

Decision_____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Assess and Revise
the New Regulatory Framework for Pacific Bell
and Verizon California Incorporated.

Rulemaking 01-09-001
(Filed September 6, 2001)

Order Instituting Investigation on the
Commission's Own Motion to Assess and Revise
the New Regulatory Framework for Pacific Bell
and Verizon California Incorporated.

Investigation 01-09-002
(Filed September 6, 2001)

DECISION REGARDING PETITIONS TO MODIFY DECISION 02-10-020

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O P I N I O N

1. Summary

Decision (D.) 02-10-020 ordered the Office of Ratepayer Advocates (ORA) to conduct a comprehensive audit of Verizon California Inc. (Verizon) covering the years 1999 through 2002.¹ Today's Decision grants the joint petition to modify D.02-10-020 filed by ORA and The Utility Reform Network (TURN), and denies the petition to modify D.02-10-020 filed by Verizon. In response to these petitions, D.02-10-020 is modified to (1) expand ORA's audit of Verizon to include the years 2003 and 2004, and (2) postpone the start of ORA's audit until after the conclusion of Phase 3 of this proceeding or Application (A.) 05-04-020,² whichever is later. The Commission will consider in Phase 3 whether to cap the cost of ORA's audit and whether to modify the audit as set forth herein.

2. Procedural Background

On January 19, 2004, ORA and TURN filed a joint petition to modify D.02-10-020 to change the audit period to 1999 - 2004 or, alternatively, 2000 - 2004. Notice of the petition appeared in the Daily Calendar on January 21, 2005. Verizon and Pacific Bell Telephone Company d/b/a SBC California (referred to hereafter as "SBC") filed responses.

Verizon filed a petition to modify D.02-10-020 on February 8, 2005. Verizon's petition asks the Commission to (1) reduce the scope of the audit ordered by D.02-10-020, (2) revise the audit period to include only the most recent three years, and (3) implement these revisions in Phase 3 of this

¹ D.02-10-020, *mimeo.*, p. 83 [Ordering Paragraph (OP) 8].

² A 05-04-020 requests Commission approval of a proposed merger of Verizon Communications Inc. and MCI, Inc.

proceeding. Notice of Verizon's petition appeared in the Daily Calendar on February 10, 2005. Responses were filed by SBC and jointly by ORA and TURN. Verizon filed a reply after obtaining permission to do so from the assigned Administrative Law Judge.

3. Regulatory Background

This proceeding is the fourth triennial review of the New Regulatory Framework (NRF) for SBC and Verizon. The order instituting this proceeding divided the proceeding into three Phases. Phase 1, which is now complete, addressed factual issues related to an audit of Verizon of limited scope. Phase 2, which is now complete, addressed factual issues related to (1) an audit of SBC, and (2) how service quality for SBC's and Verizon's end-users has fared under NRF. The purpose of Phase 3, which has not yet started, is to review and possibly revise NRF based, in part, on the record developed in Phases 1 and 2.³

Phase 1 concluded with the issuance of D.02-10-020. Among other things, D.02-10-020 directed ORA to conduct a comprehensive audit of Verizon covering the years 1999 through 2002. Decision 02-10-020 also required the scope of ORA's audit to include the following⁴:

- All of Verizon's NRF monitoring reports for 1999 - 2002.
- Any reports that Verizon submitted to the Federal Communications Commission (FCC) that contain information about service quality in California.
- Affiliates' books and records.
- Such other matters that might arise in Phases 2 and 3.

³ As explained in more detail, *infra*, many of the key Phase 3 issues will be addressed in Rulemaking (R.) 05-04-005.

⁴ D.02-10-020, *mimeo.*, pp. 78 – 80 [Conclusions of Law (COLs) 41, 42, 43, 44, and 54] and p. 83 [OPs 8 and 9].

Decision 02-10-020 directed ORA to submit an audit report in the next triennial review of NRF. The Decision also authorized ORA to hire CPAs to conduct the audit, ordered Verizon to pay for the CPAs, and allowed Verizon to seek recovery of these costs.⁵ On January 19, 2005, ORA issued a request for proposal (RFP) to begin the process of hiring CPAs to conduct the audit.

As mentioned previously, the purpose of the upcoming Phase 3 is to review and possibly revise NRF. However, the Commission is presently considering in R.05-04-005 whether to adopt a uniform regulatory framework for most telecommunications utilities, including SBC and Verizon. Thus, many of the key policy issues previously designated for Phase 3 will now be considered in R.05-04-005. We anticipate that the scope of Phase 3 will be revised to reflect R.05-04-005 by a Commission decision or an Assigned Commissioner ruling.

4. ORA & TURN's Joint Petition to Modify D.02-10-020

A. Summary of the Joint Petition

Decision 02-10-020 ordered ORA to conduct a comprehensive audit of Verizon covering the years 1999 - 2002. In their petition to modify D.02-10-020, ORA and TURN ask the Commission to revise the audit period to 1999 - 2004 or, alternatively, 2000 - 2004. ORA and TURN state that it is advisable to revise the audit period so that the audit provides the Commission with current information.

B. SBC's and Verizon's Responses

SBC and Verizon oppose ORA and TURN's petition. SBC and Verizon argue that expanding the audit period will impose unnecessary costs on Verizon and its ratepayers. SBC also asserts that the audit period should not be expanded

⁵ D.02-10-020, *mimeo.*, pp. 83 – 84 [OPs 11 and 13].

because there may be significant changes to Verizon's regulatory framework in R.05-04-005 that obviate the need for the audit.

Verizon states that expanding the audit period will not provide current information as ORA and TURN claim. This is because the audit report will be submitted in the next triennial review of NRF, which will not begin until 2009. Consequently, the data will be 5–10 years old when the audit report is submitted.

Verizon also asserts that ORA and TURN's proposal exceeds the requirements of Pub. Util. Code § 314.5,⁶ which requires the Commission to audit Verizon "at least once in every three years." Thus, an audit limited to three years or less would more than comply with § 314.5.

If the Commission is inclined to grant ORA and TURN's petition, SBC and Verizon recommend that the audit period be revised so that it covers only the three most recent years. Verizon opines that this alternate is preferable because it will provide current information while avoiding unnecessary audit costs.

5. Verizon's Petition to Modify D.02-10-020

A. Summary of Verizon's Petition

In its petition to modify D.02-10-020, Verizon asks the Commission to (1) significantly reduce the scope of the audit ordered by D.02-10-020, (2) revise the audit period so that only the three most recent years are audited, and (3) implement these revisions in Phase 3 of the current NRF proceeding.

Verizon argues that the audit ordered by D.02-10-020 is a sweeping historical review that is inconsistent with Verizon's regulatory framework that was in effect during the period covered by the audit. Verizon asserts that the Commission has previously held that audits conducted pursuant to § 314.5

⁶ All statutory references are to the Public Utilities Code unless otherwise indicated.

should be based on the regulatory framework of the audited company.

In D.93-02-010, for example, the Commission found that monitoring reports submitted by AT&T were sufficient to fulfill the § 314.5 audit requirement:

At first glance, it appears that the audit requirement of [§ 314.5] is mandatory. However, [§ 314.5] was enacted well before the Commission granted AT&T-C limited rate flexibility. Since that grant of limited rate flexibility...[the Commission] has required AT&T-C to supply additional information on regular intervals as part of the monitoring plan...The purpose of the [§ 314.5] audit is “for regulatory and tax purposes.” The information supplied by AT&T-C allows us to assess how well the interLATA market is working in light of the regulatory flexibility granted to AT&T-C. We believe that this information supplied by AT&T-C fulfills the “regulatory” purpose of [§ 314.5]. (D.93-02-010, 1993 Cal. PUC LEXIS 61, 54–55.)

As was the case for AT&T, Verizon states that it regularly submits monitoring reports to the Commission. Verizon believes that a periodic review of its monitoring reports by Commission staff would satisfy § 314.5.

Verizon claims that the comprehensive audit ordered by D.02-10-020 is inconsistent with several Commission decisions that limited the scope of audits under NRF, including D.04-09-061 (2004 Cal. PUC LEXIS 477, 7), D.98-10-026, (1998 Cal. PUC LEXIS 669, 70, 72), and D.96-05-036 (1996 Cal. PUC LEXIS 657, 11 and 12). Verizon states that the Commission should reduce the scope of the audit based on these past decisions.

Verizon also contends that its customers will not benefit from a comprehensive audit of 1999 – 2002. This is because there is no possibility that the audit will result in a rate reduction under the regulatory framework that was in effect during 1999 – 2002. Verizon argues that the absence of any customer benefits is reason enough to reduce the scope of the audit.

Verizon states that if the Commission decides to substantially reduce the scope of the audit as Verizon recommends, the Commission should wait until Phase 3 to establish the parameters of the downsized audit. Verizon believes this approach will ensure that the audit produces useful information. For example, if the Commission eliminates certain monitoring reports in Phase 3, Verizon believes there would be no point in auditing the eliminated reports that Verizon submitted during 1999 – 2002 as currently required by D.02-10-020. Verizon adds that this course of action has the added benefit of allowing the Commission in Phase 3 to advance the audit period to encompass only the most recent years so that more current information is reviewed.

B. ORA & TURN's Joint Response

ORA and TURN oppose Verizon's petition. They observe that § 314.5 requires the Commission to audit Verizon. The statute states:

The commission shall inspect and audit the books and records for regulatory and tax purposes (a) at least once in every three years in the case of every...telephone [corporation]... serving over 1,000 customers...An audit conducted in connection with a rate proceeding shall be deemed to fulfill the requirements of this section. Reports of such inspections and audits and other pertinent information shall be furnished to the State Board of Equalization for use in the assessment of public utilities. (Emphasis added.)

ORA and TURN dispute Verizon's claim that § 314.5 allows the Commission to limit an audit of Verizon to a review of monitoring reports. They argue that the statute's use of the phrase "regulatory purposes" requires the Commission to audit Verizon in a way that reflects Verizon's status as a dominant provider of local exchange services with billions of dollars of revenues. ORA and TURN contend that an audit of such an entity cannot be accomplished

by reviewing monitoring reports. They note that the most recent audits of SBC and Verizon show that monitoring reports contain significant errors.⁷

ORA and TURN contend that there is no need to reduce the scope of the audit because there might be changes to Verizon's regulatory framework sometime in the future. They state that the Commission in D.02-10-020 found that it was unlikely that future changes to Verizon's regulatory framework would affect the retrospective audit.⁸

Finally, ORA and TURN maintain that the audit ordered by D.02-10-020 will not be unduly costly to Verizon and its ratepayers. They state that the most recent audit of Verizon cost approximately \$1 million, which was charged to Verizon's ratepayers. ORA and TURN believe this cost was not excessive when compared to Verizon's substantial revenues and profits.

C. SBC's Response

SBC supports Verizon's petition to modify D.02-10-020. SBC contends that potential changes to Verizon's regulatory framework may obviate the need for a detailed audit. SBC also asserts that because costs and rates are de-linked under NRF, there is no need for the comprehensive audit ordered by D.02-10-020.

6. Discussion

A. ORA & TURN's Joint Petition to Modify D.02-10-020

Decision 02-10-020 ordered ORA to conduct an audit of Verizon covering the years 1999 through 2002. We grant ORA and TURN's petition to modify D.02-10-020 to add the years 2003 and 2004 to the audit. We conclude that it is

⁷ D.02-10-020, *mimeo.*, p.44; D.04-09-061, *mimeo.*, Appendix H

⁸ D.02-10-020, *mimeo.*, p.58.

appropriate to add recent years to the audit in order to obtain additional audited data with which to make informed decisions regarding NRF and other matters.

We decline to delete older years from the audit as recommended by SBC and Verizon. ORA and TURN correctly note that the recent audits of SBC and Verizon revealed that these companies have in the past submitted monitoring reports that contained inaccurate information. The Commission needs accurate historical information for many purposes, such as identifying trends and serving as a reference point for evaluating current and future performance.

We realize there might be changes to Verizon's regulatory framework in R.05-04-005, but these regulatory changes should not affect the audit through year 2004. Any changes to Verizon's regulatory framework are likely to be applied prospectively, and not retroactively, to the period covered by the audit, but clearly they will affect the relevance of audited material to the regulatory program.

Verizon argues that the audit period should not be expanded because doing so exceeds what is required by § 314.5. SBC and Verizon also contend that expanding the audit period will impose unnecessary costs on Verizon and its ratepayers. We are not persuaded by these arguments. Although § 314.5 requires the Commission to audit Verizon "at least once every three years," there is nothing in § 314.5 that prevents the Commission from exceeding this minimum requirement. We conclude that it is appropriate to audit Verizon for the period of 1999 – 2004 for the reasons stated in D.02-10-020 and today's Decision.⁹ Verizon's out-of-pocket costs for the audit should be minimal, since D.02-10-020 authorized Verizon to seek recovery of the audit costs incurred by ORA to hire

⁹ See D.02-10-020, *mimeo.*, p. 56, and today's Decision, Findings of Fact 4 through 10.

CPAs.¹⁰ To ensure that the audit costs borne by ratepayers are reasonable, we will consider in Phase 3 whether to cap the costs incurred by ORA to hire CPAs.

B. Verizon's Petition to Modify D.02-10-020

Verizon's petition asks the Commission to (1) significantly reduce the scope of the audit ordered in D.02-10-020, (2) revise the audit period to include only the most recent three years, and (3) determine the scope of the downsized audit in Phase 3. We address each of Verizon's requests below.

i. Scope of the Audit

We decline to grant Verizon's request to reduce the scope of the audit ordered by D.02-10-020 at this time. In particular, we believe that limiting the scope of the audit by Commission ruling on specific audit issues will result in an inappropriate micromanagement of ORA's investigation by the Commission and we decline to do so. We conclude that the current scope of the audit is appropriate for the reasons stated in D.02-10-020:

Audits are an essential part of NRF. They provide a means for the Commission to monitor utility financial performance, to determine if utilities are complying with Commission rules and statutory requirements, and to assess whether the Commission's goals for NRF are being met...Although NRF has been in effect for more than 12 years, there has yet to be a comprehensive audit of Verizon under NRF. Given the many problems found by ORA's [recent and] relatively narrow audit, it is clear in retrospect that comprehensive audits should have been conducted routinely. But even if no problems had been found, it is prudent for the Commission to maintain continuous, comprehensive, and

¹⁰ Verizon will undoubtedly incur some internal costs for the audit, such as responding to data requests and meeting with auditors. SBC and Verizon's argument that Verizon's internal costs will be unduly burdensome is speculative at this point and ignores the fact that regulatory compliance costs were built into Verizon's start-up revenue requirement.

vigilant oversight of large utilities like Verizon that provide essential services to millions of Californians.

For the preceding reasons, we will direct ORA to conduct a thorough audit of Verizon.... (D.02-10-020, *mimeo.*, p. 56.)

Although we decline to reduce the scope of the audit,¹¹ we will provide guidance regarding some of our expectations for the audit so that ORA can plan and conduct the audit accordingly. First, we do not anticipate that the audit will affect rates. During the period covered by the audit, the earnings sharing mechanism was suspended and prices for Verizon's services were de-linked from costs. Consequently, there is no obvious way that any errors or irregularities discovered by ORA's audit could have affected rates. However, should ORA's audit reveal such actions are necessary, we will address those issues on the merits at the appropriate time.

Second, we do not anticipate that ORA's audit will result in fines or other sanctions. Such actions are appropriate only if ORA discovers a violation of a statute or Commission decision.

Third, consistent with D.04-09-061, any errors in Verizon's monitoring reports and accounting records discovered by ORA's audit should be corrected in a manner consistent with generally accepted accounting principles (GAAP).¹² If corrections are required by GAAP, we expect Verizon to (i) file corrected monitoring reports, and (ii) correct errors that extend beyond the audit period. In most situations, GAAP does not require a retrospective restating of financial reports and it is difficult to envision scenarios that would require such a

¹¹ Even if we did reduce the scope of the audit ordered by D.02-10-020, ORA has independent statutory authority to use its own resources to conduct a comprehensive audit of Verizon.

¹² D.04-09-061, *mimeo.*, p. 165 [OP 1].

restatement. We note that to the extent GAAP is applicable the FCC has moved there. However, we note that the FCC has not found GAAP sufficient for all regulatory accounting. In particular Part 32 and part 64 cost allocation of the FCC's Uniform System of Accounts will have an increasingly important role as we move toward naked DSL and a review of universal service. To the extent that this decision seeks to unify regulatory accounting with GAAP, it does so only consistent with the FCC's action. We do so to ensure there is a uniform regulatory accounting front at the state and federal level. To that end, it is appropriate for this Commission to modify D.87-12-063 to be consistent with the FCC's modified Uniform System of Accounts modification since the issuance of D.87-12-063.

Fourth, although audited information for every year in the audit period will be valuable, it is likely that information concerning the most recent years will be more useful for Commission decision-making purposes than information from more distant years. Therefore, we encourage ORA to plan to spend a majority of its audit resources on the most recent years of the audit period.

Finally, we are presently considering in A.05-04-020 a proposed merger of Verizon Communications Inc. (VCI) and MCI, Inc. If we approve the merger, an audit of Verizon covering a period of time before and after the merger could help identify and measure the short-term and long-term benefits of the merger, as well as other effects the merger might have on the public interest. If the Commission in A.05-04-020 orders an audit of the merger, ORA should combine the merger audit with the audit ordered by D.02-10-020, as modified by today's Decision and any subsequent decision issued by the Commission related to the merger.

ii. The Years Covered by the Audit

We decline to grant Verizon's request to modify the audit period to include only the most recent three years. Verizon's arguments for doing so mirror its reasons for opposing ORA and TURN's petition. We rejected Verizon's arguments for the reasons described previously, which we will not repeat here.

iii. Revisions to the Audit Scope in Phase 3

In today's Decision, *supra*, we deny Verizon's request to reduce the scope of the audit ordered by D.02-10-020 at this time. As a result, Verizon's request to establish the scope of a downsized audit in Phase 3 is moot. However, we will consider other revisions to the scope of the audit in Phase 3. First, D.02-10-020, as modified by today's Decision, limits the scope of the audit to the years 1999 through 2004. The next triennial NRF review, if one is held,¹³ will start in 2008 or 2009, assuming the instant proceeding ends in 2005 or 2006. This suggests that the audit could include 2005 through 2007 or 2008, depending on when the next triennial review begins. Therefore, we will consider in Phase 3 whether the audit period should include 2005 and later years.

Second, we may adopt substantial changes to Verizon's regulatory framework in R.05-04-005. If we decide in Phase 3 to expand the scope of the audit to include 2005 and later years, we may also consider the related issues of (1) how to tailor the audit to reflect the regulatory framework in effect during 2005 and later years, and (2) the appropriate proceeding for ORA's next audit report if NRF is replaced by another regulatory framework.

¹³ There may not be another triennial review if NRF is replaced by another regulatory framework in R.05-04-005.

Finally, we may make other revisions to the scope of the audit as we deem appropriate in Phase 3.¹⁴ ORA may modify the scope of the audit, as appropriate, in response to developments in Phase 3.¹⁵

We note that ORA has not yet commenced the audit ordered by D.02-10-020. At this point, we believe it would be more efficient to postpone the audit until after Phase 3 or the merger proceeding, whichever is later. This will enable ORA to plan and conduct one comprehensive audit that takes into account developments in Phase 3 and the VCI-MCI merger proceeding.

7. Comments on the Alternate Draft Decision

The alternate draft decision of Commissioner Brown in this matter was mailed to the parties in accordance with Section 311(g)(1) and Rule 77.7. Comments were filed by Verizon and SBC. Reply comments were filed by OR. These comments have been reflected, as appropriate, in the final Decision adopted by the Commission.

8. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner for this proceeding and Timothy Kenney is the assigned Administrative Law Judge.

Findings of Fact

1. Decision 02-10-020 ordered ORA to conduct a comprehensive audit of Verizon covering the years 1999 - 2002. ORA has not yet started the audit.
2. ORA and TURN's joint petition to modify D.02-10-020 seeks to expand the audit to include 1999 through 2004 or, alternatively, 2000 through 2004.

¹⁴ We will not relitigate the issue of whether to reduce the scope of the audit during 1999 - 2004.

¹⁵ D.02-10-020, *mimeo.*, p. 83 [OP 8].

3. Verizon's petition to modify D.02-10-020 seeks to (1) reduce the scope of the audit ordered by D.02-10-020, (2) revise the audit to include only the most recent years, and (3) implement these revisions in Phase 3 of this proceeding.

4. Granting ORA and TURN's petition will provide the Commission with additional audited data with which to make informed decisions regarding NRF and other matters.

5. The Commission needs accurate historical information about Verizon in order to identify trends in Verizon's performance and to serve as a reference point for evaluating Verizon's current and future performance.

6. It is prudent for the Commission to monitor large utilities like Verizon that provide essential services to millions of Californians.

7. Audits are an essential part of NRF. They provide a means for the Commission to monitor Verizon, to determine if Verizon is complying with Commission rules and statutory requirements, and to assess whether the Commission's goals for NRF are being met.

8. Despite the need for audits under NRF, there has not been a comprehensive audit of Verizon during the 15 years that NRF has been in effect.

9. Verizon should incur minimal out-of-pocket costs for a comprehensive audit covering 1999 through 2004 because (i) D.02-10-020 authorized Verizon to seek recovery from ratepayers of the audit costs billed by ORA or the Commission, and (ii) regulatory compliance costs were built into Verizon's startup revenue requirement.

10. It is unlikely that the audit costs passed through to ratepayers will be unduly burdensome, as the amount is likely to be tiny in relation to Verizon's intrastate operating revenues that totaled \$1.721 billion in 2004.

11. The Commission is currently considering in A.05-04-020 a proposed merger of Verizon and MCI.

12. If there is another triennial review of NRF, it will not commence until 2008 or 2009, assuming the instant proceeding ends in 2005 or 2006.

13. The FCC's Uniform System of Accounts recognizes a distinction between GAAP and regulatory accounting.

Conclusions of Law

1. ORA and TURN's petition to modify D.02-10-020 should be granted for the reasons set forth in Findings of Fact (FOFs) 4 through 10.

2. Verizon's petition to modify D.02-10-020 should be denied for the reasons set forth in FOFs 4 through 10.

3. If the Commission approves the proposed merger of VCI and MCI and orders an audit of the merger, the merger audit can be combined with the audit ordered by D.02-10-020, as modified by today's Decision.

4. The following matters should be considered in Phase 3 of this proceeding:

- i. Whether ORA's audit of Verizon should include the years 2005, 2006, 2007, and 2008, and the scope of the audit during 2005 – 2008.
- ii. The appropriate proceeding for considering ORA's audit report if NRF is replaced by another regulatory framework.

5. The commencement of ORA's audit of Verizon can be postponed until after the conclusion of Phase 3 or A.05-04-020, whichever is later. This will enable ORA to plan and conduct one comprehensive audit that incorporates developments in Phase 3 and A.05-04-020 if it chooses.

6. The following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The petition to modify Decision (D.) 02-10-020 filed by Verizon California Inc. (Verizon) is denied.
2. The petition to modify D.02-10-020 filed by the Office of Ratepayer Advocates (ORA) and The Utility Reform Network is granted.
3. ORA's audit of Verizon is expanded to include the years 2003 and 2004.
4. The following matters will be considered in Phase 3 of this proceeding:
 - i. Whether ORA's audit of Verizon should include the years 2005, 2006, 2007, and 2008, and the scope of the audit during 2005 – 2008.
 - ii. The appropriate proceeding for considering ORA's audit report if the New Regulatory Framework for Verizon is replaced by another regulatory framework.
5. If the Commission approves the merger of Verizon Communications Inc. and MCI, Inc. that is pending in Application (A.) 05-04-020 and orders an audit of the approved merger, the merger audit shall be combined with the audit ordered by D.02-10-020, as modified by today's Decision, unless that audit has already commenced.
6. The commencement of the audit ordered by D.02-10-020, as modified by today's Decision, shall be permitted to be postponed by ORA until after the conclusion of A.05-04-020 or Phase 3 of the instant proceeding, whichever is later.
7. This proceeding remains open.

This order is effective today.

Dated _____, at Los Angeles, California.

