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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DA 93-762

In the Matter of	)	
1993 Annual Access Tariff Filings	)	CC Docket No. 93-193
National Exchange Carrier Association	)	Transmittal No. 556
Universal Service Fund and Lifeline Assistance Rates	)	CC Docket No. 93-123
GSF Order Compliance Filings	)	
Bell Operating Companies' Tariff for the 800 Service Management System and 800 Data Base Access Tariffs	)	CC Docket No. 93-129

MEMORANDUM OPINION AND ORDER
SUSPENDING RATES
AND DESIGNATING ISSUES FOR INVESTIGATION

Adopted: June 23, 1993; Released: June 23, 1993

By the Acting Chief, Common Carrier Bureau:

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I. EXECUTIVE SUMMARY

1. Section 69.3(a)[1] of the Commission's rules requires the local exchange carriers (LECs) and the National Exchange Carrier Association (NECA) to file annual access tariffs on April 2, 1993,

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[1] 47 C.F.R. § 69.3(a).

to become effective July 1, 1993. As required by Section 69.3(f)[2] of the Commission's rules, LECs electing to be subject to Section 61.39[3] filed biennial tariff filings for traffic sensitive rates on April 2, 1993 to become effective July 1, 1993. This Order reviews these annual and biennial filings, and directs these parties, where appropriate, to refile rates in accordance with this Order.[4]

2. The Tier 1 LECs[5] and NECA filed total access reductions of $184 million. These reductions are apportioned among access categories as follows: end user charges would increase $73.1 million, carrier common line charges would be reduced $229.1 million, switched traffic sensitive charges would be reduced $21.1 million, and special access charges would be reduced $6.7 million. The change in switched access (carrier common line plus switched traffic sensitive) is a net reduction, of $250 million, or 2.1 percent. Two LECS, Lincoln and Centel, elected to file pursuant to price cap regulation for the first time.

3. Pursuant to Section 204(a) of the Communications Act and Section 0.291 of the Commission's rules,[6] this Order suspends the annual access rates for one day and initiates an investigation of tariffs filed by price cap LECs seeking exogenous treatment of Statement of Financial Accounting Standards 106 (SFAS-106) transitional benefit obligation (TBO) amounts. This Order also suspends for one day and initiates an investigation concerning how sharing and low-end adjustments to the price cap indexes should be reflected in the rate of return used to determine sharing and low-end adjustments in the following year. This Order also suspends other portions of the annual access rates for one day and initiates an investigation on a variety of miscellaneous issues raised by petitioners or identified by the Bureau.

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[2] 47 C.F.R. § 69.3(f).

[3] 47 C.F.R. § 61.39.

[4] Appendix A contains a list of parties filing pleadings in this proceeding and provides the full and abbreviated names of the parties as used in this Order.

[5] Tier 1 companies have annual revenues from regulated telecommunications operations of $100 million or more. Tier 2 companies are companies having annual revenues from regulated telecommunications operations of less than $100 million. Tier 1 companies account for over 95 percent of total interstate access revenues.

[6] 47 U.S.C. § 204(a); 47 C.F.R. § 0.291.

II. PRICE CAP CARRIERS

A. Exogenous Treatment of Accounting Changes for Retiree Health Costs

1) Background

4. In December 1990, the Financial Accounting Standards Board (FASB) adopted SFAS-106, requiring that companies account for postretirement benefits other than pensions (OPEBs) on an accrual basis, to begin after December 15, 1992. Before SFAS-106, OPEBs were accounted for on a "pay-as-you-go" basis. Under accrual methods, OPEBs are treated as deferred compensation earned by employees as they work. SFAS-106 also requires companies to book previously unaccrued obligation amounts for OPEBs to retirees and active employees existing as of the adoption date. This amount is termed the transitional benefit obligation (TBO).

5. The Common Carrier Bureau issued an Order approving the requests of two LECs to adopt SFAS-106 accounting on or before January 1, 1993.[7] However, to avoid distortions of LEC operating results from a one-time inclusion of the TBO, the Bureau directed carriers to use the SFAS-106 option of spreading the TBO over a 20-year period, or over the average remaining service period of active plan participants.[8]

6. Subsequently, several LECs subject to price cap regulation filed tariff transmittals which sought exogenous treatment[9] of OPEBs.[10] These transmittals were suspended and

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[7] Southwestern Bell Corporation, GTE Service Corporation, Notification of Intent to Adopt Statement of Financial Accounting Standards No. 106, Employer's Accounting for Postretirement Benefits Other Than Pensions, 6 FCC Rcd 7560 (Com. Car. Bur. 1991). This order was intended to conform the Commission's Uniform System of Accounts (USOA) with generally accepted accounting principles (GAAP).

[8] Id.; see also Uniform Accounting for Postretirement Benefits Other Than Pensions in Part 32, 7 FCC Rcd 2872 (1992).

[9] The list of exogenous cost changes LECs may file appears in Section 61.45(d) of the Commission's rules. GAAP changes are not specifically recognized on the list, but the Commission, in the reconsideration order in the price cap regulation docket stated that the Commission would consider the issue of whether OPEBs are exogenous once SFAS-106 became final. Policy and Rules Concerning Rates for Dominant Carriers, Order on Reconsideration, 6 FCC Rcd 2637, 2663-64 (1991).

[10] See Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 497 (Filed February 28, 1992 to be effective July 2, 1992); US West Communications, Inc. Tariff F.C.C. Nos. 1 and 4, Transmittal No. 246 (Filed April 3, 1992 to be effective August 1, 1992); and Pacific Bell Tariff F.C.C. No. 128,

investigated.[11] On January 22, 1993, the Commission adopted an order denying the LECs' request for exogenous treatment of OPEBs.[12] However, the decision did not foreclose further consideration of exogenous treatment of TBO amounts based on a better and more complete record.[13] The annual 1993 access tariff filings were suggested as a possible forum for such consideration.[14]

7. The OPEB Order concluded that not all changes in generally accepted accounting principles (GAAP) are automatically entitled to exogenous treatment.[15] The OPEB Order also observed that the burden of proof is on the carrier seeking exogenous treatment.[16] The OPEB Order outlined the two-pronged test for whether GAAP changes should be treated exogenously. The first prong requires the carrier to show that the imposition of the costs is not within the control of the price cap carrier. The second prong requires the carrier to show that the costs are not reflected in the price cap formula, for example in the GNP-PI.[17] The OPEB

Transmittal No. 1579 (Filed April 16, 1992, to be effective January 1, 1993).

11 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, 7 FCC Rcd 2724 (Com. Car. Bur. 1992). The Bureau designated the following issues for investigation: 1) whether the LECs have borne their burden of demonstrating that implementing SFAS-106 results in an exogenous cost change under the Commission's price cap rules; and 2) if these cost changes are treated as exogenous: (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; and (d) are the individual LEC allocations of these costs among the price cap baskets consistent with Commission rules. Id. at 2725-26.

12 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, 8 FCC Rcd 1024 (1993) (OPEB Order).

13 Id. at 1037.

14 Id.

15 Id. at 1026, citing Policy and Rules Concerning Rates for Dominant Carriers, Report and Order and Second Further Notice, 4 FCC Rcd 3379, modified on recon., 6 FCC Rcd 665 at 674 (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), modified on recon., 6 FCC Rcd 2637 at 2663-65 (1991).

16 OPEB Order at 1026 and 1033.

17 Id. at 1033.

Order also concludes that "this GAAP change does not create an economic cost change for companies in general or for the LECs in particular. . . ."[18]

8. The OPEB Order concluded that, at least as to going forward OPEB amounts, the LECs have substantial control over the amount booked as OPEBs. Accordingly, the LECs failed the first prong of the exogenous cost test for going-forward amounts.[19] Concerning the TBO amounts, however, the Commission stated that it did not have to resolve the control issue because the LECs failed to meet their burden of proving that the amounts claimed as the TBO had not already been accounted for in the GNP-PI, the second prong of the test.[20]

9. The LECs based their second-prong showing on two studies: one prepared for the United States Telephone Association by Godwins; and one prepared by National Economic Research Associates, Inc. (NERA). The OPEB Order concluded that neither study proved that its initial assumptions were correct; thus, any conclusion derived from them would be speculative.[21] The OPEB Order expressed reservation about the speculative nature and close dependency of results on the initial assumptions, stating "[w]ere we to grant exogenous treatment . . . the LECs would only have to beat those assumptions to realize an apparent productivity gain."[22]

10. The OPEB Order also addressed an intertemporal double-counting issue. This issue arises from the intertemporal nature of the SFAS-106 change. Because pay-as-you-go amounts for OPEBs are already built into the LECs' rates, the GNP-PI portion of the X factor in the PCIs would give the LECs all the funds they need over time to cover these expenses. The immediate recovery of these costs (on an accrual basis) as an exogenous change, and the recovery over time through the GNP-PI portion of the X factor, would result in double counting.[23] The OPEB Order concluded that,

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18 Id. at 1037.

19 OPEB Order at 1033.

20 Id. at 1034.

21 Id. Godwins assumed that SFAS-106 is an economic cost change that will affect all companies' costs and prices in the coming years and contended that the effect on the LECs is disproportionate because they typically differ from other companies in several characteristics. NERA argued that SFAS-106 will have none of these effects for most companies because it does not change their actual economic costs and liabilities.

22 Id. at 1035.

23 Id.

absent absolute accuracy regarding forecasts of medical trends, discount rates, retirement rates, and other demographic assumptions, LECs would have productivity gains or losses by beating, or failing to beat, the assumptions. The order concluded that a year-by-year true-up mechanism necessary to deal with this issue would be an undesirable and complex addition to the price cap plan.[24]

11. The OPEB Order mentioned the rate of return used to establish initial rates as another potential source of double counting with respect to OPEBs; i.e., since there must have been at least some doubt about whether the LECs would be able to change their rates when SFAS-106 was implemented, this additional risk would be reflected in a relatively higher return. Thus, the SFAS-106 change would already be reflected in the initial rate of return. In addition, the Order questioned whether SFAS-106 amounts are already included in the studies used to determine the productivity factor in the price cap formula. The Order stated that there are two possible questions about double counting with the productivity factor which must be considered, but that the LECs failed to address: (1) what would have been the effect on the studies used to derive the productivity factor of excluding these amounts; and, (2) how would the Commission have weighed this change in the results of the studies when it set the productivity factor. The order noted that exclusion of these amounts from the short run productivity study would have resulted in a greater reduction in LEC costs in the period studied. The greater reduction in LEC costs would have implied a larger productivity factor in the short run study. If this were the case, the Commission might well have chosen a higher productivity factor for the price cap formula.[25]

2) 1993 Annual Access Tariffs

12. Ameritech, Bell Atlantic, BellSouth, GTOC, GTSC, Lincoln, NYNEX, Rochester, Southwestern, and US West seek exogenous treatment of TBO amounts.[26] In general, the LECs seeking exogenous treatment for OPEB amounts have limited the request in the 1993 annual access filings to incremental costs associated with the implementation of SFAS-106 for existing retired employees.[27] These LECs argue that they should be allowed to treat the TBO amounts

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24 Id.

25 Id. at 1036 and n. 117.

26 Centel, United and Pacific have not sought exogenous treatment of TBO expenses in their 1993 annual access filings.

27 See Ameritech D&J at 8; Bell Atlantic D&J at 4-20; BellSouth D&J at A-12; GTOC D&J at 15; Lincoln D&J at 15; NYNEX D&J at 49; Rochester D&J at 1-9; Southwestern D&J at 3-1; and US West D&J at 2-6.

exogenously based on the requirements outlined in the OPEB Order; i.e., that the TBO amounts are beyond the carriers' control, and that amounts included are not otherwise included in the price cap formula.[28]

a) Control issues

i) LECs' positions

13. The LECs argue that their control over these costs (i.e., their ability to adjust benefit plans for existing retirees) is limited, because, if these retiree benefit packages are dramatically changed, current employees will decrease the value of any deferred compensation when evaluating total compensation packages and will require higher immediate compensation or seek employment elsewhere.[29] Ameritech, for example, argues that in a competitive labor market, employees evaluate the total compensation package, or mix of wages and benefits. Thus, Ameritech states, if prior to price caps, Ameritech had offered higher wages and fewer benefits, its rates would have been higher. Accordingly, Ameritech contends, its PCI would be higher now.[30]

14. The LECs also argue that these costs are not within their control because they were based on commitments made prior to the adoption of SFAS 106. Further, these costs, the LECs assert, were based mainly on labor contracts negotiated between the companies and unions and cannot be unilaterally changed by the companies.[31] The remainder of current retirees costs associated with the TBO are for retired management employees. Bell Atlantic, for example, asserts that several court decisions have blocked companies' attempts to limit retired management employees' benefits and it may be extremely difficult for Bell Atlantic to change these amounts. Therefore, the LECs assert, the cost of current retirees' benefits is beyond their control.[32]

15. NYNEX, Lincoln and Rochester argue that the SFAS 106 change is beyond their control because the Commission ordered

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28 See Ameritech D&J at 10; Bell Atlantic D&J at 4-21 - 4-22; BellSouth D&J at A-11 - A-14; GTOC D&J at 10; Lincoln D&J at 15-16; NYNEX D&J at 53-57; Rochester D&J at 1-9; Southwestern D&J at 3-4 - 3-5; and US West D&J at 2-14 - 2-17.

29 Ameritech D&J at 8; accord NYNEX D&J at 52-53; GTOC D&J at 17.

30 Ameritech D&J at 8.

31 See Bell Atlantic Reply at 3; GTE Reply at 4-7; NYNEX Reply at 4; Southwestern Reply at 8-10; SNET Reply at 8.

32 Bell Atlantic D&J at 4-21 - 4-22.

implementation of SFAS-106 accounting and because the amounts are dictated by actuarial estimates.[33] Southwestern argues that it has been extremely aggressive in its management of health care costs. Because of this aggressive management, Southwestern's valuation of the TBO already contains a highly significant curtailment of health care inflation rates.[34] Southwestern argues that it is willing to make reasonable future adjustments to the exogenous amount pursuant to annual reporting of changes which affect TBO amounts.[35]

ii) Petitions

16. Petitioners generally agree that the LECs seeking exogenous treatment of TBO amounts have failed to make the required showing established in the OPEB Order.[36] AT&T argues that a lack of control over regulatory action is not sufficient to justify exogenous treatment. Drawing an analogy to the treatment of depreciation rates, AT&T asserts that LECs do have the ability to influence and control the cost of benefits represented by the TBO, negating any right to exogenous treatment.[37] AT&T further argues that, most fundamentally, no carrier has produced evidence from its medical plan descriptions or labor contracts showing that it has relinquished the right to modify or withdraw its benefit plans.[38] Both Ad Hoc and AT&T assert that there is no statutory right or entitlement to benefits under the Employee Retirement Income Security Act (ERISA).[39] Thus, these parties assert that no rights vest with employees, and there is a strong presumption that employers retain contractual rights to modify, suspend or terminate plans through their contracts with the union. Finally, concerning the control issue, AT&T contends that the fact that the LECs have

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33 NYNEX D&J at 52-53; Rochester D&J at 1-9 - 1-10; Rochester Reply at 4; Lincoln D&J at 15.

34 Southwestern D&J at 3-17.

35 Southwestern Reply at 6-7; see accord US West Reply at 9-10.

36 Ad Hoc Petition at 3; AT&T Petition at ii and 2-6; ICA Petition at 1 and 3; MCI Petition at 2; Sprint Petition at 2 and 3; see also WilTel Petition at 4-5.

37 AT&T Petition at 6-7.

38 Id. at 8.

39 Ad Hoc Petition at 9-10; AT&T Petition at 7, (citing, In re White Farm Equipment Co., 788 F. 2d 1186, 1193 (6th Cir. 1986) (nothing in ERISA precludes an employer from changing or withdrawing OPEBs from its employees or retirees.)).

taken measures to reduce costs is a clear indication of carrier control.[40]

b) Double-counting issues

i) LECs' positions

17. All LECs except Rochester endorse the Godwins study conclusions and describe them as very conservative, erring on the side of underestimating the TBO amounts not reflected in the GNP-PI.[41] Rochester applies the conclusion of the NERA study in determining the portion of TBO expenses for which it seeks exogenous treatment.[42]

18. A number of the companies refer to a second study performed by Godwins. This study was commissioned to provide additional sensitivity analysis[43] to address some concerns raised in the OPEB Order.[44] This second study by Godwins is intended to provide: (1) a demonstration of the conservative nature of the original Godwins study in comparison to the NERA study; (2) an explanation of the range of values used in the model to perform the sensitivity analysis of 648 variations of the basic assumption values; and, (3) a summary and examination of the results of Godwins' additional sensitivity analysis.[45] The LEC's arguments concerning double counting in the GNP-PI rely on these points.[46]

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40 AT&T Petition at 10.

41 See e.g., Southwestern Bell D&J at 3-6, n. 14, defining as "conservative" assumptions which ensure that the estimate of double counting to be removed from the exogenous request was overstated, and that the need for exogenous cost increases was understated. According to Southwestern, the original Godwins study qualified as a conservative approach to justifying the size of the exogenous factor for OPEBs.

42 Rochester D&J at 1-13; Rochester Reply at 8-9.

43 "Sensitivity analysis" involves testing the validity of conclusions by altering the key assumptions underlying a study. If, within a reasonable range of assumptions, the conclusions remain roughly the same, then they could reasonably be considered correct.

44 See OPEB Order, 8 FCC Rcd at 1035.

45 See Ameritech D&J at 9-10.

46 See BellSouth D&J at A-13 - A-16; GTOC D&J at 19-21; GTE Reply at 7-9; Lincoln D&J at 16; NYNEX D&J at 60; NYNEX Reply at 4; SNET D&J at 19-20; Southwestern D&J at 3-6 - 3-12; and US West D&J at 2-13.

19. The LECs argue that any amounts that could impact any part of the price cap formula were removed from the GNP-PI. Bell Atlantic asserts, for example, that the current retirees' portion of the TBO represents amounts since January 1, 1991, the beginning date for price caps. SFAS 106 was not promulgated until December of 1990, and, Bell Atlantic is not aware of any firm implementing SFAS 106 prior to January 1, 1991. Therefore, Bell Atlantic argues, the current retirees' portion of the TBO could not have been reflected in past GNP-PI factors except for the pay-as-you-go and Voluntary Employee Benefits Association (VEBA) funded amounts. Bell Atlantic contends that it eliminated this concern by reducing its exogenous cost amount for the entire pay-as-you-go amounts.[47]

20. Several LECs address other areas of potential double counting as discussed in the OPEB Order. Concerning the rate of return, Ameritech, for example, argues that if investors assumed there would be no change in rates when SFAS-106 was implemented, they may have required a higher rate of return to compute going-in rates under price caps. Ameritech asserts that investors relied upon the initial price cap orders' indications that all mandatory GAAP changes would receive exogenous treatment.[48] Southwestern argues that, at the time of the rate of return prescription, investor information, consistent with the price cap orders, would be that exogenous treatment would be afforded all GAAP changes.[49]

21. Ameritech contends that the VEBA impact on the productivity factor is not relevant in this filing because VEBA Trusts formed prior to price caps were established to recognize deferred compensation for active employees, not retirees. Ameritech argues that it requests exogenous treatment only for the incremental OPEB amounts for existing retirees in this filing, the concern that VEBA costs distort the level of productivity experienced by LECs is not a reason to deny exogenous cost treatment of OPEBs.[50]

22. NYNEX argues that in the price cap proceeding, the Commission acknowledged that none of the productivity studies was entirely conclusive, but rather provided only a range of values. NYNEX contends that there is no persuasive evidence to suggest that

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47 Bell Atlantic D&J at 4-23.

48 Ameritech D&J at 13; GTE Reply at 12.

49 Id. at 3-30 - 3-31; Southwestern Reply at 25-26.

50 Ameritech D&J at 13-14.

if the studies were adjusted for VEBA costs incurred by some LECS, there would have been a significant difference in that range.[51]

23. Southwestern states that it has requested exogenous treatment for only the increment by which SFAS-106 costs exceed pay-as-you-go costs. By doing so, Southwestern asserts, it has eliminated any of the potential intertemporal double counting described in the OPEB Order.[52]

ii) Petitions

24. Petitioners generally argue that the second Godwins study does not meet the LECs' burden of demonstrating that exogenous treatment is warranted.[53] Ad Hoc argues that the issue addressed by the Godwins study constitutes only a small part of the basis for the Commission's rejection of OPEBs, and that the LECs do not adequately address these remaining double counting concerns.[54] Ad Hoc also argues that many other publicly-traded firms have had to recognize the same accounting effects, and the LECs have been unable to show why they should be treated differently.[55]

25. AT&T argues that the expanded sensitivity analysis provided by Godwins does not alter the fact that the Godwins estimates are based on assumptions not corroborated by either empirical evidence or statistical analysis. For example, AT&T notes, Godwins does not provide evidence or analysis of the magnitude of wage or price changes in the economy resulting from SFAS-106 implementation.[56] AT&T contends that this is a critical flaw because the sensitivity analysis can only indicate the range of reasonable outcomes, assuming that the model is appropriate in

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[51] NYNEX D&J at 62; see also Bell Atlantic D&J at 4-24 - 4-25.

[52] Southwestern D&J at 3-32.

[53] Ad Hoc Petition at 4; AT&T Petition at 12-20; ICA Petition at 3; MCI Petition at 10; Sprint Petition at 3.

[54] Ad Hoc Petition at 5 (stating other areas of potential double counting include: national price indices; pay-as-you-go trends of these costs versus the incremental SFAS-106 accounting effect; investor perceptions and required returns used both to initialize the LEC price caps and to support the sharing and lower formula adjustment mechanism; and in the price cap productivity factor calculation); see also MCI Petition at 10-16 (addressing intertemporal double counting and double counting in rate of return and the productivity factor).

[55] Ad Hoc Petition at 14; see also ICA Petition at 1.

[56] AT&T Petition at 15-16.

the first place.[57] AT&T further argues that the TBO is a "sunk" cost which could affect the value of a firm (much like an adverse ruling in a product liability suit), but has nothing to do with the firm's current labor expense. Furthermore, AT&T argues, there is no evidence that a "sunk" cost would translate to a price increase by nonregulated firms.[58]

26. Concerning the rate of return double counting issue, AT&T argues that, as shown by the reaction of Standard & Poor's (S&P) to FASB's 1986 SFAS-106 exposure draft (one year prior to the LEC Represcription Order), the institutional investor was not only aware of the OPEB issue, but had formed an opinion on the relevance of SFAS 106 to the capital markets. AT&T contends that S&P concluded that for debt rating purposes, it would focus on current cash outlays rather than speculative future accruals.[59] In other words, AT&T argues, the cash OPEB amounts built into the LECs' rate of return, not the accrued costs represented by SFAS-106, are the relevant costs for determining the LECs' cost of equity capital. Thus, AT&T concluded, because the price cap LECs' rate of return already includes a risk assessment based on those costs, to grant exogenous treatment to the TBO would entail double counting.[60]

3) Discussion

27. LEC claims in the 1993 annual access filings for exogenous treatment of TBO amounts include complex analysis and reasoning that demand equally complex review. The claims raise difficult issues concerning the degree of control LECs have over TBO amounts and concerning potential double-counting in several parts of the price cap formula.

28. The OPEB Order restated that, for GAAP changes, the burden is on the LEC seeking exogenous treatment to prove that the amounts are not within the control of the price cap carrier and that the costs are not already reflected in the price cap formula. The record associated with the 1993 annual price cap filings is inconclusive concerning the control issue. Some LECs argue that these costs are absolutely not within the LEC's control.[61] Other LECs assert that they have control, but that the control is

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57 Id.

58 Id. at 16-17; but see BellSouth Reply at 5-6.

59 AT&T Petition at App. B-5, 2 (a copy of S&P announcement is included in the petition).

60 Id. at 3.

61 See Bell Atlantic D&J at 4-21 - 4-22.

limited.[62] At least one company may have the unilateral power to "modify, suspend or terminate" benefits.[63]

29. The record concerning double counting in the GNP-PI has been enhanced by a second Godwins study. However, other potential areas of double counting discussed in the OPEB Order have not been sufficiently addressed. These include: the intertemporal double counting issue; double counting related to the inclusion of costs in the prescription of the rate of return which determined the initial price cap rates; and the anticipation of SFAS-106 costs in the studies underlying the productivity factors. These issues are of significant monetary importance to both the companies and their ratepayers. Pursuant to Section 204(a) of the Communications Act and Section 0.291 of the Commission's rules, we conclude that an investigation of the proposed tariff changes based on the claims for exogenous treatment of TBO amounts is warranted. We therefore suspend the affected tariffs for one day, impose an accounting order, and initiate an investigation. We designate issues for investigation in Section VI of this Order. Parties to the investigation are listed at Appendix B of this Order.

B. Sharing and Low-End Adjustment Issues

1) Implementation of the Sharing and Low End Adjustment Mechanism

30. AT&T contends that several price cap LECs appear to have improperly implemented the sharing and low end adjustment mechanisms. In particular, AT&T alleges that NYNEX and SNET have erred in restating their 1992 calendar year earnings by excluding revenues received in 1992 from a low-end adjustment.[64]

31. NYNEX responds that removal of the low-end adjustment revenues is required to effect the earnings limitations of price caps. Otherwise, NYNEX argues, a LEC that underearns would never be able to attract capital and stay in business. Additionally, NYNEX argues that its treatment of the low-end adjustment is consistent with the Commission's rules.[65] Similarly, SNET argues that the exclusion of its 1992 low-end adjustment revenues from 1991 earnings is necessary to comply with the price cap rules.[66]

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62 See Ameritech D&J at 8.

63 See Lincoln D&J at 15.

64 AT&T Petition at 20-21; accord MCI Petition at 21-24.

65 NYNEX Reply at 2-3.

66 SNET Reply at 4.

32. AT&T raises an issue which applies to all LECs that had a sharing amount or low end adjustment based on 1991 earnings. This issue is being addressed in a Notice of Proposed Rulemaking.[67] The proceeding would clarify the LEC price cap rules to require that price cap LECs compute their rates of return for the price cap sharing and low-end adjustment mechanisms in basically the same manner as rate of return carriers do in determining overearnings. The proposed rules include an adjustment to "add back" the effect on rates of return of both rate increases and reductions under price caps to share or increase earnings from earlier years.[68] Because the issue is unresolved we suspend the affected tariffs for one day, impose an accounting order, and initiate an investigation pertaining to all LECs that had a sharing amount or low-end adjustment last year.

2) Omission of Interest from Revised Lower Formula Adjustment Amounts of GTE and NYNEX

33. AT&T and MCI argue that several LECs[69] that restated their 1991 Form 492 results have reported higher earnings than previously reported, thus requiring that these carriers make an adjustment that effectively reduces the low-end adjustment they received for the 1992/93 tariff period. However, petitioners argue, these carriers have not included an interest amount in their calculations.[70]

34. NYNEX and GTE respond that the Commission required LECS to include interest on the original sharing obligations, while it did not allow the LECs to include interest on the original low-end adjustment. Thus, NYNEX and GTE argue, if the Commission had allowed NYNEX to include interest on the original low-end adjustment, it would have gained more revenues than it would return by adding interest to its 1991 earnings revisions.[71] GTE also asserts that such computations are not supportable by GAAP.[72]

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[67] Price Cap Regulation for Local Exchange Carriers Rate of Return Sharing and Lower Formula Adjustment, Notice of Proposed Rulemaking, CC Docket No. 93-179, FCC No. 93-325, (adopted June 18, 1993).

[68] In the 1993 access filings, only those LECs that made low-end adjustments in 1992 (NYNEX and SNET) added back amounts.

[69] NYNEX, GTE System - New York; GTE System - Texas; GTE System - South; GTE North (Idaho, Iowa, Ohio, Minnesota, Montana and Nebraska); and GTE Southwest.

[70] AT&T Petition at 28-30; MCI Petition at 24.

[71] NYNEX Reply at 4-5; GTE Reply at 14-15.

[72] GTE Reply at 14-15.

35. We have reviewed the GTOC, GSTC and NYNEX transmittal concerning their omission of interest from revised low-end adjustments. We conclude that the transmittals are not patently unlawful so as to warrant rejection. We also conclude that no question has been raised which warrants investigation at this time.[73]

3) Unexplained Earnings Revisions Affecting Sharing of BellSouth and Low-End Adjustment of SNET

36. AT&T asserts that, based on revised earnings in BellSouth's final report for calendar year 1991, BellSouth purports to revise the calculation of its original sharing amount downward by approximately $8.8 million, and thus increase its PCIs for the 1993-94 year to implement the change to its previously-reported sharing obligation for 1992. Similarly, AT&T contends that SNET has revised its 1991 earnings from 8.86 percent to 8.56 percent, which would increase the amount of its low-end adjustment for that year by approximately $3.2 million. AT&T argues that neither BellSouth nor SNET has provided sufficient explanation of the basis for its changes.[74]

37. BellSouth responds that the revision to its Form 492 Report and to its sharing amount for 1991 is necessary to properly reflect retroactive revenue billing adjustments. In addition, as a result of a decision to correct an error, BellSouth made a retroactive separations cost adjustment to properly reflect interstate Operator Transfer Service investment and expenses in calendar year 1991. BellSouth states that these interstate investment and expense revisions were not previously reported in BellSouth's initial Form 492 Report.[75]

38. SNET also responds that certain adjustments to its 1991 earnings are justified. SNET states that the primary reason for revision is completion of a study demonstrating a cash working capital requirement of $11.2 million in 1991. None was reported previously.[76]

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73 The parties' arguments, however, raise an issue that may require Commission reevaluation of its rules. The Commission does not have a rule which requires LECs to compute interest on the amount of underearnings that occur before the effective date of the low-end adjustment. The Commission does not require that interest be added when the low-end adjustment is revised.

74 AT&T Petition at 25-26.

75 BellSouth Reply at 11-12.

76 SNET Reply at 2.

39. We have reviewed the transmittals of BellSouth and SNET concerning earnings revisions affecting sharing and low-end adjustments of BellSouth and SNET respectively and all associated pleadings. We conclude that no compelling argument has been presented that the tariff revisions are so patently unlawful as to require rejection, and that no question has been presented that warrants investigation at this time.

4) Bell Atlantic's Omission of End User Revenues from the Common Line Basket for Sharing Purposes

40. AT&T argues that Bell Atlantic omitted end user revenues from the common line basket revenues in violation of the _1992 Annual Access Order's_[77] requirement that sharing amounts be distributed among baskets based on their proportionate revenues.[78] AT&T contends that Bell Atlantic's omission has a substantial effect on the allocation of sharing among baskets.[79] AT&T contends that the Commission should require Bell Atlantic to reallocate its 1992 sharing amounts, to adjust the allocation of its 1991 sharing true-ups, and to recalculate its price cap indices to reflect the change in the sharing allocation.[80]

41. Bell Atlantic argues that to include the end user revenues in the common line basket for purposes of determining sharing would be inconsistent with the Commission's requirement that sharing adjustments be flowed through on a "cost causative basis."[81] Bell Atlantic asserts that it complied with this requirement by allocating 1992 sharing amounts using an allocator that includes revenues that are affected by sharing. End user revenues, Bell Atlantic argues, are not cost causative and were, therefore, properly excluded from the allocator.[82]

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77 _1992 Annual Access Order_, 7 FCC Rcd at 4732-33 (Com.Car.Bur. 1992).

78 AT&T Petition at 26-27.

79 According to AT&T, Bell Atlantic's reported sharing was as follows: Common Line (21%, or $1.749 million), Traffic Sensitive (51.7% or $4.299 million), Special Access (20%, or $1.861 million), and Interexchange (7.2%, or $600,000). Using the corrected revenues, these allocations should be, according to AT&T: Common Line (43.4% or $3.606 million), Traffic Sensitive (37.1%, or $3.083 million), Special Access (14.3%, or $1.118 million), and Interexchange (5.2%, or $432,000).

80 AT&T Petition at 27.

81 Bell Atlantic Reply at 11-12, citing Policy and Rules Concerning Rates for Dominant Carriers, Order on Reconsideration, CC Docket No. 87-313, 6 FCC Rcd 2637, 2689 (1991).

82 _Id_.

42. The LEC Price Cap Order[83] states that under the sharing mechanism the PCI will be adjusted for all baskets on a cost causative basis. The 1992 Annual Access Order required carriers to allocate sharing obligations on a cost causative basis and found that revenues can be used as a proxy for basket costs.[84] The 1992 Annual Access Order also states that sharing allocations based on revenues most closely comport with the goals of the Commission's price cap plan to move away from cost allocation systems and instead focus on prices. It is not clear that Bell Atlantic's exclusion of end user revenues from the common line basket for sharing purposes is consistent with the LEC Price Cap Order and the 1992 Annual Access Order. We conclude that there is sufficient uncertainty to warrant investigation of Bell Atlantic's PCI adjustments. Pursuant to Section 204(a) of the Communications Act and Section 0.291 of the Commission's rules, we are suspending Bell Atlantic's rates for one day, imposing an accounting order, and initiating an investigation. We designate issues in Section VI of this Order.

5) Ameritech's Reversal Calculation for Sharing Amounts

43. Sprint argues that Ameritech's PCI is inflated due to problems associated with the reversal of 1992 sharing amounts as directed by the 1993 TRP Order.[85] Reversal of prior year sharing is an exogenous cost in the current year, due to its nature as a one-time event mandated by Commission rules.[86] Specifically, Sprint asserts, Ameritech's estimate of the 1993 removal is 1.66 percent higher than the 1992 sharing. However, Sprint continues, the increase in Ameritech's interstate revenues between 1992 and 1993 was only 1.36 percent. Sprint concludes that, if the 1.36 percent increase in revenues is applied to the 1992 sharing amount, the 1993 removal amount would be $18.436 million, or about $54,000 less than the amount claimed by Ameritech.[87]

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[83] See Second Report and Order, 5 FCC Rcd 6786, 6805 (1990) and Erratum, 5 FCC Rcd 7664 (1990) (LEC Price Cap Order), modified on recon. 6 FCC Rcd 2637 (1991), petitions for further recon. dismissed, 6 FCC Rcd 7482 (1991), upheld on appeal, National Rural Telecom Association v. FCC, Nos. 91-1300, 91-1303, 91-1304 and 91-1326, slip op. (D.C. Cir. Mar. 26, 1993).

[84] 1992 Annual Access Tariff Filings, CC Docket No. 92-141, 7 FCC Rcd 4731, 4732-33 (Com. Car. Bur. 1992)(1992 Annual Access Order).

[85] Commission Requirements for Cost Support Material to be Filed with 1993 Annual Access Tariffs, Order, 8 FCC Rcd 1936 (1993)(1993 TRP Order).

[86] Id. at 1938-39.

[87] Sprint Petition at 5-6.

44. Ameritech argues that Sprint incorrectly interprets the instructions for the removal of sharing provided in the 1993 TRP Order. Ameritech replies that it calculated the amount individually for each basket based on the percentage change in the base revenue, or "R" value, for that basket. Ameritech argues that there is no "R" value for total interstate, and that it would be inappropriate to add the "R" values for each basket to obtain a total interstate value because the imputed access revenues for interstate intraLATA traffic would be double counted since they appear in the interexchange basket as well as the common line and traffic sensitive baskets. Therefore, Ameritech asserts it properly calculated the sharing removal amounts.[88]

45. We have reviewed Ameritech's calculations of its sharing amounts in its Transmittal No. 702 and all associated pleadings. We conclude that no question has been presented that warrants investigation at this time.

C. US West Exogenous Impact of Dial Equipment Minutes (DEM) Transition

46. AT&T and MCI argue that US West has underreported its dial equipment minutes (DEM) exogenous cost reduction in the calculation of the Traffic Sensitive basket PCI. US West reports a reduction of $753,099 in exogenous costs, as the last step in the transition to DEM as the separations factor for local switching equipment.[89] AT&T argues that this amount deviates significantly from those calculated by other Bell Operating Companies.[90] AT&T asserts that, from the Commission's ARMIS reports, it has calculated that US West should include a further reduction of $5.677 million. MCI estimates a reduction of $5.5 million would be correct.

47. US West argues that petitioners' calculations employ a methodology which differs from that used by US West to calculate its DEM adjustment. The primary difference in methodologies, US West asserts, is the manner in which the DEM allocator is calculated. According to US West, AT&T and MCI hold the allocator constant from period to period while US West forecasts the minutes used to compute the overall DEM allocator for the prospective

88 Ameritech Reply at 6-7.

89 US West TRP EXG-1 form, Tariff F.C.C. No. 1, Transmittal No. 345, Apr. 2, 1993.

90 AT&T Petition at App. F, (stating that the other BOCs have shown decreases of from $3.5 million (Pacific) to $6.0 million (BellSouth) with an average reduction of $3.57 million); accord MCI Petition at 19.

tariff period.[91] In support of its calculations, US West provides: (1) supporting data with explanation of the forecasting process; (2) explanation of how the interstate DEM allocation factor is derived; and (3) explanation of how it developed its 1993 DEM exogenous cost adjustment.

48. Years 1988 through 1992 are transition years for the purpose of using DEM as an interstate allocator for certain investments. Transition rules give decreasing weight to the 1987 allocator and increasing weight to the DEM allocator.[92] The Commission allows exogenous cost treatment of this event to the extent that changes in the transition rules from the previous to the current tariff year would have affected interstate revenues in the current tariff year.

49. US West's method of calculating its DEM adjustment is different from the practice of other LECs. In addition, this difference has a significant monetary effect and appears not to be in accordance with Commission rules. Pursuant to Section 204(a) of the Communications Act and Section 0.291 of the Commission's rules, we conclude that an investigation of US West's exogenous treatment of the DEMs transition is warranted. Therefore, we are suspending US West's rates for one day, imposing an accounting order, and initiating an investigation. Issues designated for investigation appear in Section VI of this Order.

D. <u>Southwestern's Dark Fiber Rates</u>

50. MCI and Wiltel ask that we reject or suspend and investigate Southwestern's dark fiber rate increases. MCI argues that, in the 1992 annual access filing, Southwestern increased dark fiber rates from a prescribed rate of $112 per strand, per mile to $150, an increase of 34 percent. In the current filing, MCI asserts, Southwestern is proposing an additional increase to $215 per strand, per mile. This constitutes, MCI contends, an additional increase of 43 percent above Southwestern's current dark fiber rates, and a cumulative increase of 92 percent over the prescribed rate of $112 per strand, per mile.[93] MCI argues that the Commission prescribed reasonable dark fiber rates that were

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91 US West Reply at 17; US West argues that the Commission has not found its methodology unreasonable in past years.

92 The transition was complete as of the end of 1992 and full weight is now given to the DEM allocator. The DEM allocator equals the interstate minutes of holding time of originating and terminating local switching equipment divided by the total state and interstate minutes for local switching equipment.

93 MCI Petition at 26-27.

cost-based and provided a fair return.[94] Recognizing that Southwestern's rates are within-band and below-cap, MCI asserts that Southwestern is attempting to use the price cap rules to subvert the Commission's rate prescription in the Dark Fiber Order.

51. Wiltel argues that its monthly charges for dark fiber service will increase from $175,147.08 per month to $250,260 per month, an increase of over $900,000 per year. Wiltel contends that the rates are unreasonable in violation of Section 201(b) of the Communications Act.[95] Wiltel also alleges that the proposed increase will eradicate the proportional relationship between DS3 rates and dark fiber rates, which will constitute an unreasonable discrimination in violation of Section 202(a) of the Communications Act.[96]

52. Southwestern responds that its rates for dark fiber service are within-band and below-cap, and were filed pursuant to Section 61.49(b) of the Commission's Rules.[97] Southwestern further argues that, under Section 1.773(a)(1)(iv),[98] the rates are presumed to be prima facie lawful. Further, Southwestern contends that the parties have only marginally addressed one of the four elements necessary to overcome the presumption of lawfulness. Accordingly, Southwestern argues that the petitions of Wiltel and MCI should be dismissed.[99]

53. We have reviewed Southwestern Bell's transmittal concerning its dark fiber rates and all related pleadings. We conclude that the transmittal is not patently unlawful so as to warrant rejection. We also conclude that no question has been raised which warrants investigation at this time.

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[94] MCI Petition at 27-28, citing, Bell Atlantic Telephone Companies, Revisions to Tariff F.C.C. No. 1, Transmittal No. 395, BellSouth Telephone Companies, Revisions to Tariff F.C.C. No. 4, Transmittal No. 354, Southwestern Bell Telephone Company, Revisions to Tariff F.C.C. No. 68, Transmittal Nos. 2039, 2062, and 2094, US West Communications, Revisions to Tariff F.C.C. No. 1, Transmittal No. 127, CC Docket No. 88-136, Memorandum Opinion And Order, 6 FCC Rcd 4776 (1991) (Dark Fiber Order).

[95] Wiltel Petition at 3.

[96] Id. at 3-4.

[97] 47 C.F.R. § 61.49(b).

[98] 47 C.F.R. § 1.773(a)(1)(iv).

[99] Southwestern Reply at 31-35.

E. NYNEX's Gross Income Tax

54. AT&T asserts that NYNEX failed to include the proper amount of state gross income tax (GIT) in its exogenous cost calculation. AT&T argues that, as part of NYNEX's 1992 annual access filing, it included $6.75 million in its GIT exogenous cost reduction for a retroactive tax rate change, effective January 1, 1991. The exogenous cost reduction also included $1.818 million to reflect the effect of a six-month reduction in the GIT surcharge rate from 15 to 10 percent, effective January 1, 1992. On April 10, 1992, the GIT surcharge was raised back to 15 percent for the calendar year 1992. NYNEX reflected this change in an Errata to its 1992 annual filing by doubling the effect of the 15 percent surcharge rate on revenues for the second half of 1991 ($1.818 million) to approximate the effect of the increase for the full 1992 calendar year. This change to account for the higher level of the GIT surcharge, AT&T contends, resulted in a decrease of $3.635 million from the level of the GIT exogenous cost reduction shown in the April 2, 1992 annual filing. AT&T argues that NYNEX represented in its 1992 tariff support that, unless further changes were made to the GIT, NYNEX would reflect $3.635 million as an exogenous cost reduction and calculate the GIT rate surcharge using a 10 percent surcharge for the entire year. AT&T argues that the GIT surcharge rate has reverted to 10 percent. However, AT&T continues, NYNEX has only implemented an exogenous cost reduction of $1.818 million which is one half the correct amount to reflect the reduction in the GIT surcharge rate. AT&T further argues that NYNEX failed to justify its omission of the additional $1.818 million exogenous cost reduction resulting from the GIT surcharge change.[100]

55. NYNEX responds that, while AT&T is correct that NYNEX miscalculated the GIT exogenous cost reduction in the 1993 filing, AT&T's point is now moot. NYNEX states that the Governor of New York recently signed a bill reinstating the 15 percent surcharge, retroactive to the first of the year.[101]

56. The Common Carrier Bureau has reviewed NYNEX's transmittal and all associated pleadings. We conclude that no compelling argument has been presented that the tariff revisions are patently unlawful so as to require rejection, and that no question has been presented that warrants investigation at this time.

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100 AT&T Petition at App. E.

101 NYNEX Reply at 5.

F. Calculation of the "g" Factor by Bell Atlantic and SNET

57. AT&T argues that both SNET and Bell Atlantic have improperly applied the Commission's prescribed price cap index formula in calculating the "g" factor in the PCI computation for the common line basket. AT&T contends that Bell Atlantic incorrectly used the fourth quarter 1992 line count instead of the count for the full calendar year 1992 base period in its g factor calculation. AT&T concludes that the correct calculation of the g factor would result in a common line basket PCI reduction of $5.45 million. AT&T repeats the same allegation for SNET, asserting that SNET used only its December 1992 line count. AT&T concludes that the correct calculations would reduce SNET's common line rates by $104,000.[102]

58. Bell Atlantic responds stating that in calculating its "g" factor, Bell Atlantic used the access lines reported in its ARMIS Report 43-01 for the fourth quarter of the base year, as it has done for all of its previous price cap filings. Bell Atlantic asserts that AT&T's approach would lead to inconsistent figures and result in an invalid "g" factor.[103]

59. SNET agrees that it has incorrectly calculated its "g" factor. However, it does not agree with AT&T that a determination of annual growth in minutes of use per access line must be based on a comparison of full 12-month periods. SNET argues that as long as the measurement point is consistent, the measured growth in minutes per access line should be the same, whether calculated on a December-to-December basis, or on a 12 month over 12 month basis. Finally, SNET asserts that a comparison of monthly average of line counts should be used to compute "g" in both the base year and the base year minus one.[104]

60. Pursuant to Section 204(a) of the Communications Act and Section 0.291 of the Commission's rules, we conclude that an investigation of the proposed tariff changes related to the calculation of "g" factors by Bell Atlantic and SNET is warranted. Therefore, we are suspending rates for one day, imposing an accounting order, and initiating an investigation. We designate issues for investigation in Section VI of this Order.

G. New Services

61. New services subject to price cap regulation must be included in the appropriate price cap basket beginning at the first

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102 AT&T Reply, App. G.

103 Bell Atlantic Reply at 12.

104 SNET Reply at 10-11.

annual price cap tariff filing following completion of the base year in which the new service is introduced.[105] The demand for the new service during the base year must be included in determining the weights used to calculate the Actual Price Index (API) for the appropriate basket.

62. Among other new services introduced in this year's annual access filings, LECs placed Line Information Database Service (LIDB) in the traffic sensitive basket. With the exception of one LEC, the per query charges (LIDB query and LIDB transport) are included in the local transport service category within that basket.[106] The only LEC not placing these charges in the local transport category is United, which placed them in the local switching category.

63. Pursuant to Section 204(a) of the Communications Act and Section 0.291 of the Commission's rules, we conclude that an investigation of the proposed tariff changes of those price cap companies that include LIDB charges as new services is warranted. Therefore, we are suspending rates of those price cap companies that include LIDB charges in their actual price index calculations for one day and initiating an investigation. We also impose an accounting order upon these companies. We designate issues for investigation in Section VI of this Order.

H. Exogenous Treatment of Long Term and Transitional Support Payments

64. Ad Hoc requests that the Commission investigate the exogenous treatment proposed by all price cap LECs to account for payments for long term support (LTS) and transitional support (TRS) payment.[107] Ad Hoc argues that the LECs' approach to these payments may fail to reflect the underlying cost trends and may produce disincentives to be more efficient.[108]

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105 See 47 C.F.R. § 61.46(b).

106 The LIDB query is the basic query charge. The LIDB transport charge, for connection between the STP port and the SCP database, is also charged on a per query basis. The STP port termination charge recovers the costs of the port on the signalling network side of the STP. The signalling link charge is a charge per line which recovers the costs of the transport facility itself.

107 LTS is paid by non-pooling carriers to NECA so that NECA maintains a national-average carrier common line rate. TRS is paid by certain low-cost non-pooling carriers to certain higher-cost non-pooling carriers to ease the transition to a non-pooling environment for the latter carriers.

108 Ad Hoc Petition at 2.

65. NECA argues that the LEC filings comply with the Commission rules for recovery of LTS and TRS.[109] NECA also argues that the 1992/1993 test period was unique in that the transition period for TRS ended and TRS receivers were required to begin contributing to LTS on April 1, 1993. Finally, NECA contends that the exogenous change is not the value of the 1993/1994 support amount, but the difference between the 1992/1993 amount and the 1993/1994 test-period amounts.[110]

66. We have examined the LEC calculations of exogenous cost change related to LTS and TRS support payments and all related pleadings. We conclude that no question has been raised which warrants investigation at this time.

I. Discount Plans Affecting DS3 Rates

67. MFS asks the Commission to suspend and investigate all discounted high capacity rates offered by the Bell Operating Companies and GTE. MFS argues that, while the rates are technically in compliance with the price cap rules the variability of the rates indicates that they are being set at predatory levels and may be subsidized by monopoly services. MFS asserts that, for example, Bell Atlantic proposes to offer volume and term discounts of up to 69 percent of its monthly tariffed rates, up from 57 percent in its 1992 annual access filing. Similarly, MFS contends, BellSouth proposed to raise its discounts from 50 percent to 73 percent; and GTE seeks to increase its discounts from 45 percent to 67 percent. MFS argues that neither the initial 1992 volume and term discounts nor the additional discounts now proposed appear to be based on differences in cost of providing the services, but instead appear to reflect below-cost pricing for selected services.[111]

68. The petitioned LECs generally argue that MFS makes only conclusory statements, providing no evidence or factual allegations of its claims. These companies also assert that their long term and volume discounted rates are below-cap, within-band rates, and thus enjoy a presumption of reasonableness in accordance with the price cap rules.[112]

69. Parties seeking suspension of within-band, within-cap filings, which are presumed lawful, must meet the substantial

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109 See also Bell Atlantic Reply at 11; NYNEX Reply at 6; Southwestern Reply at 37-38.

110 NECA Reply at n. 4.

111 MFS Petition at 4-5.

112 Ameritech Reply at 8; accord Bell Atlantic Reply at 10; BellSouth Reply at 13-14; GTE Reply at 14; NYNEX Reply at 5-6; Pacific Reply at 3-4.