

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

FCC AUDIT REPORTS ON RBOC's PROPERTY RECORDS

DANIEL BERNINGER, Petitioner

PETITION TO REOPEN THE RECORD ON THE FCC CPR AUDIT.

Verizon, SBC, BellSouth, and Qwest, Respondents.

To the Commission:

PETITION TO REOPEN THE RECORD ON THE FCC CPR AUDIT.

Daniel Berninger, Citizen of the United States of America, submits this petition to reopen the record on the FCC Continuing Property Audit (reference CC Docket No. 99-117; AAD File No. 98-26.) In support of this petition, the following is show.

STANDING

Daniel Berninger is a Citizen of the United States of America. The outcome of the FCC Continuing Property Audit effects substantially everyone in the United States through its impact the regulation of Incumbent Local Exchange Companies (ILECs).

STATEMENT OF FACTS AND BACKGROUND

The Communication Act governing the creation and responsibilities of the Federal Communications Commission contains a number of provisions regarding oversight of telephone company accounting records. The provisions require ILEC's to account for the existence, value, and utility of equipment applied in the provision of services regulated by the Commission. For example, Section 213 [47 U.S.C. 213] Valuation of Carrier Property, states:

(a) The Commission may from time to time, as may be necessary for the proper administration of this Act, and after opportunity for hearing, make a valuation of all or of any part of the property owned or used by any carrier subject to this Act, as of such date as the Commission may fix.

...

(f) For the purpose of enabling the Commission to make a valuation of any of the property of any such carrier, or to find the original cost of such property, or to find any other facts concerning the same which are required for use by the Commission, it shall be the duty of each such carrier to furnish to the Commission, within such reasonable time as the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, records, and memoranda whenever and wherever requested by any such duly authorized agent, and to cooperate with and aid the Commission in the work of making any such valuation of finding in such manner and to such extent as the Commission may require and direct, and all rules and regulations made by the Commission for the purpose of administering this section shall have the full force and effect of law. Unless otherwise ordered by the Commission, with the reasons therefore, the records and data of the Commission shall be open to the inspection and examination of the public. The Commission, in making any such valuation shall be free to adopt any method of valuation which shall be lawful.

The Commission declined to undertake a detailed audit of ILEC property records from 1934 through 1997. A General Accounting Office report "Telephone Communications – Controlling Cross-Subsidy Between Regulated and Competitive Services" (GAO/RCED-88-34) published in October 1987 represented one of many efforts imploring the Commission to verify the ILEC accounting for cost of service. For example, the GAO report states regarding the ability of

Bell Operating Companies to properly allocate costs between regulated and unregulated activities:

FCC's actions in prescribing cost allocation standards and requiring cost manuals and annual independent audits are all essential steps of an oversight program to ensure that telephone rates are not subsidizing competitive ventures. FCC expects these measures to provide assurance to the public that its rules and procedures are being followed consistently and that cost allocations are documented and accurately presented.

However, the unavoidably subjective nature of the cost allocation process and the FCC's "public interest" mandate require that it remain involved in overseeing the allocation process and ultimately deciding whether the companies' results are acceptable. FCC plans to audit company records periodically, but at existing staffing levels these audits will be infrequent.

The level of oversight FCC is prepared to provide will not, in GAO's opinion, provide telephone ratepayers or competitors positive assurance that FCC cost allocation rules and procedures are properly controlling cross-subsidy.

In 1997, the Common Carrier Bureau's auditors began an audit of the Continuing Property Records (CPRs) of the largest ILECs, the RBOCs, to determine if their records were being maintained in compliance with the Commission's rules and to verify that property recorded in their accounts represented equipment used and useful for the provision of telecommunications services. The Bureau auditors reported that the carrier's CPRs contained deficiencies and did not comply with the Commission rules. The auditors reported the CPRs included records and accounting entries that had no description of the equipment or its location and were described as "undetailed investment" or "unallocated other costs." On April 7, 1999, the Commission released a Notice of Inquiry that initiated a proceeding based on the CPR audits. In a report and order on November 1, 2000, the Commission declined to pursue further investigation and closed the proceeding considering the continuing property records. The Commission noted "that although we have made no decision concerning the findings stated in the CPR audits, we recognize that further investigation in the CPR audit matter will require a great deal of time and effort, and could prove to be a lengthy and costly proceeding for all participants." The Commission directed the Common Carrier Bureau to work with the RBOCs to evaluate and improve the accuracy of their property records and accounts to ensure

compliance with requirements going forward. The Commission noted “the Auditors found, and the RBOC’s did not seriously challenge, that the CPRs were not well maintained.”

ASSERTION

Daniel Berninger submits that the Commission closed the proceedings investigating CPR’s prematurely. The Commission’s duty to protect the public interest compels it to reopen the record, reexamine the findings of the CPR audits, and take the steps necessary to assure the public that its rules and procedures are being followed consistently.

ARGUMENT

The Commission breached due process in closing the record on the CPRs audits relying on undisclosed agreements between the Common Carrier Bureau and some of the parties with interests in the proceeding. Even were the auditors entirely mistaken regarding the \$5 billion missing equipment category, the Commission does not have the authority to ignore the accounting irregularities of a magnitude associated with the estimated \$13 billion inventory value categorized as “undetailed investment” and “unallocated other costs”. Commission rules explicitly state carriers must maintain records that allow auditors to physically verify the existence of equipment necessary for provision of regulated services.

The Commission failed to give the (former) Accounting Safeguards Division adequate opportunity to defend the audit results. The staff were never given an opportunity to present their findings and answer questions about their findings to the Commissioners on a par with the access afforded the respondent ILEC’s.

The Commission itself did not defend the audit or audit staff.

The Commission inappropriately linked the closure of the CPR proceeding to the CALLS negotiation over access fees. As noted by Harold Furchtgott-Roth in his comments regarding the closing of the audit proceedings (FCC 00-396), “As I have said earlier, there were a number of deficiencies in the process through which the CALLS proposal was adopted, one of which were these undisclosed agreements between the Bureau and some of the parties with interests in the proceeding.”

The Commissions assertions that pursuing the proceeding could prove “lengthy and costly for the participants” reveals a substantial misrepresentation of the potential impact of

errors in the accounting records of the ILECs. The ILEC's have recovered over \$2 trillion dollars from ratepayers over the last 20 years. If the exaggeration of assets caused only a 5% overcharge, customers are due a \$100 billion dollar refund.

INFORMATION REGARDING RESPONDENTS

Daniel Berninger does not possess detailed information on addresses and points of contact for the companies effected by the CPR audits, so he defers to the Federal Communications Commission to provide this information as established in CC Docket No. 99-117 and AAD File No. 98-26.

CONCLUSION

The opportunity to address the issues raised by the CPR audits diminishes rapidly over time. The Commission not only closed the CPR audit proceeding, it dismantled the Accounting Safeguards Division and reassigned the entire staff. The ILEC's have requested and received preliminary support from the Commission to narrow significantly reporting requirements associated with their accounting for costs. The new rules will allow the incumbent carriers to shred the incriminating documents. The fact that last three Common Carrier Bureau Chiefs ended up as Senior Vice-President at Bell Operating Companies makes it all the more important to reopen the record and address the appearance of a whitewash that undermines public confidence in telecom regulation.

Respectfully submitted,

Daniel Berninger

Dated December 23, 2002