 51.321(h) of the Commission's rules remains in effect in its current form. Additionally, Verizon agrees to provide remedial refresher training on the posting requirements of section 51.321(h) to all personnel responsible for Internet posting regarding collocation space exhaustion, such training to take place within 12 months from the effective date of this Consent Decree.

17. Verizon shall make a voluntary contribution to the United States Treasury in the total amount of \$77,000 (seventy-seven thousand dollars). This amount shall be paid within 30 days of the date on which the order adopting this Consent Decree becomes final. Such contribution shall be made, without further protest or recourse, by certified check, cashiers check, or money order drawn to the order of the Federal Communications Commission, and shall be mailed to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Reference should be made on the check or money order to ``Acct. No. 200132080058.''

18. While this Consent Decree is in effect, Verizon agrees to maintain and make available to the Bureau within 21 days of the receipt of a specific written request from the Bureau, business records demonstrating compliance with the terms and provisions of this Consent Decree. This requirement will begin forty-five 45 days after the effective date of this Consent Decree and will expire twenty-four (24) months later.

19. In express reliance on the covenants and representations in this Consent Decree, the Bureau agrees to terminate the inquiry without any finding of liability on the part of Verizon.

20. The Bureau agrees that, based on the facts developed in the Inquiry and in the absence of material new evidence related to this matter, it will not use the facts developed in this Inquiry through the date of the Consent Decree or the existence of this Consent Decree to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Verizon concerning the matters that were the subject of the Inquiry. The Bureau also agrees that, based on the facts developed in the Inquiry, and in the absence of material new evidence related to this matter, it will not use the

facts developed in this Inquiry through the date of this Consent Decree or the existence of this Consent Decree to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Verizon with respect to its basic qualifications, including its character qualifications, to be a Commission licensee or with respect to compliance with the Commission's rules and policies.

21. Nothing in this Consent Decree shall prevent the Commission from adjudicating complaints filed pursuant to section 208 of the Communications Act, as amended, 47 U.S.C. § 208, against Verizon or its affiliates for alleged violations of section 51.321(h) of the Commission's rules, or for any other type of alleged misconduct, regardless of when such misconduct took place. If any such complaint is made, the Commission's adjudication of that complaint will be based solely on the record developed in that proceeding. Nothing in this Consent Decree shall prevent the Commission from instituting new investigations or enforcement proceedings against Verizon pursuant to sections 4(i), 403 and 503 of the Communications Act in the event of any alleged future misconduct.

22. 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 Order adopts the Consent Decree without change, addition, or modification.

23. Verizon waives any rights it may have under any provision of the Equal Access to Justice Act, 5 U.S.C. § 504.

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

25. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither Verizon nor the Commission shall contest the validity of the Consent Decree or Order, and Verizon and the Commission will waive any statutory right to a trial de novo with respect to any matter upon which the Order is based, and shall consent to a judgment incorporating the terms of this Consent Decree.

26. The Bureau and Verizon agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Communications Act, including section 251 thereof, and the Commission's implementing rules, including section 51.321(h). The parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Verizon does not admit any liability for violating Commission rules in connection with the matters that are the subject of this Consent Decree. Indeed, Verizon expressly denies any such noncompliance, violation, or liability.

27. The Parties agree that any provision of the Consent Decree that would require Verizon to act in violation of a rule or order adopted by the Commission will be superseded by such Commission rule or order.

28. This Consent Decree may be signed in counterparts.

For the Enforcement Bureau,
Communications, Inc.
Federal Communications Commission

For Verizon

David H. Solomon
Chief
Wholesale Services

Virginia Ruesterholz
Senior Vice President,

Date

Date

1 47 C.F.R. § 51.321(h).

2 See Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, CC Docket 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14143 (2000) ('Bell Atlantic/GTE Merger Order').

3 Id. at 14170; see also Bell Atlantic/GTE Merger Order, Appendix D at ¶ 27. The audit covered the period from July 1, 2000 through October 31, 2000.

4 See January 29, 2001 letter from Mark E. Gaumond, Arthur Anderson, LLP, to Magalie Roman Salas, Secretary, Federal Communications Commission; see also January 29, 2001 Report of Independent Accountants ('Auditor's Report on Compliance'); see also January 29, 2001 Report of Management on Compliance with the FCC's Collocation Rules.

5 See Auditor's Report on Compliance at 2.

6 Id.

7 Id.

8 47 C.F.R. § 51.321(h); see also Bell Atlantic/GTE Merger Order, Appendix D at ¶ 27.

9 47 C.F.R. § 51.321(h).

10 See In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761, 4793 (1999) ('Advanced Services Order').

11 See Auditor's Report on Compliance at 2; see also May 7, 2001 letter from Joseph DiBella, Regulatory Counsel, Verizon Communications, Inc., to Elizabeth H. Valinoti, Attorney, Federal Communications Commission, Enforcement Bureau, Attachments A, B ('May 7, 2001 DiBella Letter').

12 See May 7, 2001 DiBella Letter, Response to FCC Questions at 1, 3.