Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
2002 Biennial Review of	)	WC Docket No. 02-313
Telecommunications Regulations	)	
	)	

BIENNIAL REVIEW 2002 REPLY COMMENTS OF VERIZON

Introduction

A couple of parties to the biennial review proceeding have suggested that the Commission *add* to existing regulations, or indefinitely delay the regulatory reform required by the Act. These arguments are inconsistent with the Act, and must be rejected. Section 11 requires the Commission to review "*all* regulations issued under this Act," in "every even-numbered year" and states that it "*shall* repeal or modify" any regulation that is "is no longer *necessary* in the public interest as a result of meaningful economic competition." 47 U.S.C. § 161 (emphasis added). The Commission cannot use the biennial review proceeding to add to existing regulations, as it would be contrary to the purposes of Section 11. Neither can it ignore its statutory mandate to repeal or modify unnecessary regulations in the current year by delaying the process through indefinite study.

I. The Commission Cannot Ignore the Statutory Mandate To Review and Eliminate All Unnecessary Regulations, and Cannot Implement Additional Regulations Through the Biennial Review Process

Commenters have identified several regulations that are no longer necessary and should be promptly eliminated. For example, in opening comments, Verizon explained that the Commission must comprehensively overhaul its unbundled network element ("UNE") rules and the related pricing standards to promote the Act's core goal of promoting facilitiesbased competition. Verizon Comments, at 9-10. Verizon also explained that it was no longer necessary to continue rules that impose disproportionate burdens on ILECs' provision of broadband services, or to prohibit former Bell Operating Companies ("BOCs") from sharing operating, installation, and maintenance ("OI&M") services with their Section 272 affiliates. *Id.* at 12-14. Verizon also agrees with the comments of the United States Telecom Association, which point out that large parts of the Commission's rules for Part 32 (accounting), Part 43 (ARMIS Reporting), and Part 64 (miscellaneous common carrier rules, including cost allocation and telephone equipment) are ripe for significant streamlining. *See* USTA Comments, at 7-9, 25-26.[1] Indeed, in addition to the Part 64, Subpart I cost allocation rules specifically raised by USTA, the Commission should further streamline the process that is used to allocate central office and outside plant costs between regulated and nonregulated activities. Currently, the rule requires carriers to forecast usage for a three-year period at the time when the network elements are initially shared between regulated and nonregulated activities, and to repeat these three-year forecasts every year. *See* 47 C.F.R. § 64.901(b)(4). However, the Commission's concerns regarding separated costs can be addressed by requiring forecasts only at the time the investment is initially shared, and using the higher of the initial three-year forecast or actual usage for later reporting.[2] Verizon also agrees with the USTA

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[1] For example, the Part 64, Subpart G's prohibition on the bundling of enhanced services that USTA advocates eliminating should be part of the Commission's elimination of unnecessary broadband regulation. *See* USTA Comments, at 23. However, if the Commission repeals Part 64, Subpart G, it should make it clear that it is not eliminating the provisions in that subpart that *allow* for the bundling of telecommunications services and customer premises equipment. *See* 47 C.F.R. § 64.702(e).

[2] The Commission originally declined to move from forecasting to actual usage for cost allocation, based on concern that "an underallocation of central office equipment and outside plant to nonregulated activities could result whenever the usage associated with those activities increases over a period of several years." *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and 3*; *Local Competition and Broadband*

recommendation that the Commission restructure and streamline the price-cap and rate-of-return rules, and eliminate rate-of-return calculations for price cap carriers. *See* USTA Comments at 18, 28-29. These are only a few specific examples of regulations that are no longer necessary, however. The Commission must review *all* regulations and eliminate all that are no longer necessary in the public interest. Verizon Comments, at 7-8.

The Commission must reject the suggestions of certain commenters who would turn the biennial review proceeding on its head and use it as an opportunity to add to existing regulations. Section 11 requires the Commission to review *all* regulations and to "repeal or modify any regulation it determines to be no longer necessary in the public interest." 47 U.S.C. § 161. Using such a review in order to add to carriers' regulatory burdens is not only beyond the scope of biennial review, but directly contrary to the mandate of the statute. Suggestions for new regulations instead should be (and in many cases already are being) considered in other proceedings.[3] Of course, any new regulations must themselves be "necessary in the public interest" or Commission adoption would be a nullity.

Reporting, 16 FCC Rcd 19911, ¶ 124 (2001) (footnote omitted) ("2000 Biennial Review Order"). However, requiring forecasts only at the time of initial sharing and using actual usage after that would eliminate this concern, while also reducing unnecessary costs associated with requiring such forecasting every year. *See 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2,* Verizon Comments at 10, USTA Comments at 21-22 (filed Dec. 21, 2000).

[3] For example, the suggestion by the National Telecommunications Cooperative Association ("NTCA") that the Commission add equal access to the list of services that are eligible for universal service support is being considered in the universal service docket. *See Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, FCC 02J-1, ¶¶ 67-86 (rel. July 10, 2002) (Joint Board failing to reach a majority position on the issue). As Verizon has explained in comments in that docket, the Commission should reject proposals to add equal access to the definition of universal service, because it contradicts section 332(c)(8) of the Act and is not related to the goals of the universal service fund. *See Federal-State Joint Board on Universal Service,* Verizon Reply Comments, at 6 (filed Jan. 4, 2002).

While the Act speaks of the Commission's mandate to "repeal *or* modify," the presumption should be that if the regulations are not necessary, they be repealed. That is because the de-regulatory purpose of the Act (and of Section 11 in particular) demands that unnecessary regulations be eliminated. Modification is only appropriate if the regulations cannot be eliminated in their entirety. *See* Verizon Comments at 6-7. Again, the purpose of the statute would be nullified if the Commission were able to comply by simply applying superficial changes, rather than eliminating altogether, unnecessary regulatory requirements.

In addition, the Commission cannot accept Wyoming's suggestion that the Commission halt any action designed to eliminate or streamline certain regulations until after the regulations have been submitted to Joint Conference or Joint Board review. *See* Wyoming Comments, at 4-5. The Commission has an obligation under the Act to review and eliminate, by the end of the year, any regulations that are no longer "necessary in the public interest." 47 U.S.C. § 161. If the Commission were able to avoid the application of the statutory mandate by simply putting forth the issues for indefinite study, the Act's requirement of a biennial review would essentially become a nullity. *See* Verizon Comments, at 8. Wyoming is similarly incorrect in arguing that the Commission's obligation to review and eliminate unnecessary regulations only applies if the regulation "is no longer necessary in the public interest *as the result of meaningful competition between providers of such service.*" *See* Wyoming Comments, at 2 (emphasis added). Reading this language in the context of the rest of Section 11 indicates that the italicized clause is explanatory, not a prerequisite for review or elimination of unnecessary regulations. *See* 47 U.S.C. § 161(a)(1) (stating that the Commission's *review* must be of "*all* regulations" (without limitation)) (emphasis added) , 47 U.S.C. § 161(b) (stating that the Commission must "*repeal or modify* any regulation that it determines to be no longer necessary in the public interest" (without limitation)) (emphasis added). It would stretch credulity to suggest that Congress intended the Commission to conduct unlimited *review* of "*all* regulations" and to *repeal* or *modify* all those that were "no longer necessary in the public interest" (without limitation), but that it would allow the Commission to make the "determin[ation]" that regulations are no longer "necessary in the public interest" only if they were unnecessary for a specific *reason* – *i.e.*, due to the existence of meaningful competition.

II. All Telecommunications Carriers Should Be Permitted To Use Uniform Accounting Standards Pursuant To Generally Accepted Accounting Principles, Rather Than Operating Pursuant to the Part 32 Accounting Rules

As set forth in more detail in prior pleadings,[4] the Commission should repeal the Part 32 accounting rules and instead let all carriers operate pursuant to generally accepted accounting principles ("GAAP"). GAAP accounting and other methods of information exist that make the Part 32 accounting regulations unnecessary for federal purposes. In addition, the Part 32 rules should be eliminated because they impose burdensome obligations on only one class of carriers.

Price cap regulation combined with price flexibility has completely eliminated any link between ILECs' recorded costs and the prices they charge for services. Thus, the accounting rules are not necessary for the regulation of rates. The accounting and reporting rules placed on ILECs were established at a time when prices were set on a cost plus basis and there was very little, if any, competition in the market. Since that time, regulatory paradigms

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[4] *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and 3*, Joint Comments of BellSouth, SBC, Verizon, Qwest, Frontier and CBT at 6-14 (filed Apr. 8, 2002); *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and 3*, Joint Reply Comments of BellSouth, SBC, Verizon, Qwest, Frontier and CBT at 3-6 (filed May 7, 2002).

have shifted. Competition has increased, and the largest ILECs operate under a price cap system that does not require detailed accounting regulation. In addition, the Commission has worked to eliminate rules, such as sharing and the lower formula adjustment mechanism ("LFAM"), that would have created potential incentives for price cap ILECs to shift costs.[5] Similarly, the Commission recently adopted the CALLS plan, which is "an integrated access reform/universal service plan that restructured access rates to remove implicit subsidies. Rates under CALLS are not based on the development and reporting of costs under any of the Commission's accounting and reporting rules."[6] Because Part 32 rules are no longer necessary for regulatory purposes, they should be eliminated.[7]

One commenter has expressed concern that certain portions of the Part 32 accounting regulations should be amended "to ensure that Common Carriers are not allowed to continue to manipulate their financial results via their billing and collection systems" or otherwise "distort their financial results" in a way that misleads investors. Part 32 Comments of Brierfield Consulting, at 1. However, this concern is misplaced. Although recent events have raised legitimate concerns about the accounting practices of some companies, including a few in the telecommunications industry, these concerns have to do with those companies'

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5 *See Price Cap Performance Review for Local Exchange Carriers and Access Charge Reform*, 12 FCC Rcd 16642, ¶148 (1997) *aff'd in part, rev'd in part, USTA v. FCC*, 188 F.3d 521 (D.C. Cir. 1999). *See also Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, and Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA*, 14 FCC Rcd 14221, ¶ 162 (1999).

6 *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 3*, USTA Comments at 5 (filed Feb. 13, 2001).

7 *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 3*, Verizon Comments at 2-3 (filed Feb. 13, 2001).

financial accounting, not the Part 32 accounting required for *regulatory* purposes. Indeed, not only are regulatory accounts not the problem, but the carriers that have presented the most egregious cases of potential concern are those that are not required to comply with Part 32 accounting regulations at all.[8] Certainly, no one has articulated any reason to believe that applying antiquated Part 32 accounting requirements to only one set of carriers (and stricter Class A accounting rules to a handful of ILECs) would stop the next Enron or WorldCom from occurring.[9] Indeed, to the extent commenters complain that the Part 32 accounting rules result in accounting standards different than those used by non-regulated companies pursuant to GAAP, that is even more reason to *eliminate* the Part 32 rules, so the carriers who must now comply with these rules can instead keep all of their federal books pursuant to a GAAP-based system that operates under uniform standards with the rest of the industry.

In addition, Part 32 rules simply are not necessary for federal regulatory needs. Thus, Wyoming's alarmist concerns – namely, that elimination of unnecessary rules regarding accounting, ARMIS, or separations "could sound the death knell for competition before it even has an opportunity to develop," Wyoming Comments at 6, are simply unfounded. These arguments appear to presume that if the Commission eliminated the Part 32 accounting rules, reliable information necessary for regulatory purposes would suddenly disappear. That is simply not the case. Eliminating burdensome accounting rules (including the continuing property record and affiliate transaction journalization rules) and ARMIS reporting

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8 The Part 32 accounting rules apply to only ILECs. 2000 Biennial Review Order, ¶ 126 ("Currently, we apply these requirements to incumbent LECs only . . ."). They do not apply to IXCs (such as WorldCom) or to any other provider of telecommunications services, such as CLECs, wireless carriers, or local or toll resellers.

9 If the Part 32 accounting regulations really were uniquely designed to avoid some of the accounting irregularities presented by Enron and other companies, they should be extended to other carriers as well – a solution that no commenter supports.

requirements – which are currently imposed on only one class of carriers – will not eliminate accounting, property records, reporting, or restrictions on affiliate transactions. These carriers would still be subject to the requirements of GAAP – which are already being used by every other class of carriers, and for many regulatory requirements – and other FCC rules will remain in place. Similarly, the Commission implemented a freeze of separations factors because it recognized that the separations process was part of a system of "outdated regulatory mechanisms that are out of step with today's rapidly-evolving telecommunications marketplace." *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, Order, 16 FCC Rcd 11382, ¶ 1 (2001). This elimination of "outdated" mechanisms is precisely what the biennial review is designed to accomplish.

Wyoming also has argued that reform of accounting regulations and ARMIS reporting requirements should not occur because much of the data gathered by the Commission "is valuable and often used in Wyoming." Wyoming Comments, at 4. States largely have also moved from outdated return-based regulation and uniform GAAP accounting should better serve their regulatory needs as well. Regardless, whether or not this accounting data is potentially "valuable" to the states is irrelevant to the question of whether the regulations are "necessary" under the Act. The Commission has properly recognized that if it cannot identify a "*federal* need" for a regulation, it "is not justified in maintaining such a requirement at the federal level."[10] Federal accounting rules must relate directly to the FCC's jurisdiction over the federal costs. *See Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 370 (1986).

These regulations impose significant burdens on the carriers that must comply with them. In a paper already presented to the Commission, one independent accounting firm

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[10] 2000 Biennial Review Order, ¶ 207 (emphasis added).

estimated that moving to GAAP in lieu of the current USOA Class A accounting and reporting requirements would result in average cost efficiencies of $20 million *per year* for *each* ILEC.[11] An estimated $5 million per year of that savings could be realized just by allowing ILECs to operate under simplified procedures regarding the obligations to keep continuing property records. *Id.* These concrete burdens, as well as the lack of identification of any federal need for the continuation of these rules, outweigh commenters' abstract concerns about the elimination of unnecessary regulations.

Conclusion

The Commission should reject commenters' unfounded exhortations about continuing outdated regulatory requirements, and maintain only those regulations for which it finds there is a *specific* federal need. Because commenters have failed to articulate such specific needs, the regulations identified above should be eliminated.

Respectfully submitted,

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November 4, 2002

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11 *See* November 10, 1998 Supplement to July 15, 1998 Position Paper, "Accounting Simplification in the Telecommunications Industry," attached to November 10, 1998 Letter to Magalie R. Salas, FCC, from Carl R. Geppert, Arthur Andersen LLP, CC Docket Nos. 98-81 et al, at 8.

Attachment A

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.