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

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| 1993 Annual Access Tariff Filing | ) | CC Docket No. 93-193 |
| U S WEST Communications, Inc. Tariff F.C.C. Nos. 1 and 4 | ) | Transmittal No. 345<br>Transmittal No. 369 |

# REBUTTAL

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TABLE OF CONTENTS

| | | Page |
|---|---|---|
| I. | INTRODUCTION AND SUMMARY | 1 |
| II. | OPEB | 2 |
| III. | DEM | 5 |
| IV. | "ADD-BACK" | 8 |
| V. | LIDB | 9 |
| VI. | CONCLUSION | 11 |

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REBUTTAL

U S WEST Communications, Inc. ("U S WEST"), through counsel, and pursuant to the Federal Communications Commission's ("Commission") Memorandum Opinion and Order Suspending Rates and Designating Issues for Investigation,[1] hereby files its rebuttal to oppositions to U S WEST's Direct Case.[2]

## I. INTRODUCTION AND SUMMARY

In its Direct Case, U S WEST responded to Commission inquiries and information requests on a number of subjects. U S WEST demonstrated that Other Postretirement Employee Benefit ("OPEB") costs associated with the implementation of SFAS-106[3] should be given exogenous cost treatment under existing price cap rules. U S WEST also showed that its calculation of exogenous costs associated with the Dial Equipment Minutes ("DEM")

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[1] In the Matter of 1993 Annual Access Tariff Filings, 8 FCC Rcd. 4960 (1993) ("Suspension Order"); Order granting extension of time to file rebuttals, CC Docket No. 93-193, DA 93-877, rel. Aug. 5, 1993.

[2] See U S WEST Direct Case, filed herein July 27, 1993 ("Direct Case" or "U S WEST Direct Case").

[3] Statement of Financial Accounting Standards No. 106.

transition fully complied with Commission rules. In the comments which follow, U S WEST responds to oppositions to its Direct Case.[4] Regarding OPEB costs, U S WEST urges the Commission to find that exogenous treatment for the Transition Benefit Obligation ("TBO") is appropriate. U S WEST argues that AT&T and MCI have presented no evidence that U S WEST failed to comply with Commission rules for calculating the DEM adjustment or that its adjustment was unreasonable. On the "add-back" issue, U S WEST argues that no purpose would be served by attempting to clarify the price cap rules in this tariff proceeding. Finally, U S WEST argues that the most appropriate assignment of the Line Information Data Base ("LIDB") per query charge is to the Local Transport Service category of the Traffic Sensitive Basket.

## II. OPEB

Oppositions to local exchange carriers' ("LEC") Direct Cases[5] claim that LECs have failed to demonstrate that OPEB costs associated with the TBO satisfied the Commission's two-

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[4]Comments and oppositions were filed herein on Aug. 24, 1993, by: Ad Hoc Telecommunications Users Committee ("Ad Hoc"); Allnet Communication Services, Inc. ("Allnet"); American Telephone and Telegraph Company ("AT&T"); and MCI Telecommunications Corporation ("MCI").

[5]Direct Cases of other LECs filed herein on July 27, 1993, by: Ameritech Operating Companies ("Ameritech"); Bell Atlantic Telephone Companies ("Bell Atlantic"); BellSouth Telecommunications, Inc. ("BellSouth"); GTE Service Corporation ("GTE"); NYNEX Telephone Companies ("NYNEX"); Pacific Bell and Nevada Bell ("Pacific"); Southern New England Telephone Company ("SNET"); and Southwestern Bell Telephone Company ("SWB").

pronged test for exogenous cost treatment.[6] U S WEST disagrees. Over the past year and a half, U S WEST and other LECs have provided the Commission with a vast amount of evidence on exogenous treatment of OPEB and TBO costs.[7] No purpose would be served by reviewing this evidence or rehashing LEC arguments in this rebuttal. The Commission has sufficient information to make a decision on the exogenous treatment of TBO and should do so at the earliest possible date.

Both U S WEST and LECs as a group have fully satisfied the Commission's original test for exogenous cost treatment of the TBO.[8] Unfortunately, it appears that the burden of proof placed

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[6]See Ad Hoc at 1-5; Allnet at 2-3; AT&T at 5-6; MCI at 3-4.

[7]U S WEST, alone, has addressed the issue of exogenous treatment of OPEB and TBO costs in the following filings with this Commission: U S WEST Communications, Inc. Tariff F.C.C. Nos. 1 and 4, Transmittal No. 246, filed Apr. 3, 1992; In the Matter of Treatment of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, "Employees Accounting for Postretirement Benefits Other Than Pensions", CC Docket No. 92-101, U S WEST Direct Case, filed June 1, 1992, and Rebuttal filed July 31, 1992; 1993 Annual Access Tariff Filing, Transmittal No. 345, filed Apr. 2, 1993 ("1993 Annual Access"); Reply to Petitions to Reject or, in the Alternative, Suspend and Investigate, U S WEST Communications, Inc., 1993 Annual Access Tariff Filing, Transmittal No. 345, filed May 11, 1993 ("Reply"); and U S WEST's Direct Case.

[8]See In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Order on Reconsideration, 6 FCC Rcd. 2637, 2664-65 ¶ 63 (1991) ("LEC Price Cap Recon. Order"), aff'd sub nom. National Rural Telecom Association v. F.C.C., 988 F.2d 174 (D.C. Cir. 1993). In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd. 665, 674 ¶ 74 (1991) ("AT&T Price Cap Order on Recon."), rev'd and remanded, AT&T v. F.C.C., 974 F.2d 1351 (D.C. Cir. 1992). In the Matter of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, "Employers Accounting for Postretirement Benefits Other than

(continued...)

on LECs increases every time the Commission addresses the issue of exogenous cost treatment of OPEB or TBO in a formal proceeding. U S WEST does not object to the use of a test which includes "double counting" and "control" standards to determine whether a cost qualifies for exogenous treatment under the price cap rules. However, U S WEST does object to requiring LECs to satisfy an unattainable standard to qualify for exogenous cost treatment. The language of the Suspension Order gives the impression that this is exactly the direction the Commission is moving.[9] If the Commission no longer believes that exogenous cost treatment is appropriate under price cap regulation, this issue should be addressed in a separate rulemaking or the upcoming LEC price cap review rather than by skewing the application of existing price cap rules.

Contrary to the assertions of opponents, exogenous cost treatment of the TBO fully comports with the Commission's price cap rules. The TBO is exactly the type of cost that the exogenous cost provisions of the Commission's price cap rules were designed to address.[10] Failure to grant exogenous cost

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[8](...continued)
Pensions," Bell Atlantic Tariff F.C.C. No. 1; US West Communications, Inc. Tariff F.C.C. Nos. 1 and 4; Pacific Bell Tariff F.C.C. No. 128, Memorandum Opinion and Order, 8 FCC Rcd. 1024, 1033 ¶ 52 (1993) ("OPEB Order"), appeals pending sub nom. Southwestern Bell Tel. Co., et al. v. F.C.C., Nos. 93-1168, et al. (D.C. Cir. pet. for rev. filed Feb. 19, 1993).

[9]Suspension Order, 8 FCC Rcd. at 4965 ¶ 29.

[10]See In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd. 6786, 6807 ¶ 166 (1990).

treatment would violate both the letter and the spirit of price cap regulation. U S WEST urges the Commission to find that exogenous treatment for the TBO is appropriate and terminate its investigation into this issue.

III. DEM

Both AT&T and MCI take issue with U S WEST's explanation of its DEM calculation and assert that U S WEST has understated its 1993 DEM adjustment by approximately $5 million.[11] They claim that U S WEST failed to follow Commission rules in calculating the exogenous cost adjustment for DEM. Neither assertion is correct. MCI's claim is based on an overly-simplistic analysis of data submitted in U S WEST's Direct Case. MCI's opposition implies that the Commission's rules require some constant relationship between interstate rate changes associated with DEM adjustments and changes in interstate revenue requirements. This is not true. U S WEST presented this data in its Direct Case to establish one point. That is, to demonstrate that ratepayers were not harmed by U S WEST's DEM methodology -- in fact they benefitted from it.[12]

While both AT&T and MCI assert that U S WEST failed to follow Commission rules, they offer no specifics but refer to the

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[11]AT&T at 31-33; MCI at 33-36.

[12]MCI conveniently ignores the fact that U S WEST reduced its rates by $5.6 million more than would have been anticipated based on interstate cost reductions associated with the DEM transition.

DEM adjustments filed by other LECs.[13] The reason AT&T and MCI cannot be more specific is because the rules themselves are not specific except for the ultimate goal of the DEM transition. DEM is referenced only briefly in Sections 61 and 36 of the Commission's rules:

> Section 61.45(d)(3) requires that LECs "shall, in their annual access tariff filing, recognize all exogenous cost changes attributable to modifications during the coming tariff year . . . [in] the Dial Equipment Minutes factor . . ." -- but offers no further guidance on calculation of this cost change.[14]
>
> Section 36.125(b) states that "Beginning January 1, 1993, Category 3 investment . . . is apportioned on the basis of relative dial equipment minutes [i.e., Dial Equipment Minute factor]. . . ."[15]
>
> Section 36.125(c) requires that "During the 1988-1992 period, Category 3 investment . . . is apportioned by the application of an interstate allocation factor that is computed by adding the following two elements for the appropriate transition year (the A component times the composite allocator plus the B component times the DEM allocator). The A and B components are specified in § 36.125(d) and (e). . . . The DEM allocator is computed in the same manner as the interstate allocation factor described in Section 36.125(b)."[16]

As the above references indicate, the Commission's rules do not define the DEM allocator for the transition years other than to indicate that it should be moving toward relative DEM which is required to be used beginning January 1, 1993. However, relative DEM is not a constant number but changes continually as customers

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[13]AT&T at 31-34; MCI at 33-36.

[14]47 C.F.R. § 61.45(d)(3).

[15]47 C.F.R. § 36.125(b).

[16]47 C.F.R. § 36.125(c).

change their interstate/intrastate usage mix. Thus, the DEM transition has been moving towards an unknown target -- relative DEM as of January 1, 1993. In fact, every LEC is moving toward a different allocation factor. What is surprising about LEC exogenous adjustments for DEM is -- that there is not a much broader variation among LECs for the 1993-94 tariff year, not that U S WEST's DEM is so small.

Regardless of the fact that U S WEST's DEM methodology differs from that of other LECs, U S WEST has fully complied with all Commission rules on the exogenous treatment of DEM. U S WEST demonstrated this in its Direct Case and in its earlier Reply. AT&T and MCI have presented no evidence that U S WEST failed to comply with the Commission's rules in calculating the DEM adjustment or that U S WEST's adjustment is unreasonable.[17] As

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[17]In footnote 69 of its opposition, AT&T asserts that U S WEST has changed its method of calculating the DEM adjustment from that used in previous U S WEST annual access filings. See AT&T at 33 n.69. AT&T then cites U S WEST's 1992 Annual Access Charge Tariff filing, Transmittal No. 244, filed Apr. 2, 1992 ("1992 Annual Access") as an example of the correct way to calculate the DEM adjustment. AT&T is confused on both points. U S WEST did not change its methodology in the 1993 Annual Access filing from that used in 1992 or in earlier years. Also, AT&T's description of the methodology which U S WEST used in its 1992 Annual Access filing is incorrect. U S WEST did not hold DEM allocators constant between tariff years as AT&T asserts. Furthermore, Commission rules do not require that DEM allocators be held constant -- notwithstanding AT&T's claim to the contrary. It appears that AT&T has misconstrued the formula contained in U S WEST's 1992 Annual Access filing. See 1992 Annual Access, Description and Justification, Section 1, Workpaper 2. This formula was used to convert the DEM transition from a calendar year to a July to June tariff year. It is not a formula for calculating the 1991/92 DEM allocator, as AT&T appears to assume. Workpaper 2 provides no indication of the methodology which U S WEST used to calculate the 1991/92 DEM allocator.

such, the Commission should terminate its investigation with respect to U S WEST's DEM adjustment.

## IV. "ADD-BACK"

The oppositions offer conflicting positions on the "add-back" issue. MCI and Ad Hoc assert that "add-back" should be required for prior-year-sharing adjustments but denied for low-end adjustments.[18] Allnet claims "add-back" is required for both sharing and low-end adjustments.[19] All three parties claim that history is on their side and that their "version" of "add-back" is required under existing price cap rules.[20] Conversely, AT&T argues that existing price cap rules are unambiguous in their silence on the "add-back" issue.[21] AT&T points out that the fact that the Commission has found it necessary to initiate a Notice of Proposed Rulemaking ("NPRM") contradicts the claim that "add-back" is implicit in the current price cap rules.[22] As such, AT&T asserts that current price cap rules do not allow for the use of "add-back" adjustments and if the Commission modifies its rules to include "add-back" adjustments it can only

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[18]MCI at 23-32; Ad Hoc at 12.

[19]Allnet at 5-6.

[20]See MCI at 23-29; Allnet at 5-6; Ad Hoc at 12-14.

[21]See AT&T at 22.

[22]Id.

do so prospectively.[23] U S WEST agrees with the position of AT&T.[24] The Commission is currently addressing the "add-back" issue in a rulemaking proceeding[25] and no purpose would be served by attempting to "clarify" the price cap rules in the instant tariff proceeding. Furthermore, any change in the Commission's rules to incorporate "add-back" could only be applied prospectively.

V. LIDB

U S WEST and several other LECs support assigning LIDB per query charges to the Local Transport Service category in the Traffic Sensitive Basket.[26] AT&T and United and Central[27] argue that LIDB per query charges should be assigned elsewhere. AT&T argues that the Commission should create a new service category within the Traffic Sensitive Basket[28] while United and Central argues that the LIDB per query service charge should be assigned

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[23]See id. at 22-23.

[24]See U S WEST Comments in CC Docket No. 93-179, filed Aug. 2, 1993, at 5-7; and U S WEST Reply Comments in CC Docket No. 93-179, filed Sept. 1, 1993, at 4.

[25]In the Matter of Price Cap Regulation of Local Exchange Carriers, Rate of Return Sharing and Lower Formula Adjustment, Notice of Proposed Rulemaking, 8 FCC Rcd. 4415 (1993).

[26]See U S WEST Direct Case at 14; SNET at 12; Bell Atlantic at 14; Pacific at 12-13; BellSouth at 10-12; SWB at 53-54; Ameritech at 4-5; NYNEX at 4-5; and GTE at 32.

[27]Reply Comments to the Direct Cases of Other Parties filed herein Aug. 10, 1993, by the United and Central Telephone Companies ("United and Central").

[28]See AT&T at 37-40.

to the switching category.[29] AT&T claims that a new service category is needed to protect customers from "excessive or discriminatory pricing."[30] This concern -- even if true -- is not a basis for creating another price cap category. The Commission's existing rules provide adequate recourse if LIDB customers believe that they are being charged unreasonable prices. These customers are not "small fry"; they are quite capable of taking whatever action is necessary to protect their interests. Conversely, creating a separate category will further limit LEC pricing flexibility and erode price cap incentives.

United and Central attempts to rebut LEC arguments supporting the assignment of the LIDB per query charge to the Local Transport category by asserting that the common channel signaling ("CCS") network is not the only way to reach LIDB.[31] United and Central claims that X.25 links can also be used to access LIDB.[32] This alternative is not available in U S WEST's network -- the CCS network and X.25 links are one and the same. As such, U S WEST continues to believe that the most appropriate assignment of the LIDB per query charge is to the Local Transport category.[33]

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[29]See United and Central at 2-3.

[30]AT&T at 38.

[31]United and Central at 3.

[32]Id.

[33]However, in the event the Commission determines that assignment to the Local Transport category is inappropriate,

(continued...)

## VI. CONCLUSION

As the foregoing demonstrates, TBO costs should be given exogenous treatment under the Commission's price cap rules. U S WEST has also shown that the exogenous cost adjustment associated with the DEM transition fully complies with all relevant Commission rules. As such, the Commission should terminate its investigation and allow U S WEST's rates to remain in effect as originally filed.

Respectfully submitted,

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[33] (...continued)
United and Central's proposal to assign LIDB per query charges to the switching category represents a "second best" alternative.

**CERTIFICATE OF SERVICE**

I, Kelseau Powe, Jr., do hereby certify that on this 10th day of September 1993, I have caused a copy of the foregoing **REBUTTAL** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.

Kelseau Powe, Jr.

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