



(Commission) against Southwestern Bell, protesting the assessment of End User Common Line (EUCL) charges on independent payphone provider (IPP) lines.<sup>4</sup>

2. By letter dated July 3, 1991, Southwestern Bell responded to and denied Complainant's informal complaint.<sup>5</sup>

3. In or around September 1992, several months before Complainant filed its formal Complaint in this case, Peoples Telephone Company, Inc. (Peoples) purchased Complainant's 238 pay telephones in the State of Texas.<sup>6</sup>

4. On January 14, 1993, Complainant filed its formal Complaint, which is the pleading that governs Complainant's claim in this proceeding. Complainant filed a "corrected copy" of that Complaint on January 28, 1993.<sup>7</sup>

5. In its Complaint, Complainant alleged that it provided "IPP service to its customers at approximately 200 IPP stations in the State of Texas, each of which is connected to a telephone line provided by the defendant [Southwestern Bell]."<sup>8</sup>

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"Complainant's Responses and Objections to Defendant's First Set of Interrogatories," *In the Matter of C. F. Communications Corp., et al. v. Century Tel. Of Wisconsin, Inc.*, EB Docket No. 01-99, File Nos. E-93-46, E-93-47, E-93-48, responses to interrogatories nos. 1, 2, and 3, pp. 3 through 5, attached at **Tab A**.

<sup>4</sup> *In the Matter of Millicom Services Company v. Southwestern Bell Telephone Company*, Complaint (Corrected Copy), FCC File No. E-93-49, pp. 1 and 4, (Jan. 28, 1993) (*Complaint*). *Complaint* is attached at **Tab B**.

<sup>5</sup> *Complaint*, p. 4, Exhibit 2. Southwestern Bell contends, and the Commission agrees, that, in order for a complainant to take advantage of the "relation-back rule," Commission Rule 1.718, the informal complainant would among other things need to file his, her or its formal complaint within six months of the date of the carrier's report. In this case, Complainant had until roughly January 3, 1992, in which to file its formal complaint in order to enjoy the benefits of Commission Rule 1.718. As it did not file a formal complaint until January 1993, Complainant cannot take advantage of the relation-back rule.

<sup>6</sup> See, Peoples Telephone Company, Inc.'s "Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For Fiscal Year Ended December 31, 1995," SEC File No. 0-16479, "Acquisitions," p. 10, a copy of which is attached at **Tab C** (Form 10-K).

<sup>7</sup> *Complaint*.

<sup>8</sup> *Complaint*, pp. 3 – 4. Complainant sold these assets to Peoples Telephone Company, Inc. in September 1992, see below.

6. In its Complaint, Complainant admitted that “Complainant ceased paying EUCL charges billed to its IPPs in November, 1990.”<sup>9</sup> In other words, Complainant admitted that it had stopped paying EUCL charges assessed by Southwestern Bell more than two years before it filed its formal Complaint, which would include the point in time when Complainant sold its payphone assets to Peoples.

7. Southwestern Bell filed a timely Answer, dated March 22, 1993, raising the affirmative defense of Statute of Limitations and agreeing with Complainant that it had stopped paying for EUCL charges in November 1990.<sup>10</sup>

8. In its *Answer*, Southwestern Bell moved to dismiss Complainant’s Complaint, among other reasons, because it was “barred by the Statute of Limitations at 47 U.S.C. 415.”<sup>11</sup>

9. On April 5, 1993, Complainant replied to the *Answer*. In its *Reply*, Complainant incorporated by reference its “Opposition to Defendant’s Motion,” filed along with the *Reply*.<sup>12</sup> In its “Opposition to Defendant’s Motion” (*Opposition*), Complainant did not refute the underlying factual allegation made in support of Southwestern Bell’s Motion to Dismiss (i.e., that Complainant had ceased paying EUCL charges in November 1990). Rather, Complainant argued that its claims were not barred by the Statute of Limitations because, read in conjunction with Commission Rule 1.717, Commission Rule 1.718 allows for a relation back to the date of the filing of the informal complaint. Complainant’s argument appears to be that the duty to file

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<sup>9</sup> *Complaint*, p. 7.

<sup>10</sup> *In the Matter of Millicom Services Company v. Southwestern Bell Telephone Company*, Answer, FCC File No. E-93-49, ¶ 15, p. 2 (March 22, 1993) (*Answer*). *Answer* is attached at **Tab D**.

<sup>11</sup> *Answer*, “Motion to Dismiss or in the Alternative to Stay Proceedings,” pp. 3 – 4.

<sup>12</sup> *In the Matter of Millicom Services Company v. Southwestern Bell Telephone Company*, Reply, FCC File No. E-93-49, p. 1 (April 7, 1993) (*Reply*). *Reply* is attached at **Tab E**.

within six months in order to enjoy the relation-back benefit of Commission Rule 1.718 begins to run from the date of the “Commission’s disposition.”<sup>13</sup>

### GROUNDS FOR MOTION

Southwestern Bell moves for a summary decision on Complainant’s case for damages because, as a matter of law, Complainant did not sustain any recoverable damages — it cannot recover any damages before January 1991, as they would be barred by the Statute of Limitations, 47 U.S.C. § 415, and it did not sustain any damages after it sold its assets to Peoples in September 1992. Moreover, any possible “successor-in-interest” cannot now assert its own alleged claims as they would be barred by the Statute of Limitations.

### ARGUMENT AND CITATION OF AUTHORITIES

In the *Liability Order*,<sup>14</sup> the Commission established the applicability of the two-year statute of limitations<sup>15</sup> and explained that Complainant’s novel theory — that the running of the statute related back to the filing date of the informal complaint because the Commission had not disposed of the informal complaint — was without merit:

Similarly, we reject complainants' argument that this “relating back” provision is dependent upon when the Commission had “disposed” of an informal complaint. Rather, the clear language of section 1.718 of the rules allows for “relating back” of damages only if a complainant files a formal complaint within 6 months “from the date of the carrier's report.”<sup>16</sup>

Consequently, under these facts, Complainant’s claims for damages are limited to those EUCL charges paid by Complainant during the period beginning no more than two years before

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<sup>13</sup> Complainant’s “Opposition to Motion to Dismiss or in the Alternative to Stay Proceedings,” pp. 1 – 4 (April 5, 1993) (*Opposition*). *Opposition* is attached at **Tab F**.

<sup>14</sup> *In the Matter of C.F. Communications Corp. et al. v. Century Telephone of Wisconsin, Inc.*, FCC File Nos. E-89-170, *et seq.*, *Memorandum Opinion and Order on Remand* (rel. April 13, 2000)(*Liability Order*). *Liability Order* is attached at **Tab G**.

<sup>15</sup> *Id.* at ¶ 36, citing 47 U.S.C. § 415.

<sup>16</sup> *Id.* at ¶ 37.

Complainant filed its formal complaint — roughly from January 1991 forward. Yet, as Complainant admits in its Complaint, it had not paid any EUCL charges since November 1990, and, as shown in the Peoples 10-K filing with the SEC, Millicom sold its Texas payphones to Peoples in September 1992; therefore, there are no damages for Complainant to recover in this case.

As discussed in footnote 1 above, an entity calling itself New York City Telecommunications, Inc. (NYCTC), a Nevada corporation, is now claiming to be the complainant in this case. Presumably, Complainant Millicom Services Company transferred all its remaining assets to NYCTC in November 1993<sup>17</sup> and Complainant Millicom Service Company, a New York partnership, was dissolved.<sup>18</sup> SWBT notes that the sale of assets does not give NYCTC the right to automatically supplant Complainant, Millicom Services Company, in this case.<sup>19</sup> Even if Millicom Services Company had assigned its claims against SWBT over to NYCTC, which has not yet been shown to be the case, those claims would be limited to those claims Millicom Services Company had on the date of the assignment.<sup>20</sup>

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<sup>17</sup> This transfer would not include the assets Millicom Services Company sold to Peoples Telephone Company, Inc. in September 1992 — assets which had been the source of Millicom's claim against Southwestern Bell.

<sup>18</sup> Complainant's responses to discovery do not address the question of whether Millicom Services Company was dissolved. Under New York law, whether a partnership is dissolved when its assets are transferred to another person or entity is determined by reference to the partnership agreement. *See, Watkins v. Delahunty*, 133 A.D. 422, 117 N.Y.S. 885 (1909)(N.B.: New York adopted the *Uniform Partnership Act* after the date of this opinion); *Mehlman v. Avrech*, 146 A.D.2d 753, 537 N.Y.S.2d 236 (1989); New York Partnership Law, §§ 61, 63.

<sup>19</sup> For the sake of argument, if there is a mechanism under the Commission Rules to substitute parties, then theoretically NYCTC could apply for substitution. Substitution, however, is a procedural mechanism that allows the case to continue and that avoids the multiplication of lawsuits; substitution does not address the substantive legal issue here — whether Millicom Services Company incurred any damages.

<sup>20</sup> If there were a procedural mechanism under the Commission Rules to allow the “successor in interest” or “assignee” to be substituted for the original complainant, then presumably the new complainant could assert his, her, or its own claims against the defendant as long as they were filed timely (i.e., within the statute of limitations) and as long as such amendments were allowed. In this case, any claims that NYCTC might assert on its own behalf have long been barred by the two-year statute of limitations. Southwestern Bell also notes that Commission Rules pertaining to pleading no longer permit amendments. Commission Rule § 1.727(h).

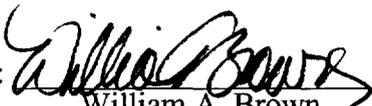
Partnerships do not transmogrify into corporations; they are separate and distinct legal entities. NYCTC was never "f/k/a" (formerly known as) Millicom Services Company. When Millicom Services Company transferred its remaining assets to NYCTC and presumably was dissolved, any future claims for damages that Millicom Services Company might have been able to be alleged in this case were eliminated. This is so because, like a natural person, Millicom Services Company is dead or at least not operating as a IPP in Southwestern Bell's service area. Again, Millicom Services Company admits to having no damages; therefore, even if there were an assignment, it would not have included damages against Southwestern Bell.

### CONCLUSION

Complaint has admitted in its formal Complaint filed in January 1993 that it did not pay Southwestern Bell EUCL charges after November 1990. In September 1992, four months before it filed its formal Complaint, Complainant sold its payphone assets to Peoples. Consequently, there were no payphone lines on which Southwestern Bell could assess EUCL charges after that time. As such, this complaint for damages should be dismissed with prejudice because Complainant has not sustained any recoverable damages. Southwestern Bell respectfully requests a summary decision in its favor, dismissing Complainant's claim for damages with prejudice.

Respectfully submitted,

SOUTHWESTERN BELL  
TELEPHONE COMPANY

By:   
William A. Brown

Dated: July 17, 2001

William A. Brown  
Davida M. Grant  
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1401 I Street, N.W., 4<sup>th</sup> Floor  
Washington, DC 20005  
(202) 326-8904 — Voice  
(202) 408-8745 — Facsimile

Its Attorneys

**CERTIFICATE OF SERVICE**

I, William A. Brown, the undersigned attorney of record, do hereby certify that I have caused copies of the foregoing “**DEFENDANT SOUTHWESTERN BELL TELEPHONE COMPANY’S MOTION FOR SUMMARY DECISION AND BRIEF IN SUPPORT THEREOF**” to be served in accordance with 47 C.F.R. § 1.735(f) via hand delivery or via facsimile transmission, followed by regular U.S. mail delivery, postage prepaid, this 17<sup>th</sup> day of July, 2001, to each of the following persons:

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room TW-B204  
Washington, DC 20554  
*Via Hand Delivery*

Arthur I. Steinberg, Administrative Law Judge  
Federal Communications Commission  
445 – 12<sup>th</sup> Street, S.W., Room 1-C861  
Washington, DC 20054  
*Courtesy Copy, Via Regular Mail*

Tejal Mehta  
Federal Communications Commission  
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Market Disputes Resolution Division  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554  
*Via Hand Delivery*

David Solomon, Chief  
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William A. Brown

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- Tab C            Peoples Telephone Company, Inc.’s “Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For Fiscal Year Ended December 31, 1995,” SEC File No. 0-16479, “Acquisitions.”
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Tab

A

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July 2, 2001

JUL 6 2001

FCC LEGAL  
DEPARTMENT

VIA FACSIMILE AND U.S. MAIL

Sherry A. Ingram  
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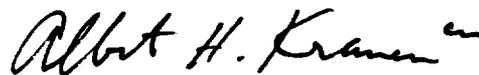
Re: *C.F. Communications Corp., et. al. v. Century Telephone of Wisconsin, Inc., et. al.*  
File Nos. E-93-46, E-93-47, E-93-48

Dear Sherry:

Enclosed please find Complainant's Responses and Objection to Defendant's First Set of Interrogatories in the above referenced cases. We will forward you the original Declaration of Larry Ginsburg upon our receipt of it back from the client.

If you have any questions, please do not hesitate to call.

Sincerely,



Albert H. Kramer

AHK/cvm

Encl.

cc: John Goodman (fax and mail)  
Attached Service List (mail)

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

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In the Matter of )

C.F. Communications Corp., et. al., )

Complainants, )

v. )

Century Telephone of Wisconsin, Inc., )  
et. al., )

Defendants. )

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EB Docket No. 01-99

File No. E-93-46, E-93-47, E-93-48

To: **Arthur I. Steinberg**  
**Administrative Law Judge**

**and**

**Verizon**

**COMPLAINANT'S RESPONSES AND OBJECTIONS  
TO DEFENDANT'S FIRST SET OF INTERROGATORIES**

Pursuant to Section 1.323(b) of the Commission's rules, 47 C.F.R. § 1.323(b),  
Complainant herein responds to Defendant's First Set of Interrogatories to Complainant.

**GENERAL RESPONSES AND OBJECTIONS**

1. Complainant's responses to the Interrogatories are based on the best information presently known to Complainant, and Complainant reserves the right to amend, supplement, correct, or clarify its responses when other or additional information

becomes available, and to interpose additional objections or to move for an appropriate order when and if such becomes necessary.

2. Where the information requested by these Interrogatories is ascertainable from documents in the possession, custody, or control of Complainant, and the burden of ascertaining or deriving the information from such records is the same for Defendant as for Complainant, Complainant will make such documents available for inspection and review by Defendant. The fact that Complainant produces documents to Defendant, or makes documents available for inspection and review by Defendant, however, does not mean that such documents provide evidence of all ANIs for the telephone lines that Complainant had in service during the period through April 16, 1997, or provide evidence of all damages incurred by Complainant during the period through April 16, 1997. Rather, additional information or documents from Defendant may be needed to ascertain all the ANIs for the telephone lines that Complainant had in service or all the damages that Complainant incurred as a result of the EUCL charges billed by Defendant.

3. Complainant will produce documents to Defendant, and make documents available for inspection and review by Defendant, provided that Defendant signs an appropriate confidentiality agreement.

4. Complainant objects to these Interrogatories to the extent that they seek any information or material that is subject to the attorney-client privilege or the common interest privilege or information or material that was prepared in anticipation of litigation or that otherwise constitutes protectable work product.

5. Complainant objects to these Interrogatories as unduly burdensome to the extent that they seek information that is already in the possession of Defendant through Defendant's records or otherwise.

6. The term "Verizon" or "Defendant," as used in these Responses, Objections, and General Objections shall be defined to include the Defendant, Verizon New York, Inc., and any and all of its predecessor or successors, including, but not limited to, New York Telephone Company, NYNEX, Bell Atlantic Telephone Company, New Jersey Bell Telephone Company, Bell Telephone Company of Pennsylvania, as well as any agents, attorneys, employees, or other persons or entities acting on behalf of these entities.

### RESPONSES AND OBJECTIONS

1. Please state your full name, your place and date of incorporation, your principal place of business, your current address and telephone number, and all names under which you do or have done business.

Response:

Subject to the foregoing General Objections, Complainant states that its full name is New York City Telecommunications Co., Inc. ("NYCTC"). Complainant was incorporated in 1993 in the State of Nevada as ATI Services, Inc., then subsequently changed its name to MSC Services, Inc., and then to New York City Telecommunications Co., Inc. Complainant's principal place of business and current address is 3029 Staffordshire Boulevard, Powell, Tennessee 37849, and its current phone number is (865) 938-4101. Complainant previously did business and/or received bills under various names, including: Public Coin Phone Systems; Metrotel Communications, Inc.; Coinmach Telephone, Inc.; Cointel Communications, Inc.; Millicom Telecommunications Services,

Inc.; Public Telecommunications Associates LLP I; Public Telecommunications Associates LLP II; MSC National, Inc.; Millicom Services Company; ATI Services, Inc.; MSC Services, Inc.; and NYC Public Telephones Company.

2. To the extent that the business or legal entity that filed the Complaint no longer exists, please identify each person or entity that claims a legal right to receive any monetary settlement that might be given or any damages that might be awarded as a result of your Complaint, including, but not limited to, the name, address, and telephone number of any debtor in possession or bankruptcy trustee or estate.

Response:

Subject to the foregoing General Objections, Complainant states that the business or legal entity that filed the Complaint still exists under its new name, New York City Telecommunications Co., Inc.

3. If the business or legal entity that filed the Complaint sold or otherwise transferred its business or any payphones identified in response to Interrogatory Number 4 to another entity, please identify that entity, the business or payphones involved and any documents that described that transaction.

Response:

Subject to the foregoing General Objections, Complainant states that it sold or otherwise transferred its payphones as follows:

In November 1993, Millicom Services Company sold its assets, which included approximately 2,678 payphones, to ATI Services, Inc. Thereafter, in January 1994, ATI Services, Inc. changed its name to MSC Services, Inc. MSC Services, Inc. then changed its name in January 1997 to New York City Telecommunications Company, Inc. (d/b/a New York City Public Telephone Company). In February 1998, New York City Public Telephone Company sold certain of its assets, including payphones, to MSC National. In February 1998, ETS Payphones, Inc. purchased the stock and assets, including at least 3,120 payphones, of MSC National.

Complainant will make any documents in its possession, custody, or control describing these transactions available for Defendant's inspection and review at the offices of Dickstein Shapiro Morin & Oshinsky LLP, 2101 L Street, NW, Washington, DC 20037-1526, (202) 785-9700.

4. Please state:
  - (i) The telephone number of the lines you used to provide public payphone service for which you claim you were wrongfully assessed an EUCL charge during the relevant time period;
  - (ii) The date on which each such telephone line was installed and the date each such telephone line was suspended or disconnected; and
  - (iii) The location of each public payphone for which you claim you were wrongfully assessed an EUCL charge during the relevant time period; and
  - (iv) For each such payphone, state the basis for our contention that there was not "a combination of general public and specific customer need" for the payphone services at that location.

For each person identified as having personal knowledge of this information, state the substance of their knowledge and identify any documents, data compilations, or tangible things in their possession, custody, or control that are relevant to the facts alleged in the Complaint or that support your claim for damages in this proceeding.

Objection:

Complainant objects to this Interrogatory because Defendant, as the provider of the telephone lines to which Complainant's phones were connected, already has the information requested in this Interrogatory within its possession.

Response:

Subject to this specific objection and the foregoing General Objections, Complainant responds to this Interrogatory as follows:

(i) The ANIs of the telephone lines that Complainant used to provide public payphone service for which Complainant was wrongfully assessed EUCL charges during the time period through April 16, 1997 are set forth in various records, including: (a) phone bills sent by Verizon to Complainant imposing the EUCL charge; and (b) various business records, including service records, coin collection records, cancelled checks, vendor files, and contract documents. These records are voluminous, consisting of over 200 separate boxes of documents. Furthermore, an accurate identification of all the ANIs of the telephone lines that Complainant used to provide public payphone service can only be ascertained through review of the information and documents in Defendant's possession, custody, or control, either alone or in combination with the records referenced above.

Because the burden of ascertaining or deriving the information necessary to answer this interrogatory from these records is the same for Defendant as for Complainant, Complainant will make these records available to Defendant for inspection and review at

New York City Telecommunications Company, Inc., 7157 Clinton Highway, Unit H17, Powell, Tennessee, 37849. . . .

(ii) The date on which each telephone line that Complainant used to provide public payphone service was installed, suspended, or disconnected can be ascertained or derived from the records identified in response to part (i) of this Interrogatory, including the phone bills, cancelled checks, and business records, in combination with Defendant's own records. Because the burden of deriving or ascertaining this information from these records is the same for Defendant as for Complainant, Complainant will make the phone bills and other records available for inspection and review by Defendant at the address listed in Complainant's response to part (i) of this Interrogatory.

(iii) The location of each public payphone on which Complainant was wrongfully assessed EUCL charges during the relevant time period can be ascertained or derived from the records identified in response to part (i) of this Interrogatory, including the phone bills and business records, in combination with Defendant's own records. Because the burden of deriving or ascertaining this information from these records is the same for Defendant as for Complainant, Complainant will make the phone bills and other records available for inspection and review by Defendant at the address listed in Complainant's response to part (i) of this Interrogatory.

(iv) Unlike Defendant's business, Complainant's business was focused on public pay telephones. Each of the telephones owned, installed, and/or serviced by Complainant were tariffed by Defendant as public payphones and installed for public use, rather than for the use of any specific customer or premises owner or for "a combination of general public and specific customer need." Various attributes of Complainant's payphones, while overlapping and not required to establish their public purpose and use, support the

conclusion that Complainant's payphones were for public use. The location of Complainant's payphones, for instance, were chosen based on a determination of where there would be the most public traffic and where the payphones would be most available to the public. Even in those instances where Complainant installed a pay telephone indoors, such pay telephone was placed in the area where the pay telephone would be most available to the public. As a matter of business practice, Complainant did not install pay telephones to meet a specific customer need or the specific needs of a location owner or manager. In fact, the vast majority of Complainant's payphones, as installed and subscribed, were not even capable of receiving incoming calls. It was Complainant's practice, both currently and during the time period relevant to this proceeding, to select locations for its payphones on the basis of coin revenue potential, meaning locations that are available to the largest number of end users. Such locations are public places.

The following individuals have personal knowledge of the information in Complainant's response to Interrogatory Number 4: Larry Ginsburg, 5101 15<sup>th</sup> Avenue, Brooklyn, New York 11219, (718) 686-7711; Delores Smith, 3029 Staffordshire Boulevard, Powell, Tennessee 37849, (865) 938-4101; Paul Evangelista, 95 Essex Drive, Apt. 1D, Staten Island, New York 10314, (718) 761-4524; Nick Yagnik, 25 N. Elcher Road, Apt. F68, Clearwater, Florida 34609, (727) 799-4152. The relevant documents in the possession, custody, or control of these individuals consist of the records identified in Complainant's response to parts (i) through (iv) above.

5. For each telephone number identified in response to Interrogatory Number 4, please state the amount of the EUCL charge you claim you paid each month

during the relevant time period, provide proof of your payment of the charge, and identify any documents you contend constitute evidence of payment.

Objection:

Complainant objects to this Interrogatory because Defendant, as the provider of the telephone lines to which Complainant's phones were connected, already has the information requested in this Interrogatory within its possession, custody, or control.

Response:

Subject to this specific objection and the foregoing General Objections, Complainant states that the amount of EUCL charges paid by Complainant to Verizon during the time period through April 16, 1997, can be ascertained or derived from the documents referenced in Complainant's response to part (i) of Interrogatory Number 4 above, including the phone bills sent by Verizon to Complainant, along with information within the Defendant's possession, custody, or control regarding the installation and disconnect dates and the applicable EUCL rates. The records referenced in Complainant's response to part (i) of Interrogatory Number 4 will be made available at New York City Telecommunications Company, Inc., 7157 Clinton Highway, Unit H17, Powell, Tennessee, 37849, for Defendant's inspection and review, because the burden of ascertaining the information requested in this Interrogatory from these records is the same for Defendant as for Complainant.

6. Please provide a computation of each and every category of damages for which recovery is sought, including the source and method of computation, and identify all relevant documents and materials or such other evidence to be used by the Complainant to

determine the amount of damages sought as set forth in section 1.722 of the Commission's rules.

Objection:

Complainant objects to this Interrogatory because Defendant, as the provider of the telephone lines to which Complainant's phones were connected, already has the information requested in this Interrogatory within its possession, custody, or control.

Response:

Subject to this specific objection and the foregoing General Objections, Complainant states that Complainant seeks recovery of the amount that it paid in EUCL charges to Verizon through April 16, 1997, plus interest on this amount. The EUCL charges were imposed as a flat fee per telephone line in operation per month. The damages, other than interest, that Complainant incurred for any particular month can be calculated by multiplying the number of lines that Complainant had in service during a particular month by the EUCL charge rate in effect during that month for that area. The documents and materials to be used by the Complainant to determine the amount of damages, other than interest, sought by Complainant are Complainant's copies of the phone bills sent by Verizon to Complainant imposing such charges, the cancelled checks and other business records, and such records, including billing records, that Complainant obtains from Defendant in discovery in this proceeding.

A complete, accurate, and detailed computation of the damages Complainant incurred for the period through April 16, 1997 can be completed after Defendant produces

information and documents within the Defendant's possession, custody, or control, including information regarding the installation date and suspension or disconnect date for each ANI Complainant had in service, billing records, and information as to the applicable EUCL rates that the Defendant had in effect during the relevant period. Using the method of computation described above, Defendant can use the information within its possession, custody, or control to calculate Complainant's damages as easily as Complainant can calculate such damages.

7. If you cannot provide the information requested in Interrogatory Number 6, then please provide an explanation of:

- (i) The information not in the possession of the Complainant that is necessary to develop a detailed computation of damages;
- (ii) Why such information is unavailable to the Complainant;
- (iii) The factual basis Complainant has for believing that such evidence of damages exists; and
- (iv) A detailed outline of the methodology that would be used to create a computation of damages with such evidence, as set forth in Section 1.7222 of the Commission's rules.

Response:

Subject to the foregoing General Objections, Complainant states that a complete, accurate, and detailed computation of the damages it has incurred due to the wrongful billing of EUCL charges by Verizon could be conducted based upon information currently in the possession, custody, or control of the Defendant, including the installation date and suspension or disconnect date for each ANI subscribed to by Complainant, billing records,

and information as to the EUCL rates that the Defendant had in effect each month during the relevant period or, at a minimum, confirmation from the Defendant that the EUCL rates that Complainant believes were imposed by Defendant during the relevant time period are accurate. With this information, the time periods during which each of the ANIs Complainant had in service could be obtained, and then the applicable EUCL rates could be multiplied by the number of lines in service each month to determine the amount of damages incurred by Complainant. This information is not readily available to Complainant because Complainant has not verified whether the records in its possession, custody, or control regarding the EUCL charges billed by Verizon, and paid by Complainant, including the actual phone bills, are complete, and review of the actual phone bills sent by Verizon to Complainant, to ascertain the amounts that Complainant paid to Defendant in EUCL charges for each telephone line is unduly burdensome in light of the voluminous nature of these records and because Defendant, as the provider of the telephone lines to which Complainant's payphones were connected, has this information readily in its possession.

8. Please state the full name, address title, and position of each person you plan to call as a witness at the hearing in this matter and identify the subject matter on which they are expected to testify. For any person you plan to call as an expert witness, also include their professional qualifications, the facts and opinions to which they are expected to testify, the grounds of each opinion, and any documents used to formulate or support their opinion.

Response:

Subject to the foregoing General Objections, Complainant states that it has not yet determined what witnesses, either expert or lay, that it will call at the hearing in this matter or the subject matter on which such witnesses will testify. When this determination is made, Complainant will provide this information to Defendant in a supplemental response to this Interrogatory.

As to Specific and General Objections:

Dated: July 2, 2001

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**DECLARATION OF LARRY GINSBURG**

I, Larry Ginsburg, hereby declare and state that I have read the foregoing, "Complainant's Responses and Objections To Defendant's First Set of Interrogatories," and hereby certify that the statements contained therein answering the Defendant's interrogatories are true and correct to the best of my knowledge and belief.

Signed and dated this \_\_\_\_ day of July 2001.

\_\_\_\_\_  
Larry Ginsburg  
New York City Telecommunications Company, Inc.