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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

DA 92-540

DISPATCHED

In the Matter of	)	
	)	
Treatment of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, "Employers Accounting for Postretirement Benefits Other Than Pensions"	)	CC Docket No. 92-101
	)	
Bell Atlantic Tariff F.C.C. No. 1	)	Transmittal No. 497
	)	
US West Communications, Inc. Tariff F.C.C. Nos. 1 and 4	)	Transmittal No. 246
	)	
Pacific Bell Tariff F.C.C. No. 128	)	Transmittal No. 1579

ORDER OF INVESTIGATION AND SUSPENSION

Adopted: April 29, 1992; Released: April 30, 1992

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. Bell Atlantic Telephone Companies (Bell Atlantic), US West Communications, Inc. (US West), and Pacific Bell (Pac Bell) have filed the above-captioned tariffs to increase their price cap index levels as a result of their implementation of the Statement of Financial Accounting Standards - 106 (SFAS-106), "Employers Accounting for Postretirement Benefits Other Than Pensions" (OPEB).[1] These local exchange carriers (LECs) assert that the change in accounting necessary for implementation of SFAS-106 should be recognized as an exogenous cost change under the Commission's price cap rules.[2] In this

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[1] See Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 497 (Filed Feb. 28, 1992); US West Communications, Inc. Tariff F.C.C. Nos. 1 and 4, Transmittal No. 246 (Filed Apr. 3, 1992); Pacific Bell Tariff F.C.C. No. 128, Transmittal No. 1579 (Filed Apr. 16, 1992).

[2] See Policy and Rules Concerning Rates for Dominant Carriers, Report and Order and Second Further Notice, 4 FCC Rcd 3379 (AT&T Price Cap Order), modified on recon., 6 FCC Rcd 665 (1991)(AT&T Price Cap Reconsideration Order), appeal docketed, AT&T v. FCC, No. 91-1178 (D.C. Cir. Apr. 15, 1991); Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6786 (1990) and Erratum, 5 FCC Rcd 7664 (1990)(LEC Price Cap Order), modified on recon. 6 FCC Rcd 2637 (1991)(LEC Price Cap Reconsideration Order), recon. dismissed, FCC 91-344, released December 20, 1991, further modified on recon., 6 FCC Rcd 4524 (1991)(ONA Part 69 Order), petitions for recon. of ONA

Order the Bureau suspends for five months the tariffs filed by Bell Atlantic and US West[3] and designates for investigation issues arising from the Bell Atlantic, US West, and Pac Bell claims that exogenous treatment is appropriate in these circumstances.

II. BACKGROUND

2. In December 1990, the Financial Accounting Standards Board (FASB) adopted SFAS-106, which changes the way businesses following Generally Accepted Accounting Principles (GAAP) must account for benefits other than pensions that are provided to retired employees. These are typically medical benefits. Traditionally, these benefits have been accounted for on a "pay-as-you-go" basis, recognizing the amounts actually paid to retired employees each year. SFAS-106, however, requires accounting recognition of these benefits as they are earned by employees during their working years. Under SFAS-106, the new accounting is required for fiscal years beginning after December 15, 1992, and earlier implementation is encouraged. Furthermore, companies not only have to change to accrual accounting on a going-forward basis, they also must correct their accounting practices to recognize all future benefits of existing retirees and employees.

3. Since 1985, the Commission has implemented a policy of following GAAP, including new FASB standards, unless adoption of the principle or practice conflicts with the Commission's regulatory objectives. This policy is incorporated into Section 32.16 of the Commission's Uniform System of Accounts (USOA), 47 C.F.R. § 32.16. Pursuant to Section 32.16, the Bureau issued an Order authorizing all subject carriers to adopt SFAS-106, on or before January 1, 1993, as a mandatory practice for purposes of the USOA.[4]

4. In the transmittals now pending before us, Bell Atlantic, US West, and Pac Bell argue that the incremental costs of implementing SFAS-106 should be reflected as exogenous cost changes, increasing their price cap indexes. These LECs contend that these costs are not reflected in the price cap formula. In support of their arguments, these LECs have submitted studies that they believe evidence differences between the impact of SFAS-106 upon the price cap

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Part 69 Order pending, appeal docketed, District of Columbia PSC v. FCC, No. 91-1279 (D.C. Cir. June 14, 1991); Competition in the Interstate Interexchange Marketplace, Report and Order, 6 FCC Rcd 5880 (1991)(Interexchange Order)(further streamlining and removing from price cap regulation most of AT&T's business services), on recon., FCC 92-181 (released Apr. 17, 1992).

[3] Since we anticipate that the issues raised herein for investigation will be resolved prior to the January 1, 1993, effective date of the Pac Bell tariff, we do not suspend the Pac Bell tariff in this Order.

[4] Southwestern Bell, GTE Corporation, Notification of Intent to Adopt Statement of Financial Accounting Standards No. 106, Employer's Accounting for Postretirement Benefits Other Than Pensions, AAD-80 (Dec. 26, 1991).

LECs as a whole and the American economy as a whole.[5]

5. In its price cap decisions, the Commission created an incentive-based system of regulation that rewards carriers who exceed a benchmark measure of cost changes. The benchmark is composed of cost indicators outside of any carrier's control. For example, an inflation measure (Gross National Product Price Index, or GNP-PI) reflects economy-wide cost changes, while a productivity offset to the inflation measure reflects the historical productivity of the telephone industry, which has exceeded the productivity of the economy as a whole. Finally, the Commission identified certain cost changes triggered by administrative, legislative, or judicial action beyond the control of the carriers.[6] The Commission determined that these "exogenous costs" should result in an adjustment to the cap in order to ensure that the price cap formula does not lead to unreasonably high or unreasonably low rates.[7]

6. Changes in GAAP are not given routine exogenous cost treatment.[8] The Commission determined that cost changes resulting from GAAP changes may already be reflected in the inflation measure, which is intended to capture economy-wide cost changes. The Commission therefore stated that carriers claiming that GAAP changes are exogenous would bear the burden of demonstrating that no double-counting would result from exogenous treatment, even if the carriers demonstrate that the costs are beyond their control.[9]

III. REASONS FOR SUSPENSION AND INVESTIGATION

7. The instant LECs' claim for exogenous treatment of costs attributable to SFAS-106 accounting changes is based on complicated econometric analysis and reasoning. Evaluation of this analysis and other issues raised in the transmittals is likely to require equally complicated review and opportunity for full participation by other interested parties. In addition, the threshold issue presented by these transmittals -- whether costs of SFAS-106 should be treated as exogenous costs -- is common to all price cap carriers. Because of the complex issues raised by the arguments and studies on which these rate increases are based, the importance of these issues as they

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[5] United States Telephone Association (USTA), "Post-Retirement Health Care Study Comparison of TELCO Demographic and Economic Structures and Actuarial Basis to National Averages" (1992)(submitted in Bell Atlantic and US West transmittals); National Economic Research Associates, Inc. (NERA), "The Treatment of FAS-106 Accounting Changes Under FCC Price Cap Regulation" (1992)(submitted in Pac Bell transmittal).

[6] LEC Price Cap Order, 5 FCC Rcd at 6807.

[7] Id., citing AT&T Price Cap Order, 4 FCC Rcd at 3187.

[8] See 47 C.F.R. § 61.45(d).

[9] AT&T Price Cap Reconsideration Order, 6 FCC Rcd at 674; LEC Price Cap Reconsideration Order, 6 FCC Rcd 2663-65.

relate to the operation of the Commission's price cap plan, and the monetary importance of the Bell Atlantic, US West, and Pac Bell filings,[10] we conclude that an investigation of the proposed adjustment to price cap rate indexes is warranted.

8. We further conclude that the changes submitted by Bell Atlantic and US West are of sufficient magnitude and their justification is sufficiently questionable that the changes in rates and indexes should be suspended while this investigation proceeds.[11] Accordingly, in this Order we suspend the Bell Atlantic and US West transmittals, pursuant to our authority under Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), for the full five-month period allowed by this section, or until this investigation is concluded, whichever comes first. The issues designated for investigation are discussed below.

IV. PARTIES

9. The studies submitted by Bell Atlantic, US West, and Pac Bell address the effects of SFAS-106 on all local telephone companies subject to the price cap rules. In light of this, and also the fact that the Commission's price cap plan applies equally to all price cap LECs, the issue of the exogenous treatment of the costs associated with implementing SFAS-106 appears to be similar for all LECs subject to price caps. In the interest of fairness and efficiency, we believe that these issues should be considered in a single proceeding. We therefore make all price cap LECs parties to this proceeding, including those LECs who have not at this point sought exogenous treatment of the costs to implement SFAS-106.[12] Non-price cap LECs may participate in this proceeding as voluntary parties, as of course may other interested persons.

V. ISSUES DESIGNATED FOR INVESTIGATION

10. We hereby designate the following issues for investigation:

I. Have the LECs borne their burden of demonstrating that implementing SFAS-106 results in an exogenous cost change under the Commission's price cap rules?

II. If these cost changes are treated as exogenous,

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[10] As a result of implementing SFAS-106, Bell Atlantic seeks to increase its price cap index levels up to $49.7 million for the period January 1, 1991 through June 30, 1993. US West seeks to increase its price cap index levels up to $19.03 million for the period January 1, 1993 through June 30, 1993. Pac Bell seeks to increase its price cap index levels up to $27 million for the period January 1, 1993 through June 30, 1993.

[11] We do not suspend the Pac Bell tariff in this Order. See supra note 3.

[12] For a complete list of price cap LECs, see Appendix A.

(a) Should costs associated with implementation of SFAS-106 prior to January 1, 1993 (when the accounting change becomes mandatory) be treated as exogenous?

(b) Are the assumptions made by the individual LECs in calculating these costs reasonable?

(c) Given these assumptions, have the individual LECs correctly computed the exogenous cost changes?

(d) Are the individual LEC allocations of these costs among the price cap baskets consistent with Commission rules?

VI. DIRECT CASES

11. Since each LEC will presumably seek, as have Bell Atlantic, US West, and Pac Bell, to increase its price cap indexes to reflect implementation of SFAS-106, the burden of proof is on each LEC to show that the increase in its price cap index levels or its rates is just and reasonable.[13] Accordingly, each LEC party shall provide, as a part of its direct case, information it believes sufficient to bear its burden of proof. At a minimum, the following information should be provided in the LECs' direct cases: (1) the date the LEC has implemented or intends to implement SFAS-106; (2) the costs by year; (3) the allocation of costs to baskets by year;[14] (4) the treatment of these costs in reports to the Securities and Exchange Commission (SEC) and to shareholders, including specific citations to, or excerpted materials from, such reports; and (5) all studies on which the LEC seeks to rely in its demonstration that these accounting changes should be considered exogenous cost changes, including all studies demonstrating that the change is not reflected in the current price cap formulas, factors for inflation, productivity, allowed exogenous changes, initial price cap rates, and the sharing and low-end formula adjustment mechanisms.

12. In order to develop as complete a record as possible to resolve the issues designated for investigation, we provide below a list of more detailed information that is likely to be useful. This list is by no means intended to be exhaustive and is only intended to assist the parties in this proceeding in their preparation of direct cases, oppositions, comments, or rebuttals. We would welcome additional information not listed in this section that parties believe addresses the merits of the issues designated for investigation.

13. In particular, the LECs should describe: (1) each of the type of benefits being provided that is covered by the SFAS-106 accounting rules; (2) for 1991 and 1992, the pay-as-you-go level of expense associated with these benefits; (3) any Voluntary Employee Benefit Association (VEBA) trusts or

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[13] See 47 U.S.C. § 204(a).

[14] Those price cap LECs who have not yet filed tariffs implementing SFAS-106 should submit good faith estimates of the costs outlined in (2) and (3) of this Section.

other funding mechanisms for these expenses which were established prior to the adoption of SFAS-106; (4) the forms of postretirement benefit accrual accounting, if any, that were adopted within the regulated financial reporting before the adoption of price cap regulation; (5) what type and level of SFAS-106-type expense is reflected in current rates; and (6) what type and level of SFAS-106-type expense was reflected in the starting rates for price caps.

14. We also seek descriptions and justifications of the actuarial assumptions, and the assumptions unique to postretirement health care benefits, made in computing the SFAS-106 expenses.[15] These assumptions should include, but are not limited to, the time value of money, participation rates, retirement age, per capita claims cost by age, health care cost trend rates, Medicare reimbursement rates, salary progression (if a company has a pay-related plan), and the probability of payment (turnover, dependency status, mortality, etc.). Parties and commenters should also discuss what assumptions, if any, were made about other future events such as capping or elimination of benefits, or the possible advent of national health insurance.

15. Further, since part of the growth in the GNP-PI presumably occurs due to growth in medical costs, we seek information on what adjustment, if any, should be made in the exogenous adjustment to avoid any double counting. If an adjustment has been made, parties and commenters should document how the adjustment was computed. Moreover, parties and commenters should describe and quantify any wage changes which will be reflected in the GNP-PI that are expected to occur as a result of the introduction of SFAS-106. In particular, parties and commenters should discuss what adjustment, if any, should be reflected in the exogenous adjustment for this change.

16. Finally, parties and commenters relying on the macroeconomic model used in the USTA study should fully describe and document the model, including the method of estimation, parameter estimates, and summary statistics. This same data should be submitted for any alternate functional forms which were modeled, including the data used to estimate the model, the data used in making forecasts from the model, and the results of any sensitivity analyses performed to determine the effect of using different assumptions.

VII. PROCEDURAL MATTERS

A. Filing Schedules

17. This investigation will be conducted as a notice and comment proceeding pursuant to Section 1.411 of the Commission's Rules, 47 C.F.R. § 1.411. CC Docket No. 92-101 has been assigned for this purpose. The carriers listed in Appendix A to this Order are designated as parties. These parties shall file their direct cases no later than June 1, 1992. The direct cases must present the parties' positions with respect to the issues described in this Order. The direct cases shall specifically reference (using the designations used in this Order) the issues designated in paragraph 10, the information sought in paragraph 11, and the additional information sought in

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[15] These expenses are described in paragraphs 29 through 42 of SFAS-106.

paragraphs 12 through 16. Pleadings responding to the direct cases may be filed no later than July 1, 1992, and must be captioned "Opposition to Direct Case" or "Comments on Direct Case." Parties may each file a "Rebuttal" to oppositions or comments no later than July 15, 1992.

18. An original and seven copies of all pleadings must be filed with the Secretary of the Commission. In addition, one copy must be delivered to the Commission's commercial copying firm, Downtown Copy Center, Room 246, 1919 M St., N.W., Washington, D.C. 20554. Members of the general public who wish to express their views in an informal manner regarding the issues in this investigation may do so by submitting one copy of their comments to the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Such comments must specify the docket number of this investigation.

19. All relevant and timely pleadings will be considered by the Commission. In reaching a decision, the Commission will take into account information and ideas not contained in pleadings, provided that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of reliance on such information is noted in the Order.

B. Ex Parte Requirements

20. Ex parte contacts (i.e., written or oral communications which address the procedural or substantive merits of the proceeding which are directed to any member, officer, or employee of the Commission who may reasonably be expected to be involved in the decisional process in this proceeding) are permitted in this proceeding until a public notice of scheduled Commission consideration of a final Order is released and after the final Order itself is issued. Written ex parte contacts must be filed on the day submitted with the Secretary and Commission employees receiving each presentation. For other requirements, see generally Section 1.1200 et seq. of the Commission's Rules, 47 C.F.R. §§ 1.1200 et seq.

C. Paperwork Reduction Act

21. The investigation established in this Order has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection, or recordkeeping, labeling, disclosure or other record retention requirements as contemplated under the statute. See 44 U.S.C. § 3502(4)(A).

VIII. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201(b), 203, 204(a), 205, and 403 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201(b), 203, 204(a), 205, and 403, that the issues set forth in this Order are DESIGNATED FOR INVESTIGATION.

23. IT IS FURTHER ORDERED that the carriers listed in Appendix A SHALL BE PARTIES to this proceeding.

24. IT IS FURTHER ORDERED that each LEC party SHALL PROVIDE, as a part of its direct case, information it believes sufficient to bear its burden of proof that the increase in its price cap index levels or its rates reflecting implementation of SFAS-106 is just and reasonable.

25. IT IS FURTHER ORDERED that Bell Atlantic Tariff F.C.C. No. 1, Transmittal 497 and US West Tariff F.C.C. Nos. 1 and 4, Transmittal 246 ARE SUSPENDED, pursuant to Section 204 of the Communications Act of 1934, 47 U.S.C. § 204, for five months beyond the time these tariffs would otherwise go into effect, or until this investigation is concluded, whichever comes first. The suspension period for the Bell Atlantic tariff shall end on December 2, 1992, and the suspension period for the US West tariff shall end on January 1, 1993.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

APPENDIX A

List of Local Exchange Carriers Subject to Price Cap Regulation

Ameritech Operating Companies
Bell Atlantic Telephone Companies
BellSouth Telecommunications, Inc.
GTE Telephone Operating Companies
GTE System Telephone Companies
Nevada Bell
NYNEX Telephone Companies
Pacific Bell
Rochester Telephone Corporation
Southern New England Telephone Company
Southwestern Bell Telephone Company
United Telephone System
US West Communications, Inc.