

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Stale or Moot Docketed Proceedings

1993 Annual Access Tariff Filings
Phase I

CC Docket No. 93-193

1994 Annual Access Tariff Filings

CC Docket No. 94-65

AT&T Communications Tariff FCC
Nos. 1 and 2, Transmittal Nos. 5460, 5461,
5462, and 5464 Phase II

CC Docket No. 93-193

Bell Atlantic Telephone Companies Tariff
FCC No. 1, Transmittal No. 690

CC Docket No. 94-157

NYNEX Telephone Companies Tariff
FCC No. 1, Transmittal No. 328

**REBUTTAL OF VERIZON
TO AT&T OPPOSITION TO DIRECT CASE**

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May 27, 2003

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I. Introduction and Summary.

AT&T's opposition to Verizon's Direct Case rests on a misrepresentation of the Commission's rule for exogenous treatment of a change in accounting standards. It claims that the rule does not allow a carrier to obtain exogenous treatment of a change in accounting until the date that the Financial Accounting Standards Board ("FASB") states that the change is "effective." In reality, the rule states that a carrier cannot claim exogenous treatment until FASB

¹ The Verizon telephone companies ("Verizon") are the affiliated local telephone companies of Verizon Communications Inc. These companies are listed in Attachment A.

and the Commission have approved the change and until the *carrier* has made the change “effective” in its regulatory books. The Commission adopted the last part of the rule to make sure that the carriers sought exogenous treatment of “changes in costs that have occurred, not anticipated cost changes.” Here, it is indisputable that Bell Atlantic (now Verizon) sought exogenous treatment only *after* it implemented the change in accounting treatment of other post-employment employee benefits (“OPEB”) adopted by FASB in accounting standard SFAS 106 and approved by the Commission. Furthermore, AT&T’s claim that these costs are not eligible for exogenous treatment, because Verizon did not wait until the last permitted date for adoption, is an attempt to add a new “control” test that the D.C. Circuit Court of Appeals already decided was not contemplated by the Commission's price cap rules.

Even aside from the fact that, for the reasons outlined above, AT&T is wrong when it claims that Verizon should not have included 1991-92 OPEB costs in its 1993 and 1994 tariff filings, no refunds would be warranted. First, the exogenous adjustments for OPEB costs related to the 1991-92 period were \$39 million, not \$40.6 million as AT&T claims. Second, Verizon's rates for the periods covered by the 1993 and 1994 tariff filings were \$48.7 million below cap. Therefore, regardless of how the Commission rules on Verizon's implementation of the OPEB accounting changes in 1991 and 1992, no refunds would be justified. This is yet another reason why this entire investigation is a waste of time.

Finally, AT&T is just wrong in arguing that the Commission even has the authority to conduct this investigation given that the Commission’s order resurrecting the investigation came more than a year after the Commission terminated it. The Commission may have made a mistake,

but the time for correcting that mistake is long past. The Commission does not have the statutory authority to re-open this case.

II. The Rule That An Accounting Change Is Eligible For Exogenous Treatment Only After It Has Become “Effective” Refers To The Date That The Carrier Makes It Effective, Not FASB.

AT&T argues that Verizon should not be allowed to include an exogenous adjustment for its 1991-92 OPEB costs, because the Commission's price cap rules do not allow a change in accounting rules to be reflected in an exogenous cost change until the date that FASB states that the rule is “effective.” *See* AT&T, 10-11. This argument merely reflects AT&T’s continuing attempt to distort the Commission's price cap rules. AT&T improperly sought exogenous treatment of its own anticipated OPEB costs in 1990 before FASB or the Commission approved SFAS 106, and it still acts as if it does not understand that the Commission's price cap rules permit exogenous treatment of changes in accounting rules only after the Commission approves a FASB practice *and* after the *carrier* makes the change “effective.” That is exactly what Verizon did in its 1993 annual access tariff filing.

In May 1990, AT&T sought exogenous treatment under its own price cap plan for implementation of the then-proposed OPEB accounting rule that it *expected* FASB to adopt later that year. *See American Telephone and Telegraph Company, Revisions to Tariff F.C.C. Nos. 1, 2, and 13, Transmittal No. 2304, Memorandum Opinion and Order*, 5 FCC Rcd 3680, ¶ 2 (Com. Car. Bur. 1990). The bureau rejected this request, finding that AT&T had not met the two-part test for exogenous treatment of an accounting change; (1) the change must be adopted by FASB; and (2) it must be approved by the Commission as being compatible with regulatory accounting needs. *See id.*, ¶ 4 & fn. 5. Neither had happened at that time.

Having once jumped the gun on seeking exogenous treatment of accounting changes before they were approved, AT&T now seeks to prevent Verizon from receiving exogenous treatment of accounting changes even *after* they were approved and implemented. AT&T cites paragraph 168 of the *LEC Price Cap Order*, which states that “no GAAP change can be given exogenous treatment until the Financial Accounting Standards Board has actually approved the change and it has become effective.” AT&T, 11, *citing Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order*, 5 FCC Rcd 6786, ¶ 168 (1990) (“*LEC Price Cap Order*”). AT&T claims that Verizon “concedes” that the “effective” date of SFAS 106 was December 15, 1992, and that this precludes Verizon from seeking exogenous treatment of its implementation of the OPEB accounting change in 1991 and 1992.

Once again, AT&T has it all wrong. Verizon never “conceded” that the FASB “effective” date was the date referenced in paragraph 168 of the *LEC Price Cap Order*. The order states that carriers may file tariffs seeking exogenous treatment of an accounting change after the change has been approved by FASB *and* after the change has become effective. These are two different events. By “effective,” the Commission meant that the *carrier* has actually implemented the change. The very next sentence in the paragraph clarifies that point and explains why the Commission did not allow exogenous cost adjustments for accounting changes until after the carrier has made them effective; “[t]he cap mechanism is intended to reflect changes in costs that have occurred, not anticipated cost changes.” *LEC Price Cap Order*, ¶ 168. Obviously, a GAAP cost change actually occurs only after FASB approves it *and* after the *carrier* has implemented it.²

² *See* Direct Case of Verizon, 4-5. Even if the Commission interpreted its order as allowing exogenous treatment only after the FASB “effective date,” Verizon clearly met this requirement by filing tariffs for exogenous treatment of its OPEB costs in April 1993, well after the December

Unlike AT&T, Verizon did everything that the Commission said it needed to do *before* seeking exogenous treatment. Verizon waited until after FASB approved the OPEB rule in December 1990, it waited until after the Commission approved the OPEB rule in its December 26, 1991 order, and it filed for exogenous treatment in the 1993 annual access tariff filing after it had made the OPEB accounting change effective in its 1991 and 1992 books of account. It is indisputable that Verizon's filing met the requirements for exogenous treatment of an accounting change.

Moreover, any other conclusion would contradict the Court's reversal of the Commission in *Southwestern Bell Telephone Company v. FCC*, 28 F.3d 165 (D.C. Cir. 1994). In early 1992, Bell Atlantic sought exogenous treatment of its OPEB costs for 1991 and 1992, to be recovered in the July 1, 1992 through June 30, 1993 tariff period. *See* Bell Atlantic Tariff FCC No. 1, Transmittal No. 497, Description and Justification, Section 4.4 (filed Feb. 28, 1992). The Commission rejected the tariff filing, finding that Bell Atlantic and other carriers that had filed similar tariffs had "control" over their OPEB cost increases, at least with regard to ongoing OPEB costs. *See Treatment of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, "Employers Accounting for Postretirement Benefits Other*

15, 1992 "effective date" in SFAS 106. And Verizon's implementation of SFAS 106 in 1991 and 1992 is clearly consistent with SFAS 106 and the Commission's order approving it, both of which stated that "earlier implementation is encouraged." *See* SFAS 106, ¶ 108; *See Southwestern Bell, GTE Service Corporation, Notification of Intent to Adopt Statement of Financial Accounting Standards No. 106, Employers' Accounting for Postretirement Benefits Other Than Pensions, Order*, 6 FCC Rcd 7560, ¶ 2 (1991) ("*OPEB Adoption Order*"). This explicitly encouraged companies to make the accounting change "effective" at an earlier time. Therefore, for a carrier that had the capability of implementing the OPEB accounting change earlier than December 15, 1992, SFAS 106 was "effective" for that carrier once it adopted the change at any time after the December 1990 issuance of SFAS 106.

Than Pensions,” Memorandum and Order, 8 FCC Rcd 1024 (1993) (“*OPEB Rejection Order*”). The Court reversed and remanded, finding that the OPEB accounting change qualified as beyond the carriers’ “control” as that term was defined in the Commission’s rules. *See Southwestern Bell*, 28 F.3d at 169-70. Since these tariffs were filed in early 1992 and were based on Verizon’s 1991 base year OPEB costs, there was no question in anyone’s mind that Verizon was seeking exogenous treatment of its costs of implementing SFAS 106 prior to 1993. Yet, neither the Commission nor the Court considered Verizon’s adoption of SFAS 106 as premature or inconsistent with the price cap rules. The Court clearly found that Verizon had met the “control” test, and the only issue left on remand was whether the cost changes met the other requirement for an exogenous adjustment, *i.e.*, a showing that a GAAP cost change is not already accounted for in the GDPPI-X factor. *See id.*, ¶ 168. That issue is no longer part of this investigation, since no party raised it in response to the *OPEB Reinstatement Order*³, and so there is no real issue left to decide. To deny exogenous treatment now based on a finding that the OPEB cost change under examination in *Southwestern Bell* did not meet the rule for exogenous treatment of GAAP changes would contradict the Court’s remand.

III. Verizon’s Implementation of SFAS 106 Met The Standards For Exogenous Treatment.

AT&T argues (at 11-14) that Verizon’s 1991 and 1992 OPEB costs did not qualify for exogenous treatment, because Verizon’s implementation of SFAS 106 was not “beyond its control” before January 1, 1993. However, AT&T makes the same mistake that the Commission

³ *Stale or Moot Docketed Proceedings, Order, Notice, and Erratum*, 18 FCC Rcd. 2550, ¶ 25 (2003) (“*OPEB Reinstatement Order*”) (“with respect to other OPEB issues . . . [i]f we receive no timely comments in response to this order, we will limit our further action in Docket 94-157 to the two specific issues described . . . above”).

made in *Southwestern Bell* in trying to add an element to the “control” test that was not contained in the Commission's price cap rules at that time.

In *Southwestern Bell*, the Court made it clear that the Commission's “control” test for exogenous treatment of changes in accounting rules included two and only two components during the period in question; (1) adoption of a change in generally accepted accounting practices (“GAAP”) by FASB; and (2) approval of the GAAP change for regulatory purposes by the Commission. *See Southwestern Bell*, 28 F.3d at 170. So long as both of these events occurred prior to the carrier’s tariff filing seeking exogenous treatment, such treatment was permitted by the Commission's price cap rules. As the Court explained, “the Commission's mandate brings about the change and demonstrates that the carrier lacked control.” *Id.*, 168.

The Commission had tried to add a third test by denying exogenous treatment because the carriers purportedly had “substantial control over the level and timing of OPEB expenses.” *OPEB Rejection Order*, ¶ 53. The Court made it clear that there was “not a hint of such a control test” in the Commission's rules and that the rules clearly stated that the “control” test was satisfied when the accounting rule was mandated by FASB and by the Commission. *See Southwestern Bell*, 28 F.3d at 170-71. The carrier’s actions simply were not germane to the issue of whether the accounting change was outside the carrier’s control.

Nonetheless, AT&T tries to lead the Commission down the same path that resulted in reversal in *Southwestern Bell*. It argues that “under the classic control test” Verizon maintained “control” over whether to adopt SFAS 106 prior to January 1, 1993, the last date by which the Commission's order required the carriers to adopt that accounting change. *See AT&T*, 12-13. It argues that the accounting change was not “truly beyond the control of the carrier” prior to that

date. But, as the Court explained, this is utterly irrelevant. The issue is not the carrier's "control" over the "level and timing" of OPEB costs, but whether the *change in accounting rules* was beyond its control, and that issue was resolved when FASB and the Commission adopted the OPEB rule. There is no additional test of whether the change is "truly beyond the control of the carrier."

The Commission's order approving SFAS 106 made it clear that the carriers were required to implement it "on or before" January 1, 1993, and that "earlier implementation is encouraged." *See Treatment of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, "Employers Accounting for Postretirement Benefits Other Than Pensions," Order*, 6 FCC Rcd 7560, ¶¶ 2, 3 (Com. Car. Bur. 1991). AT&T argues that this means that the rule was "mandated by the Commission" on January 1, 1993, but not before. This directly contradicts both the letter and the spirit of the Commission's order. If the Commission had meant to "mandate" SFAS 106 only "on or after" January 1, 1993, it would have said so. The fact that Verizon complied with the Commission's mandate "before" January 1, 1993 rather than "on" January 1, 1993 does not make its actions any less consistent with the Commission's mandate, and the Commission cannot rationally penalize Verizon for the "earlier implementation" of SFAS 106 that the Commission's order specifically encouraged.

AT&T argues (at 13) that it would be "one-sided" to permit the carriers to implement at an earlier date only the rules that favor them and to delay until the last minute implementation of rules that would not benefit them. But this argues that the Commission was wrong in telling the carriers to implement SFAS 106 "on or before" January 1, 1993. The Commission could have told the carriers not to implement SFAS 106 until January 1, 1993 if it believed that earlier

adoption was not in the public interest. It did not, and for good reason. FASB adopted SFAS 106 because the balance sheets of most publicly traded companies failed to recognize billions of dollars of liabilities associated with postretirement benefits, primarily health care, that they had promised to their current and retired employees. FASB found that this failed to give investors a complete picture of the financial position of these companies.⁴ For this reason, both FASB and the Commission encouraged the companies affected by SFAS 106 to include these liabilities on their balance sheets as soon as possible. FASB allowed a two-year transition period for implementation of SFAS 106 to allow companies with less resources additional time to develop the data needed to estimate their OPEB costs.⁵ Verizon, which had the information to implement SFAS 106 prior to the “last minute,” was following sound accounting practices in implementing it as soon as possible.

IV. There Is No Basis For Ordering Verizon To Make Refunds.

AT&T argues (at 13-14) that the Commission should order Verizon to refund \$40.6 million to its customers, because its 1993 and 1994 earnings were unlawful due to inclusion of 1991-92 SFAS 106 implementation costs. Even aside from the fact that AT&T’s argument is wrong for all of the reasons discussed above, no refunds would be justified in any event, because Verizon’s rates for the relevant period were below cap by substantially more than the amount of the exogenous cost adjustments for 1991-92 OPEB costs.

⁴ *See* SFAS 106, Summary (FASB adopted SFAS 106 because “failure to recognize an obligation prior to its payment impairs the usefulness and integrity of the employer’s financial reporting”).

⁵ *See* SFAS 106, Summary (“The Board recognizes that limited historical data about per capita claims costs are available and that actuarial practice in this area is still developing. The Board has

First, AT&T's numbers are incorrect. AT&T claims that Verizon included \$37.5 million in exogenous adjustments for 1991-92 OPEB costs in the 1993 annual access tariff filing. *See* AT&T, 8-9 & Exhibit 1. However, the \$37.5 million figure includes \$0.7 million of OPEB costs associated with billing and collection costs. *See* Exhibit 1 attached hereto. Since this amount was not included in Verizon's price cap rates or in its price cap index calculations, it is not subject to potential refunds in this investigation. Also, AT&T claims that Verizon included \$3.0 million in exogenous adjustments for 1991-92 OPEB costs in its September 1, 1994 tariff filing. *See* AT&T, 8-9 & Exhibit 1. However, AT&T is using an annual rate change that Verizon calculated in that tariff so that it would recover only \$2.2 million for 1991-92 OPEB costs during the 8.5 months that the tariff would be effective. *See* Exhibit 2. Therefore, the total amount of 1991-92 OPEB costs included in these filings was \$39 million (\$36.8 million plus \$2.2 million).

Second, as is shown in Exhibits 3 and 4, Verizon's rates were \$48.7 million below cap during the period covered by the 1993 and 1994 tariff filings (July 1993 through June 1995). Although Verizon raised its price cap indexes by the amount of the exogenous adjustments for OPEB costs, it did not raise its rates to take full advantage of the additional "headroom" resulting from those exogenous cost increases. Since the amount of headroom for the tariff periods substantially exceeds the amount of OPEB costs at issue, no refunds would be justified even if the Commission disallowed all of Verizon's 1991-92 OPEB costs.

taken these factors into consideration in its decisions to delay the effective date of this Statement . . .").

V. The Commission Does Not Have The Statutory Authority To Re-open These Investigations.

AT&T disagrees with Verizon's arguments that the Commission's *OPEB Reinstatement Order* is unlawful and that the Commission should terminate this investigation. *See* AT&T, 14-17. AT&T claims that the Commission's decision in the *Termination Order*⁶ to terminate the OPEB investigation was a “ministerial error” that the Commission can correct at any time, notwithstanding that the time periods for administrative and judicial review of the *Termination Order* expired long before the Commission resurrected this investigation. Verizon has already responded to these arguments in its reply to AT&T’s opposition to Verizon's petition for reconsideration of the *OPEB Reinstatement Order* and only the key issues need to be discussed here. *See Stale or Moot Docketed Proceedings*, CC Docket Nos. 93-193, 94-65, and 94-157, Verizon Reply in Support of Petition for Reconsideration (filed Apr. 17, 2003).

First, AT&T is incorrect in arguing that the Commission's decision to terminate the OPEB investigation in the *Termination Order* was a “ministerial error.” The *Termination Order* stated that “[w]e have reviewed the docket proceedings listed in the Appendix, and have determined that the dockets should be terminated. None of the dockets have any outstanding issues.” *Termination Order*, ¶ 1. Even if this was, in fact, a mistake with regard to some of the listed proceedings, and even an inadvertent one, the Commission's identification of these proceedings was not a “ministerial task” of the sort that a court might leave to the Clerk’s Office to carry out. The Commission claimed to have reviewed these proceedings itself (“we have reviewed the docketed proceedings”) and to have made a considered judgment that there were no outstanding

⁶ *Stale or Moot Docketed Proceedings, Order*, 17 FCC Rcd 1199 (2002) (“*Termination Order*”).

issues to be decided (“we have determined”). *Id.* And it incorporated into the order by reference the list of docketed proceedings that it had designated for termination. Although the job of examining individual dockets was undoubtedly performed by the Commission's staff, this is true of nearly all actions done in the Commission's name. What the Commission cannot claim here is that the mistake was a mere typographical or transposition error in which the Commission simply mislabeled a docket by writing down the wrong docket number of a proceeding intended to be terminated (such as typing Docket 94-157 when the Commission really meant to list Docket 94-175). The Commission clearly meant to list the combined OPEB investigation in Docket 94-157, as the other references, including the case name and the order cite, all refer to the OPEB investigation. *See Termination Order*, Appendix. Again, the Commission may have made an inadvertent mistake in deciding to terminate this investigation, but it was the Commission's mistake, not a mere clerical transcription error.

Second, AT&T is wrong that the Commission has the power to issue an order correcting this mistake, or any other substantive mistake in the *Termination Order*, at “any time,” presumably not just this year, but also next year or 50 years in the future. The Act establishes a 30-day limit on petitions for reconsideration of a Commission decision, and a Commission order becomes final and non-appealable 60 days after public notice if no appeal has been filed. *See* 47 U.S.C. § 405(a) (2003); 28 U.S.C. § 2344 (2003). In addition, the Commission's rules establish a 30-day period for the Commission to set aside an order on its own motion. *See* 47 C.F.R. § 1.108 (2003). All of those periods ended long before the Commission issued its *OPEB Reinstatement Order*. AT&T's claim that there is no finality in the Commission's decisions has been soundly rejected by the courts. *See, e.g., Albertson v. FCC*, 182 F.2d 397, 399 (D.C. Cir. 1950) (an agency may “in the absence of any specific [statutory] limitation,” correct its own

mistake if it acts “within the period for taking an appeal.”). Parties have a right to rely on the Commission's decisions without wondering whether, at some point in the unforeseeable future, long after a proceeding is finished and all opportunity for appeal has been exhausted, the Commission will come out of nowhere and change its mind.

AT&T argues (at 15-16) that *Albertson* stands only for the proposition that the agency in that case had the authority to entertain a petition for reconsideration and that such a petition tolled the time period for appeal. But AT&T's crabbed reading ignores the Court's explanation of its decision. The Court stated that the petition for reconsideration could have been filed only within the time period for filing an appeal, because its is only “within such period jurisdiction over the contested order remains with the Commission.”⁷ Obviously, if this petition had been filed *after* the time period for appeal had expired, the Court would have found that it was beyond the agency's authority to reconsider its action. Similarly, the Commission's action reinstating the OPEB investigation a year after the time period for reconsideration or appeal had passed contradicts the rule in *Albertson* and subsequent cases. *See, e.g., American Methyl Corp. v. EPA*, 749 F.2d 826, 835 (D.C. Cir. 1984); *Spanish Int'l Broad. Co. v. FCC*, 385 F.2d 615, 621 (D.C. Cir. 1967).

Where, as in this case, the Commission has terminated an investigation without making a finding that the tariffs were unlawful, the Commission is not left without authority to address the lawfulness of Verizon's tariffs. Under section 205 of the Act, the Commission may establish a rate

⁷ *Id.* For this reason, AT&T's claim that the Court rejected Verizon's position in *AT&T Corp. v. FCC*, No. 02-1084 (July 5, 2002) (*per curiam*) is incorrect. In that proceeding, the bureau reinstated two of the cases that had been terminated in the *Termination Order* prior to the expiration of the 60-day period for appeal, which complied with the *Albertson* principle. *See*

investigation at any time, in response to a petition or on its own initiative. However, if the Commission conducts a section 205 investigation, the exclusive remedy for any finding of unlawfulness is a prescription of *prospective* rates. *See* 47 C.F.R. § 205(a) (2003) (the Commission may prescribe the rates “to be thereafter observed”). Under the Act, a section 205 proceeding is the exclusive remedy if the Commission has terminated a section 204 investigation in error and then failed to correct that error within the time that the order was subject to review.

AT&T provides no support for its claim that the Commission's has “broader” (indeed, unlimited) “error correction” power to reconsider even substantive mistakes at any time. Certainly, *American Trucking* and its progeny do not establish such an absurd result. *See American Trucking Ass'ns v. Frisco Transp. Co.*, 358 U.S. 133 (1958); *See Howard Sober, Inc. v. ICC*, 628 F.2d 36, 41-42 (D.C. Cir. 1980). Those cases hold that agencies, like courts, have inherent power to correct genuine “clerical mistakes” at any time. For instance, in *American Trucking*, the ICC had, through “clerical inadvertence,” failed to include in a carrier’s formal certificate of public convenience and necessity a reservation of agency power that the ICC had adopted in its order. *See American Trucking*, 358 US at 142. The Court held that the agency could correct the certificate at a later time to conform to the decision. Similarly, in *Howard Sober*, the Court upheld the ICC’s ability to amend a certificate to include a restriction that it had adopted in its order but had failed to include in the certificate due to “ministerial error.” *See Howard Sober*, 628 F.2d at 41. Such mistakes are limited to those, such as “errors of ‘transcription, copying, or calculation’” that fail to reflect the substantive decision that the agency or court has made, such as transposing numbers or omitting clauses from a formal certificate. *See*

Termination of Stale or Moot Docketed Proceedings, Erratum, 17 FCC Rcd 4543 (2002) (adopted Mar. 8, 2002; rel. Mar. 12, 2002) (“Erratum”).

Olie v. Henry & Wright Corp., 910 F.2d 357, 363-64 (6th Cir. 1990). They do not encompass errors, such as those allegedly made in the *Termination Order*, “that involve judgment or discretion, especially when altering the error affects the substance of the judgment.” *In re American Precision Vibrator Co.*, 863 F.2d 428, 430 (5th Cir. 1989). Such mistakes can only be corrected within the statutory time period for reconsideration or appeal.

The Commission may have made mistakes in the *Termination Order*, but as is true for all of its orders, the parties had an obligation to identify those mistakes and to seek reversal through reconsideration or appeal prior to the time that that the order became final and non-appealable. AT&T has never offered any excuse for its failure to do so. Its silence is especially noteworthy in light of its having promptly identified another error from the same order, which the Commission was able to correct *before* the 60-day appeal period had expired. The Commission cannot *sua sponte* resurrect a terminated proceeding simply because AT&T or other parties sat on their rights.

VI. Conclusion

Verizon complied with the letter and spirit of the Commission's rules for exogenous treatment of OPEB accounting changes. Moreover, even if the Commission wrongfully found that Verizon's 1991-92 OPEB costs were not eligible for exogenous treatment, no refunds would be justified, because the amount by which Verizon's rates were below cap exceeded the amount of the 1991-92 OPEB exogenous cost adjustments. Regardless, the Commission should dismiss this investigation because it failed to reverse the previous termination order within the legal time limits for such action.

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Dated: May 27, 2003

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.

Verizon South

Exhibit 1

Distribution of 1991 & 1992 OPEB exogenous adjustments in 1993 Annual Access Tariff Filing

Ln	Description	Source	Total Interstate	CL	Traffic Sensitive	Special Access	IX	Total Interstate Ratemaking	Billing & Collection
			A	B Ln 5=Ln 3 col A * Ln 4 Col B	C Ln 5=Ln 3 col A * Ln 4 Col C	D Ln 5=Ln 3 col A * Ln 4 Col D	E Ln 5=Ln 3 col A * Ln 4 Col E	F=B+C+D+E	G Ln 5=Ln 3 col A * Ln 4 Col G
1	1991	WP 8-51-15 Ln 1	18,761						
2	1992	WP 8-51-15 Ln 2	18,761						
3	Total	Ln 1 + Ln 2	37,522						
4	Allocation	WP 8-51-16 Ln 3		0.4123	0.4046	0.1501	0.0153		0.0177
5	Allocated			15,470	15,181	5,632	574	36,857	664

Verizon South

Exhibit 2

Actual impact of 1991 and 1992 OPEB exogenous adjustments in September 1, 1994 tariff filing

Ln	Source	Amount
1 Interstate Revenue Requirement - Actual Impact	WP 6-42 In 1 of Transmittal #690	\$ 1,096
2 Interstate Billing & Collecting Revenue Requirement - Actual Impact	WP 6-42 In 2 of Transmittal #690	\$ 19
3 Total OPEB Interstate Revenue Requirement - Actual Impact	WP 6-42 In 3 of Transmittal #690	\$ 1,077
4 Amount Associated with 1991 & 1992	Ln 3 * 2 years	\$ 2,154

Amount Priced Below Cap for 1993/1994 Tariff Period

	1993 Annual Compliance #579 7/1/93				Indices and Rates in Effect on 6/30/1994			
	PCI or Maximum Allowable	API or Rate	Revenues	Amount Below	PCI or Maximum Allowable	API or Rate	Revenues	Amount Below
	A	B	C	$D=((B-A)/A)*C$	A	B	C	$D=((B-A)/A)*C$
Terminating CCL Premium	0.009199	0.008829	270288491	(10,871,480)	0.009226	0.008855	228490026	(9,188,142)
Terminating CCL Non Premium	0.004140	0.003973	46299	(1,868)	0.0041517	0.003985	31633	(1,270)
Originating CCL Premium	0.009199	0.008829	183214208	(7,369,198)	0.009226	0.00885	250332466	(10,202,147)
Originating CCL Non Premium	0.004140	0.003973	6648	(268)	0.0041517	0.003985	4108	(165)
Traffic Sensitive	88.8299	86.3836	934350644	(25,731,223)	88.9248	86.4752	485937801	(13,386,066)
Special Access	88.5177	88.4812	369094125	(152,195)				
Trunking					90.0006	88.4832	853110860	(14,383,353)
Interexchange	98.6583	97.4858	141755085	(1,684,682)	98.8142	97.4858	142238351	(1,912,169)
Total				(45,810,914)				(49,073,312)

Average priced below cap
(7/1/93 + 6/30/94)/2

(47,442,113)

Sources	1993 Tariff Review Plan of BATR			1994 Tariff Review Plan of BATR		
Terminating CCL Premium	CCL-1 Ln 480 Col A	RTE-1 Ln 140 Col D	RTE-1 Ln 140 Col G	CCL-1 Ln 160 Col A	RTE-1 Ln 140 Col C	RTE-1 Ln 140 Col F
Terminating CCL Non Premium	45% of Terminating CCL Prem	RTE-1 Ln 150 Col D	RTE-1 Ln 150 Col G	45% of Terminating CCL Prem	RTE-1 Ln 150 Col C	RTE-1 Ln 150 Col F
Originating CCL Premium	CCL-1 Ln 480 Col A	RTE-1 Ln 160 Col D	RTE-1 Ln 160 Col G	CCL-1 Ln 170 Col A	RTE-1 Ln 160 Col C	RTE-1 Ln 160 Col F
Originating CCL Non Premium	45% of Originating CCL Prem	RTE-1 Ln 170 Col D	RTE-1 Ln 170 Col G	45% of Originating CCL Prem	RTE-1 Ln 170 Col C	RTE-1 Ln 170 Col F
Traffic Sensitive	IND-1 Ln 150 Col A	IND-1 Ln 150 Col B	SUM-1 Ln 170 Col C	IND-1 Ln 160 Col I	IND-1 Ln 160 Col G	SUM-1 Ln 170 Col B
Special Access	IND-1 Ln 280 Col A	IND-1 Ln 280 Col B	SUM-1 Ln 220 Col C	NA	NA	NA
Trunking	NA	NA	NA	IND-1 Ln 520 Col I	IND-1 Ln 520 Col D	SUM-1 Ln 220 Col B
Interexchange	IND-1 Ln 290 Col A	IND-1 Ln 290 Col B	SUM-1 Ln 230 Col C	IND-1 Ln 600 Col I	IND-1 Ln 600 Col D	SUM-1 Ln 230 Col B

Verizon South

Exhibit 4

Amount Priced Below Cap for 1994/1995 Tariff Period

	1994 OPEB Transmittal # 690				1994 Annual Compliance Filing 7/1/94			
	PCI or Maximum Allowable	API or Rate	Revenues	Amount Below	PCI or Maximum Allowable	API or Rate	Revenues	Amount Below
	A	B	C	$D=((B-A)/A)*C$	A	B	C	$D=((B-A)/A)*C$
Terminating CCL Premium	0.00757	0.00757	195332523	-	0.00752	0.00752	194042348	-
Terminating CCL Non Premium	0.003407	0.003407	27045	-	0.003384	0.003384	26863	-
Originating CCL Premium	0.00757	0.00757	214005282	-	0.00752	0.00752	212591772	-
Originating CCL Non Premium	0.003407	0.003407	3512	-	0.003384	0.003384	3488	-
Traffic Sensitive	84.3909	84.3893	474216103	(8,991)	84.1617	84.1552	472900822	(36,523)
Special Access								
Trunking	85.423500	85.4234	823610236	(964)	85.1775	85.177	821234492	(4,821)
Interexchange	93.371700	92.4509	134892160	(1,330,261)	93.2039	92.4509	134892160	(1,089,802)
Total				(1,340,216)				(1,131,146)
Average priced below cap (#690 * 8.5/12) + (7/1/94*3.5/12)				(1,279,237)				

Sources	1994 Tariff Review Plan of BATR for #690			1994 Tariff Review Plan for 1994 Annual Compl		
Terminating CCL Premium	CCL-1 Ln 480 Col A	RTE-1 Ln 140 Col D	RTE-1 Ln 140 Col G	CCL-1 Ln 480 Col A	RTE-1 Ln 140 Col D	RTE-1 Ln 140 Col G
Terminating CCL Non Premium	45% of Terminating CCL Prem	RTE-1 Ln 150 Col D	RTE-1 Ln 150 Col G	45% of Terminating CCL Prem	RTE-1 Ln 150 Col D	RTE-1 Ln 150 Col G
Originating CCL Premium	CCL-1 Ln 480 Col A	RTE-1 Ln 160 Col D	RTE-1 Ln 160 Col G	CCL-1 Ln 480 Col A	RTE-1 Ln 160 Col D	RTE-1 Ln 160 Col G
Originating CCL Non Premium	45% of Originating CCL Prem	RTE-1 Ln 170 Col D	RTE-1 Ln 170 Col G	45% of Originating CCL Prem	RTE-1 Ln 170 Col D	RTE-1 Ln 170 Col G
Traffic Sensitive	IND-1 Ln 160 Col A	IND-1 Ln 160 Col B	SUM-1 Ln 170 Col C	IND-1 Ln 160 Col A	IND-1 Ln 160 Col B	SUM-1 Ln 170 Col C
Special Access	NA	NA	NA	NA	NA	NA
Trunking	IND-1 Ln 520 Col A	IND-1 Ln 520 Col B	SUM-1 Ln 220 Col C	IND-1 Ln 520 Col A	IND-1 Ln 520 Col B	SUM-1 Ln 220 Col C
Interexchange	IND-1 Ln 600 Col A	IND-1 Ln 600 Col B	SUM-1 Ln 230 Col C	IND-1 Ln 600 Col A	IND-1 Ln 600 Col B	SUM-1 Ln 230 Col C

CERTIFICATE OF SERVICE

I hereby certify that, on this 27th day of May, 2003, copies of the foregoing "Reply of Verizon" were sent by electronic mail, ECFS or first class mail, postage prepaid, to the parties listed below.



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