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Before the
Federal Communications Commission
Washington, D.C. 20554

DA 94-706

In the Matter of	)	
	)	
1994 Annual Access	)	CC Docket No. 94-65
Tariff Filings	)	
	)	
National Exchange	)	Transmittal No. 612
Carrier Association	)	
Universal Service Fund	)	
and Lifeline Assistance Rates	)	

MEMORANDUM OPINION AND ORDER SUSPENDING RATES

Adopted: June 24, 1994 **Released: June 24, 1994**

By the Acting Chief, Common Carrier Bureau:

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I. EXECUTIVE SUMMARY

1. In this Order, the Common Carrier Bureau reviews the annual access tariff filings that local exchange carriers (LECs) and the National Exchange Carrier Association, Inc. (NECA) are required by Section 69.3(a) of the Commission's rules, 47 C.F.R. § 69.3(a), to submit on April 2, 1994, to become effective on July 1, 1994.[1] Based on our review, we direct certain LECs to refile rates, in accordance with this Order.[2]

2. The tariffs filed by LECs subject to price cap regulation[3] propose a total of $307.0 million in access charge reductions. These access reductions are apportioned among access categories as follows: end user charges would increase by $28.7 million; carrier common line charges would decrease by $152.7 million; traffic sensitive charges would decrease by $40.9 million; rates in the interexchange basket would decrease by $8.6 million; and rates in the new trunking basket would decrease by $133.5 million.

3. In addition, NECA proposes to lower its traffic sensitive and special access rates by a total of $53.8 million,[4] and to decrease common line rates by $8.0 million. The price cap LECs and NECA propose aggregate rate reductions of $368.8 million for the 1994 access year.

4. In this Order, the Bureau suspends those LECs' annual access tariffs that raise issues concerning how sharing and lower end adjustment mechanisms should be treated when the LEC

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[1] A companion Order in CC Docket No. 94-NNN deals with the annual access filings made by Nevada Bell, Pacific Bell, Rochester Telephone Corporation, and Vista Telephone Company of Minnesota and Vista Telephone Company of Iowa.

[2] Appendix A contains a list of those parties who filed pleadings in this proceeding and sets forth their full names and the abbreviated versions that are used to refer to them in the text of the Order.

[3] The price cap companies include the Bell Operating Companies (BOCs), GTE (including GTE Telephone Operating Companies (GTOC) and GTE System Telephone Companies (GTSC)), Lincoln, Rochester, SNET, and Sprint LTD (which includes United and Central). Price cap companies and NECA account for almost 95 percent of interstate revenues from access charges.

[4] NECA proposed the traffic sensitive and special access rate reductions in a transmittal filed prior to its annual access filing. NECA Transmittal No. 601 (filed March 25, 1994). NECA subsequently deferred the effective date of this transmittal to July 1, 1994, and the revisions proposed therein were incorporated into NECA's annual access filing, NECA Transmittal No. 602 (filed Mar. 25, 1994). The captioned NECA filing, NECA Transmittal No. 612 (filed May 17, 1994), contains proposed revisions to the universal service fund (USF) and Lifeline Assistance rates, which are discussed at Section IV, *infra*.

computes its rate of return for the year in which those adjustments were made and incorporates those tariffs into the Commission's pending investigation of the same issues in CC Docket No. 93-193. In addition, this Order rejects proposals made by the petitioners to treat equal access amortizations exogenously. This Order also rejects proposals by some price cap LECs to include certain regulatory fees as exogenous costs in their price cap indices (PCIs), and instead directs those LECs to adjust their PCIs to reflect endogenous treatment of the fees. Finally, this Order suspends those provisions in the annual access filings, identified by petitioners or the Bureau, that present issues that are substantially similar to, or closely dependent upon the resolution of, issues currently under investigation in CC Docket 93-193, and incorporates those provisions into that investigation.

II. PRICE CAP CARRIERS

A. Sharing and Lower End Adjustment Issues

1. Implementation of the Sharing and Lower End Adjustment Mechanisms

(a) Background

5. Under price cap regulation, a LEC is required to make a sharing adjustment to its PCIs if its rate of return for the preceding calendar year exceeds 12.25 percent,[5] and may make a lower end adjustment to its PCIs if its rate of return for that period falls below 10.25 percent.[6] The sharing and lower end adjustments are made as one-time adjustments to a single year's rates.[7] Recently, the Commission tentatively concluded in the *Add-Back Notice* that LECs should continue to be required to reflect the effects of the sharing and lower end adjustments when calculating their rates of return for the year subsequent to the year in which they incurred

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[5] The 12.25 benchmark applies to LECs that operate with a 3.3 productivity offset. LECs that elect the more challenging 4.3 productivity offset do not have to make a sharing adjustment unless their rate of return exceeds 13.25 percent. Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6786 (1990) (*LEC Price Cap Order*), Erratum, 5 FCC Rcd 7664 (Com. Car. Bur. 1990), *modified on recon.*, 6 FCC Rcd 2637 (1991) (*LEC Price Cap Reconsideration Order*).

[6] For example, under the sharing adjustment a LEC that uses the 3.3 percent productivity offset must share with its customers half of its earnings between 12.25 percent and 16.25 percent, and all of its earnings in excess of 16.25 percent. Under the lower end adjustment, a LEC that posts earnings below 10.25 percent, is entitled to adjust its rates upward to target earnings to 10.25 percent (the "lower end adjustment") in the following year. *LEC Price Cap Order* , at 6788, 6801-02.

[7] *Id.* at 6803; *see also LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2691 n.166.

the sharing or lower end obligation.[8] The Commission further tentatively concluded that the price cap rules should be amended to clarify this requirement.[9]

(b) Contentions of the parties

6. (1) Sharing Issues. MCI contends that Ameritech, Bell Atlantic, and BellSouth have understated their sharing obligations by failing to include an adjustment to revenues to offset the effect of the sharing adjustment.[10] MCI asserts that sharing amounts under price caps, like refunds under rate of return regulation, must be added back in order to ascertain whether any new sharing obligations exist in the current reporting period. Because of these alleged sharing understatements, MCI concludes that these carriers' tariffs should be suspended and investigated. MCI also asserts that it fully agrees with the Commission's proposal in the *Add-Back Notice* to require the adjustment to offset the earlier sharing adjustment, and that the Commission should not allow LECs to avoid their sharing obligations under price caps.[11] Allnet also maintains that all LECs that implemented sharing amounts in this year's tariff filings should be subject to an accounting order and the outcome of the investigation initiated in the *1993 Annual Access Order*.[12]

7. In reply some LECs maintain that adoption of an add-back mechanism for sharing purposes runs counter to the fundamental goals and principles underlying price cap regulation and would represent a reversion to rate-of-return principles.[13] These LECs say that the adjustment proposed in the *Add-Back Notice* would turn an otherwise one-time adjustment to the price cap indices of a LEC that has incurred a sharing obligation into a continuing responsibility running over the course of multiple years.[14] U S West contends that the concept of sharing is similar to a productivity dividend in that the impact of a sharing obligation results in a one-time "dividend" subsequent to productivity gains in a prior year. On the other hand, says U S West,

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[8] Price Cap Regulation of Local Exchange Carriers, Rate of Return Sharing And Lower Formula Adjustment, Notice of Proposed Rulemaking, 8 FCC Rcd 4415, 4417 (1993) (*Add-Back Notice*).

[9] *Id.*

[10] MCI Petition at 17-19 and Exhibit II.

[11] *Id.*

[12] Allnet Petition at 4, *citing*, 1993 Annual Access Tariff Filings, 8 FCC Rcd 4960, 4973 (Com. Car. Bur. 1993) (*1993 Annual Access Order*).

[13] Bell Atlantic Reply at 7; U S West Reply at 6.

[14] *Id.*

an adjustment to offset sharing would "artificially inflate the current period earnings."[15]

8. Bell Atlantic, BellSouth, and GTOC argue that implementation of a sharing add-back can be accomplished only by a rulemaking and not in the context of this annual access proceeding.[16] Some LECs state that, even if the Commission does adopt an add-back rule, it cannot apply that rule to the instant access filings because it would be an unlawful retroactive application of a substantive rule change.[17] In addition, Ameritech cites its comments on this issue that it filed in the investigation initiated in the *1993 Annual Access Order*. Southwestern Bell contends that it has not incurred any sharing obligations in the prior years, so the add-back issue is irrelevant to its tariff.[18]

9. (2) Lower end adjustment issues. MCI contends that because the sharing obligation and the lower end adjustment represent "two very distinct and different matters," an add-back adjustment should be made only if sharing occurred, not if a lower end adjustment was made.[19] MCI claims that while an add-back mechanism to offset sharing is necessary to adjust a LEC's current year earnings to reflect the actual rate-of-return absent the sharing obligation, the lower end adjustment is nothing more than a rate increase.[20] MCI argues that requiring an adjustment to offset the lower end adjustment inappropriately results in the exclusion of associated revenues from the earnings calculations. According to MCI, the lower end adjustment entitles a LEC to an automatic rate increase when its earnings fall below the prescribed rate of return floor during a given year, while the subsequent adjustment to offset the increase would simply result in an apparent decrease in revenues used to calculate the LEC's earnings equivalent to the prior-year automatic rate increase.[21] MCI asserts that the tariff filed by NYNEX should be suspended and investigated because it makes an adjustment to NYNEX's 1993 earnings that

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15 U S West Reply at 6.

16 Bell Atlantic Reply at 7; BellSouth Reply at 6-7, *citing Add-Back Notice*; GTOC Reply at 2.

17 BellSouth Reply at 6-7 (indicating that any present decision to require a sharing add-back could be applied only prospectively and impact only those rates to become effective on July 1, 1995, at the earliest); U S West Reply at 6 n.11, *citing* Bowen v. Georgetown Univ. Hospital, 109 S.Ct. 468, 471-72 (1988).

18 Ameritech Reply at 3; Southwestern Bell Reply at 5 n.15.

19 MCI Petition at 6-7.

20 *Id.*

21 *Id.* at 7-12.

excludes NYNEX's lower end revenues from its earnings calculations.[22]

10. AT&T argues that both NYNEX and SNET have improperly included an adjustment to offset their 1993 lower end adjustments, which has the effect of removing approximately $15.9 million from NYNEX's current sharing obligation, and reducing SNET's rate of return by 0.81 percent (to 11.39 percent).[23] AT&T reasons that because the Bureau suspended and investigated the NYNEX and SNET tariffs in response to AT&T's similar claim in the *1993 Annual Access Order* and the Commission initiated the rulemaking to address add-back issues, the Bureau should suspend and investigate the proposed NYNEX and SNET tariffs for one day, impose an accounting order, and incorporate those tariffs into the Commission's pending proceedings concerning these LECs' earnings adjustments.[24]

11. In its reply, NYNEX incorporates by reference its pleadings filed in the investigation of the 1993 access tariffs relating to the lower end adjustment add-back issue. NYNEX maintains that those pleadings demonstrate that LECs must normalize their rate-of-return reports by adding back sharing revenues and removing lower end adjustment revenues in order to comply with earnings limitations of the price cap system and the Commission's rules regarding Form 492.[25] SNET also incorporates by reference its pleadings in last year's investigation proceeding, and contends that AT&T and MCI err in claiming that it has improperly adjusted its rate of return by subtracting the impact of its lower end adjustment from its earnings.[26] SNET maintains that AT&T and MCI continue to ignore the fact that the Commission adopted the lower end adjustment in order to ensure that LEC earnings were not so low as to be confiscatory and to enable companies to continue to attract capital and maintain services.[27] SNET concludes that failure to offset a lower end adjustment "would create an artificially high earnings level as the basis for applying the Commission's sharing/lower formula earnings test."[28]

(c) Discussion

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[22] *Id.* at 13-16.

[23] AT&T Petition at 9 and Appendix B.

[24] *Id.* at 10-11.

[25] NYNEX Reply at 4.

[26] SNET Reply at 2 n.4, *citing* SNET Reply to Comments (filed May 10, 1993); SNET Direct Case (filed on July 7, 1993); SNET Rebuttal (filed Sept. 10, 1993), in CC Docket 93-193.

[27] SNET Reply at 3.

[28] *Id.*

12. In the *1993 Annual Access Order*, the Bureau suspended for one day the tariffs of those LECs that had a sharing or lower end adjustment in 1992, and set those tariffs for investigation, subject to an accounting order.[29] The issue under investigation in that proceeding is how price cap LECs should reflect amounts reflecting prior year sharing or lower end adjustments in computing their rates of return to determine the current year's sharing obligation and permissible lower end adjustments to the price cap indices.[30] Allnet, AT&T and MCI now advance essentially the same arguments with respect to the LECs that implemented a sharing or lower end adjustment in 1993. The arguments made by the LECs in their replies are also essentially the same as those made by the LECs participating in the 1993 investigation. Because of the similarity of the "add-back" issues raised in both access filings, we are including the 1994 access transmittals in that investigation. In addition, as discussed above, the Commission has a pending rulemaking in which it has proposed to require LECs incurring a sharing obligation or lower end adjustment in a prior year to adjust their earnings calculations in the following years to remove the effects of the prior-year sharing obligation or lower end adjustment.[31] We therefore suspend the tariffs of all LECs that implemented a sharing or lower end adjustment last year and incorporate them into the Commission's pending investigation in CC Docket 93-193.[32] These transmittals are subject to the accounting order in CC Docket No. 93-193. After the termination of the 1993 investigation and prior to the termination of this investigation, we will give parties an opportunity to present any legal argument or factual circumstances that would lead us to conclude that the decisions reached in CC Docket No. 93-193 on add-back issues should not control our treatment of the 1994 access transmittals.

2. Omission of Subscriber Line Revenues from Common Line Basket for Sharing Purposes

(a) Background

13. The *LEC Price Cap Order* requires that the sharing obligation to be reflected in the PCI for each basket on a cost-causative basis.[33] In implementing this requirement, the *1992 Annual Access Order* required carriers to allocate sharing obligations on a cost-causative basis and found that basket revenues can be used as a proxy for basket costs in all baskets. That Order also concluded that allocating sharing obligations based on basket revenues most closely comports with the Commission's price cap goals of moving away from cost allocation systems

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[29] 8 FCC Rcd at 4965.

[30] *Id.* at 4973.

[31] *See* n.8 *supra*.

[32] *1993 Annual Access Order*, 8 FCC Rcd at 4965, 4973-75.

[33] *LEC Price Cap Order*, 5 FCC Rcd at 6805.

and instead focusing on prices.[34] Thus, for purposes of calculating the sharing amount to be allocated to the common line basket on a cost-causative basis, common line revenues may be used as a surrogate for common line costs. In the 1993 annual access tariffs, the Bureau designated for investigation the issue of whether Bell Atlantic should be permitted to exclude end user common line charge revenues when it computes the sharing obligation to be apportioned to the common line basket. [35]

(b) Contentions of the Parties

14. AT&T argues that Bell Atlantic has impermissibly failed to include its subscriber line revenues in the base period common line basket when it computed the adjustment to that basket's PCI required by its 1993 sharing obligation and thus has not allocated its sharing adjustment among all price cap baskets on a cost-causative basis.[36] AT&T asserts that using the correct revenue amounts would result in a substantial change to Bell Atlantic's sharing allocations.[37] AT&T notes that Bell Atlantic used a similar approach last year, which caused the Bureau to suspend and investigate Bell Atlantic's 1993 access filing.[38] Allnet also contends that Bell Atlantic has incorrectly omitted subscriber line revenues from its common line basket.[39] Allnet and AT&T both ask the Commission to impose an accounting order and to require Bell Atlantic to reallocate its 1993 sharing amounts in accordance with the price cap rules.[40]

15. Bell Atlantic replies that the exclusion of its subscriber line charge revenues from sharing is proper because those rates are not calculated under the Commission's price cap

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[34] 1992 Annual Access Tariff Filings, CC Docket No. 92-141, 7 FCC Rcd 4731, 4732-33 (Com. Car. Bur. 1992) (*1992 Annual Access Order*).

[35] *1993 Annual Access Order*, 8 FCC Rcd at 4966

[36] AT&T Petition at 11-12, *citing 1992 Annual Access Order*, 7 FCC Rcd at 4732-33.

[37] According to AT&T, Bell Atlantic's reported common line sharing allocation is 24 percent or $14.633 million, but the correct common line sharing allocation should be 47 percent or $28.404 million. AT&T states that the failure to include subscriber line revenues causes an understatement of Bell Atlantic's common line basket revenues of $13.771 million. AT&T Petition at 12 and Appendix C.

[38] AT&T Petition at 11 n.18, *citing 1993 Annual Access Order*, 8 FCC Rcd at 4966, 4973-74.

[39] Allnet Petition at 3..

[40] *Id.* at 3-4; AT&T Petition at 11 n.8, *citing* Commission Requirements for Cost Support Material To Be Filed with 1993 Annual Access Tariffs, 8 FCC Rcd 4960, 4973-74 (Com. Car. Bur. 1993) (*1993 TRP Order*).

regulatory scheme and are not affected by the sharing amount.[41] Bell Atlantic asserts that the objections of AT&T and Allnet only involve the issue of how the sharing amount should be allocated and do not concern the amount of revenues that must be shared.[42]

(c) Discussion

16. The issue of excluding subscriber line revenues from the computation that allocates the sharing obligation among different baskets is the same issue that is before us in our investigation of the 1993 annual access tariff filings. Because of administrative convenience we add Bell Atlantic's transmittal to that investigation. We therefore suspend Bell Atlantic's tariff for one day and incorporate it into the Commission's investigation of the exclusion of subscriber line revenues for sharing purposes in CC Docket No. 93-193.[43] Bell Atlantic's transmittal is also subject to the accounting order in CC Docket No. 93-193.

3. Reversal of Sharing

(a) Background

17. Under the Commission's price cap rules, a sharing obligation requires a one-time adjustment to the affected carrier's PCI. Accordingly, after a carrier has fully met its sharing obligation, it must "reverse" the effect on the PCI in order to restore the status quo. The adjustment needed to accomplish this should differ from the amount original sharing adjustment by the percentage change in basket revenues ("R") from calendar year 1992 to calendar year 1993.[44] Thus, if revenues increase between 1992 and 1993, the adjustment made in the

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[41] Bell Atlantic Reply at 8 n.25, *citing* Bell Atlantic Opposition, 1993 Annual Access Tariff Filings, at 11-12 (filed May 10, 1993); Bell Atlantic Direct Case, CC Docket 93-193, at 9-11 (filed July 27, 1993).

[42] *Id.*

[43] *1993 Annual Access Order*, 8 FCC Rcd at 4966, 4973-75.

[44] The Bureau explained how the reversal was to be achieved in the *1994 TRP Order*, stating that

> Because "R," the variable in the PCI formula that equals base period demand multiplied by rates, has changed since the 1993 annual access filings, the amount displayed for the removal of sharing or low end adjustment will not match the original sharing or low end adjustment reported in the 1993 TRP. The amount of the removal should differ from the original sharing or low end adjustment by the percent change in "R" between the 1993 and 1994 annual filings.

Commission Requirements for Cost Support Material To Be Filed with 1994 Annual Access calculations to the 1994 PCI to offset the 1993 sharing adjustment would be greater than the sharing adjustment to reflect that revenue growth. On the other hand, if revenues decreased from 1992 to 1993, the former adjustment would be reduced to reflect that decline. This procedure ensures that the percentage adjustment to the PCI equals the percentage adjustment caused by the original sharing amount.

(b) Contentions of the Parties

18. Sprint argues that the percentage change in "R" required to offset U S West's 1992 sharing obligation as computed by U S West is too high because it used prior year (1992) revenues that are lower than the 1992 revenues reported in their 1993 annual access filings. Because the change in "R" equals 1993 revenues divided by 1992 revenues, argues Sprint, the change in "R" as computed by U S West is overstated. According to Sprint, the overstatement has the effect of allowing U S West to include exogenous cost increases for the reversal amounts which significantly exceed the original sharing amounts.[45]

19. U S West replies that it correctly calculated the exogenous cost of reversing its sharing adjustment in accordance with Section 61.45(c) of the rules, 47 C.F.R. § 61.45(c).[46] The *1993 TRP Order* indicates that adjustments to offset the sharing adjustment should differ from the original sharing adjustment by the percentage change in "R" between the 1993 and 1994 annual access filings. U S West asserts that it used the "R" values contained in its 1993 annual access filing[47] and the "R" values for the 1994 annual access filing[48] to calculate the exogenous cost adjustment needed to offset its 1993 sharing adjustment.[49] U S West contends that Sprint's proposed method of calculating "R" is inconsistent with Section 61.45(c) and the *1994 TRP Order*.[50] Subsequent to its reply, U S West filed an amendment to its transmittal to correct the R values used to calculate the reversal of sharing.[51]

Tariffs and for Other Cost Support Material, 9 FCC Rcd 1060, 1063 n.29 (Com. Car. Bur. 1994) (*1994 TRP Order*).

[45] Sprint Petition at 5.

[46] U S West Reply at 10-11.

[47] US West Transmittal No. 345, Section 1, Workpaper 5, Line 11.

[48] U S West Transmittal No. 465, TRP Form PCI-1, Row 160.

[49] U S West Reply at 11.

[50] *Id.* at 12 and Attachment C.

[51] U S West Transmittal No. 472 - Amended, Workpaper 1, at 1 (filed June 10, 1994).

(c) Discussion

20. We have reviewed the amendment made by U S West to adjust its "R" amounts to assure that its 1994 PCIs are correctly calculated. We conclude that these amendments adequately address the problem raised by Sprint with regard to removing the sharing adjustment made to the 1993 PCIs before calculating its 1994 PCIs. We find that U S West has included the correct R amounts in this calculation. Therefore, we see no need to investigate this issue.

4. Discrepancies Between NYNEX Revenues Reported in Revised Form 492A and in ARMIS Report 43-01

(a) Background

21. In Form 492A, LECs derive the revenue figure that is the basis for determining whether they have incurred a sharing obligation or are permitted to implement a lower end adjustment. NYNEX included in its annual filing an updated Form 492A report, which includes the revenue figures it used to calculate its 1994 sharing adjustment.[52] NYNEX has subsequently made several revisions to its 1994 access tariff filing, including revisions to its sharing obligation, based on a further updated Form 492A.[53] The further updated Form 492A contains a $16.0 million reduction in reporting period revenues to account for out-of-period adjustments relating to the New York study area.[54]

(b) Contentions of the Parties

22. AT&T objects to NYNEX's tariff revisions on the grounds that NYNEX has understated the amount of its sharing obligation under Section 61.45(d)(2) of the Commission's rules, 47 C.F.R. § 61.45(d)(2), by $25.391 million.[55] AT&T argues that there is a "significant discrepancy" between the revenues reported in NYNEX's revised Form 492A and those reported in its fourth quarter ARMIS report.[56] In its reply, NYNEX stated that it intended to file revisions to its ARMIS reports to correct the discrepancy between the revenues reported in

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[52] NYNEX D&J, at 39-40.

[53] NYNEX Tariff F.C.C. No. 1, Transmittal No. 294 - Revisions (filed Apr. 28, 1994).

[54] According to NYNEX, the $16.0 million consists of: (1) $10.8 million for services that were performed in the 1992 period, such as backbilling adjustments to carriers' bills; (2) $4.5 million for reversal of an accrued liability relating to the special access investigation in CC Docket No. 85-166; and (3) $0.7 million relating to the 1991 period for corridor adjustments with New Jersey Bell and other miscellaneous billing adjustments. *Id.*

[55] AT&T Petition at 1.

[56] *Id.* at 2.

ARMIS and those reported in the most recently updated Form 492A.[57] On June 16, 1994, NYNEX filed the revisions to its ARMIS reports.[58]

(c) **Discussion**

23. We find that NYNEX's revised Form 492A now is consistent with its revised ARMIS reports, and that AT&T's concern regarding discrepancies between NYNEX's reported revenues has been adequately addressed. Accordingly, we do not designate this issue for investigation.

B. Transport Service Issues

1. DS3-to-DS1 Transport Rate Ratios

(a) Background

24. Transport is a component of the LECs' interstate switched access service that enables IXCs and other customers to originate and terminate interstate switched telecommunications traffic. Transport refers to the local transmission service between customer points of presence (POPs) and LEC end offices, at which local switching occurs.[59] In its transport rate structure and pricing rulemaking proceeding, the Commission adopted interim rules that restructured the LECs' transport rate structure.[60] In their comments in that proceeding, small and medium IXCs asked the Commission to require LECs to maintain a prescribed ratio between DS1 and DS3 transport rates. The Commission decided to require a DS3-to-DS1 rate relationship only for initial transport rates.[61]

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[57] NYNEX Reply at 3.

[58] Letter from Director, Federal Regulatory Affairs, NYNEX, to Secretary, Federal Communications Commission (June 16, 1994) (revising ARMIS Reports 43-01, Quarterly Report, 43-03, Joint Cost Report and 43-04).

[59] Transport Rate Structure and Pricing, Second Report and Order, 9 FCC Rcd 615, 616 n.1 (*Transport Second Report and Order*) (1994).

[60] Transport Rate Structure and Pricing, Report and Order, and Further Notice of Proposed Rulemaking, 7 FCC Rcd 7006, 7029-31 (1992) (*Transport Order*), *recon.* First Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 5370 (1993) (*First Reconsideration Order*), *recon.*, Second Memorandum Opinion and Order on Reconsideration, FCC 93-403 (released Aug. 18, 1993) (*Second Reconsideration Order*), *pets. for recon. pending, appeal dismissed sub nom.* New England Tel. and Tel. Co. v. FCC, No. 93-1494 (D.C. Cir. Sept. 7, 1993), *pet. for review pending sub nom.* Full Service Computing Corp. v. FCC, No. 93-1670 (D.C. Cir., filed Oct. 4, 1993).

[61] *Id.* at 7032-34.

25. Specifically, the Commission concluded that if the ratio of initial DS3 to DS1 transport rates greater than a benchmark ratio of 9.6-to-1, the rates would be presumed reasonable and generally be allowed to become effective without suspension and investigation.[62] When the Commission subsequently proposed to establish the new trunking basket that would include transport rates, small and medium IXCs renewed their proposals that the Commission suspend and investigate DS3 and DS1 transport rates if their ratio did not exceed a prescribed benchmark ratio.[63] The Commission rejected these proposals, finding that the maintenance of the proposed DS3-to-DS1 benchmark ratio would unnecessarily discourage LECs from lowering their DS3 and DS1 rates.[64]

(b) Contentions of the Parties

26. Sprint contends that, although no rule prohibits LECs from lowering DS3 transport rates so that the DS3-to-DS1 ratio falls below the initial DS3-to-DS1 benchmark of 9.6-to-1, U S West, Southwestern Bell, and BellSouth propose transport rates that will "enable them to move further and further away from cost-based rates and to skew IXC competition."[65] According to Sprint, these carriers propose to change their current DS3-to-DS1 ratios as follows: (1) US West from 9.66-to-1 to 9.21-to-1; (2) Southwestern Bell from 12.27-to-1 to 12.10-to-1; and (3) BellSouth from 15.27-to-1 to 14.15-to-1.[66] Sprint maintains that the 9.6-to-1 benchmark ratio for comparing initial DS3-to-DS1 transport rates, which the Commission deemed to produce presumptively lawful rates, is "far too low and not reflective of underlying costs.[67] Sprint further claims that because AT&T by virtue of its size is able to use proportionally more DS3 access than other IXCs allowing the BOCs to charge DS3 transport rates that are too low relative to DS1 transport rates gives AT&T cost advantage over medium and small IXCs.[68]

27. In their replies, the LECs note that the Commission has already rejected proposals to mandate a continuing DS3-to-DS1 rate relationship and has required a 9.6-to-1 DS3-to-DS1

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[62] *Id. See also* 47 C.F.R. § 69.108.

[63] *Transport Second Report and Order,* 9 FCC Rcd at 621-22.

[64] *Id.* at 623.

[65] Sprint Petition at 3.

[66] *Id.*

[67] *Id.* at 2, *citing Transport Order*, 7 FCC Rcd at 7034.

[68] Sprint Petition at 2-3.

benchmark with respect to initial transport rates only.[69] BellSouth and Southwestern Bell further note that, even if the 9.6-to-1 benchmark for initial transport rates did apply to their proposed rates, they are still well above that benchmark.[70] BellSouth concludes that, its proposed rate changes are within the service band and below the price cap and, accordingly, there is no basis for rejection or suspension and investigation of those changes.[71]

28. U S West also opposes Sprint's assertion that the reduction of its DS3-to-DS1 ratio is inappropriate and observes that Sprint made similar proposals for a DS3-to-DS1 benchmark ratio for ongoing transport rates in previous proceedings.[72] U S West asserts that the Commission rejected Sprint's prior proposals because establishing a benchmark that requires LECs to lower DS1 rates whenever they lower DS3 rates would deter LECs from lowering DS3 rates, and possibly DS1 rates.[73] U S West further contends that the Commission concluded that the deterrent effect of an ongoing rate benchmark would "retard long-distance price reductions, depress telecommunications usage, and ultimately restrict economic growth."[74] U S West concludes that, while the Commission chose a 9.6-to-1 benchmark for the initial restructured transport rates, it recognized that LECs required flexibility to price their DS1 and DS3 rates in response to marketplace forces.[75]

(c) Discussion

29. As the LECs correctly assert and Sprint concedes, the Commission's interim transport rules do not require the LECs to maintain a benchmark relationship between ongoing DS3 and DS1 rates. Further, the DS3 and DS1 transport rates proposed by the LECs in question are below their applicable price cap indices and within the appropriate service bands. Under the circumstances, we conclude that Sprint has failed to show that the DS3 and DS1 transport rates proposed by BellSouth, Southwestern Bell, and U S West are patently unlawful and has failed to raise any question regarding these rates that warrants investigation at this time.

2. Tandem-Switched Transport and Direct-Trunked Transport Rates

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[69] BellSouth Reply at 11 nn.24-25, *citing Transport Order*, 7 FCC Rcd 7006; *Transport Second Report and Order*, 9 FCC Rcd 615. U S West Reply at 9-10.

[70] BellSouth Reply at 11-12; Southwestern Bell Reply at 8.

[71] BellSouth Reply at 11-12.

[72] U S West Reply at 9-10.

[73] *Id.* at 9-10 nn.18,19, *citing Transport Second Report and Order*, 9 FCC Rcd at 623.

[74] *Id.*

[75] U S West Reply at 10.

often can afford only the TST option for all mileage categories because they lack the volume necessary to make DTT service a cost-effective option in any mileage band. Comptel claims that U S West's proposal to lower long-haul TST rates and raise short-haul TST rates unreasonably discriminates against small IXCs because the increase in short-haul TST rates disproportionally affects these carriers.[83]

34. In their replies, BellSouth and NYNEX maintain that the Commission specifically decided in establishing the transport rules that the DTT and TST rates would be set in accordance with the rules governing price cap indices and service band indices.[84] Southwestern Bell asserts that the Commission restricted pricing flexibility of LECs for transport services by establishing several service categories and banding limitations of plus-2 and minus-5 percent for the TST service category.[85] BellSouth, NYNEX and Southwestern argue that the Commission does not require any direct linkage or benchmark ratio for DTT and TST rates.[86] These carriers conclude that there is no basis for rejection or suspension of their tariffs because the proposed DTT and TST rates are below the price cap and within the appropriate service bands.[87]

35. U S West replies that Comptel's objections to the proposed short-haul TST rates are groundless because the overall impact of its proposed changes in all mileage bands for TST and DTT is revenue neutral.[88] U S West asserts that Comptel's display of percentage revenue change in its petition is misleading because it is based upon a combination of fixed and variable revenues, not rates. U S West contends that revenue impact is caused by differences in demand for each of the various fixed and variable rate elements and has no relevance to changes in rates of various elements.[89] U S West further indicates that it has complied with the price cap rules for local transport rates, and its TST rate changes remain within the required service band limits of plus-2 or minus-5 percent for the Tandem Switched category, within the trunking basket.[90]

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[83] *Id.* at 4-6, *citing,* Comptel Petition for Reconsideration and Clarification, CC Docket No. 91-213, at 10 (filed Dec. 21, 1992).

[84] BellSouth Reply at 11-12; NYNEX Reply at 4-5 n.7, *citing Transport Second Report and Order*, 9 FCC Rcd at 623;

[85] Southwestern Bell Reply at 6-7, *citing Transport Order*, 7 FCC Rcd 7006 (1992).

[86] *See, e.g.,* NYNEX Reply at 4-5; Southwestern Bell Reply at 6.

[87] BellSouth Reply at 11-12; NYNEX Reply at 4-5; Southwestern Bell Reply at 6-7.

[88] U S West Reply at 8.

[89] *Id.* at 9.

[90] *Id.*

(a) Background

30. In the *Transport Order*, the Commission adopted an interim transport rate structure consisting of flat-rate charges for entrance facilities, direct-trunked transport, dedicated signalling transport and per-minute charges for tandem-switched transport and the interconnection charge.[76] The Commission also generally required LECs to set initial rates for entrance facilities, direct-trunked transport, dedicated signalling transport, and tandem-switched transport on the basis of special access rates, and to establish the initial interconnection charge on a residual basis.[77]

31. Direct-trunked transport (DTT) service involves the transmission of traffic between the LEC serving wire center (SWC) and a LEC end office, or between any two customer-designated LEC offices, that does not require tandem switching.[78] Tandem-switched transport (TST) involves the transmission of traffic between the SWC and an end office, or between a tandem office and an end office, that is switched at a tandem.[79]

(b) Contentions of the Parties

32. Comptel argues that BellSouth, NYNEX, and Southwestern have increased their TST interoffice rates relative to their DS1 and DS3 DTT interoffice rates.[80] Comptel maintains that these LECs are effectively shifting a disproportionate amount of network costs on TST users whose traffic volumes are not high enough to justify the use of DTT services, and who lack feasible marketplace alternatives to TST.[81] According to Comptel, these LECs have "decoupled" TST rates from the underlying DS1 and DS3 rates and completely ignored the copper-to-fiber ratio, resulting in an additional cost to TST users of $8 million.[82]

33. Comptel is particularly concerned that U S West has significantly increased its TST interoffice revenues in the 0-50 mileage bands while offsetting those increases with a five percent decrease in the over-50 mileage band. Comptel explains that, unlike large IXCs, third-tier IXCs

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[76] *Transport Order*, 7 FCC Rcd at 7043-44.

[77] *Id.*

[78] *Transport Second Report and Order*, 9 FCC Rcd at 618 n.7.

[79] *Id.*

[80] Comptel Petition at 3, *citing* Comptel Reply Comments, CC Docket No. 91-213, at 3, 14, 22 (filed Mar. 19, 1993).

[81] Comptel Petition at 4.

[82] *Id.* at 4-5.

(c) Discussion

36. As the LECs correctly assert, the Commission does not prescribe a specific rate relationship between the TST and DTT service categories, and provides pricing flexibility for TST rates within the specified service band.[91] Furthermore, all of the TST rates and DTT rates proposed by the LECs are below the applicable price cap index and within the governing service bands. Accordingly, we conclude that Comptel has failed to demonstrate that the TST and DTT transport rates proposed by BellSouth, NYNEX, Southwestern Bell and U S West are patently unlawful, or to raise any issue that warrants investigation of these rates at this time.

3. Southwestern Bell's Proposed Fixed-Mileage Charge for DS1 Zero-Mile Interoffice Transport Service

(a) Background

37. Southwestern Bell proposes in its 1994 access filing to increase its recurring fixed mileage charge for DS1 circuits with zero miles of interoffice transport from $0.00 to $6.04.[92] The proposed charge appears in the switched transport portion of Southwestern Bell's tariff and would apply to the link between the distribution (DSX) bay and the switch. In its switched access expanded interconnection tariff filing, Southwestern Bell had proposed a DS1 switched connection charge of $6.04 to recover the costs of providing a link between the DSX bay and the switch.[93] Two parties challenged the expanded interconnection charge on the grounds that the costs of the connection were already recovered in Southwestern Bell's switched access rates.[94] Subsequently, Southwestern Bell agreed to eliminate the connection charge and cross-referenced a charge set at zero for the DS1 zero-mileage band in the switched transport section of its tariff. The Bureau concluded that this revision eliminated the discrepancy between switched transport and the rates in Southwestern Bell's switched access expanded interconnection tariff and decided not to investigate any further.[95]

(b) Contentions of the Parties

38. MFS maintains that Southwestern Bell's recurring proposed fixed mileage charge

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[91] *Transport Second Report and Order*, 9 FCC Rcd at 629-32.

[92] Southwestern Bell Tariff F.C.C. Nos. 67, 73, Transmittal No. 2344, Index to D&J, Tab 9, at 18.

[93] Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Switched Transport, 9 FCC Rcd 817, 822 n.40 (1994), Erratum, 9 FCC Rcd 1052 (1994).

[94] *Id.*

[95] *Id.*

of $6.04 for DS1 circuits with zero miles of interoffice transport is narrowly targeted to discriminate against collocated CAPs and their customers because Southwestern Bell does not impose such a charge on any other switched transport circuits.[96] MFS reasons that because the vast majority of cross-connects taken through collocation arrangements are at the DS1 level, Southwestern's decision to limit the imposition of the zero-mile charge only to DS1 circuits and to exclude voice grade, analog, and DS3 services, is "clearly targeted to the services most likely to be provided by collocated competitive access providers."[97] MFS also argues that the DS1 zero-mile switched transport charge cannot be justified on cost grounds, and Southwestern Bell has not attempted to do so. Finally, MFS contends that imposing this charge only on DS1 customers and not other Southwestern Bell customers would establish an unjustified preference among classes of customers in violation of Section 202 of the Act, 47 U.S.C. § 202.[98]

39. In its reply, Southwestern Bell asserts that it is not proposing a new structure for the rate element in its annual filing because it always had a placeholder for the fixed-mileage DS1 charge for zero-mile interoffice transport and is merely increasing it from $0.00 to $6.04.[99] Southwestern Bell argues that because the Commission mandated rate parity between the initial DTT and special access rates[100] and its special access DS1 zero mileage fixed rate was $0.00, it was required to set the initial DTT zero mileage fixed rate at the same level.[101] "The proposed filing," says Southwestern Bell, "simply changes the existing DTT zero mileage fixed rate from $0.00 to $6.04."[102] Finally, Southwestern Bell amended its tariff, in response to an informal request from Commission staff, to include the $6.04 switched transport charge in the expanded interconnection portion of its tariff, as well as the switched transport portion of the tariff.[103]

(c) Discussion

40. Based on our review of Southwestern Bell's Transmittal No. 2344, as amended, and MFS's petition, we believe that Southwestern Bell has sufficiently addressed MFS's concerns regarding the DS1 switched transport portion of the proposed $6.04 charge for a link between

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[96] MFS Petition at 2.

[97] *Id.*

[98] *Id.*

[99] Southwestern Bell Reply at 8.

[100] *Id.* at n.24, *citing First Reconsideration Order*, 8 FCC Rcd at 5375.

[101] *Id.* at 8-9.

[102] *Id.*

[103] *See* Transmittal No. 2364, (filed June 22, 1994).

the DSX bay and the switch. The Southwestern Bell $6.04 charge is below the applicable price cap indices and within the service bands. Nevertheless, we are concerned that Southwestern Bell's proposal may result in a double recovery by reason of its potentially being able to collect the $6.04 charge from a customer twice -- through the DTT charge for transmission between the DSX bay and the switch and again through the residual interconnection charges (RICs).[104] We, therefore, conclude that Southwestern Bell's proposed fixed mileage charge for DS1 services with zero-miles of interoffice transport warrants investigation, and we will incorporate it into the Commissions' ongoing expanded interconnection investigation.[105] Accordingly, we suspend the $6.04 rate element in Southwestern Bell's Transmittals No. 2344 and No. 2364 for one day. The accounting order in the expanded interconnection investigation applies to the Southwestern Bell transmittal as well.

4. BellSouth Delta-Y Interexchange Costs

(a) Background

41. LECs that provide "corridor" services[106] between their Local Access Transport Areas (LATAs), or interstate intraLATA services, are required to impute access charges, including the residual interconnection charge, to themselves and to include revenues from these charges in their interexchange basket. The delta-Y factor is an exogenous cost adjustment that we require the LECs to make to the PCI to reflect changes in the levels of interstate access rates that they must impute to themselves when they offer such interstate services.[107]

(b) Contentions of the Parties

42. Allnet maintains that BellSouth has excluded the changes to certain access rate elements including the interconnection charge from its calculation of the delta-Y factor through

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[104] *See* Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection for Special Access, CC Docket No. 93-162, 8 FCC Rcd 4589 (Com. Car. Bur. 1993) (*Suspension Order*); Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection for Special Access, CC Docket No. 93-162, 8 FCC Rcd 6909 (Com. Car. Bur. 1993) (*Designation Order*).

[105] *Id.*

[106] "Corridor" services are interstate offerings generally found in or between large metropolitan areas. Corridor services are provided by certain BOCs as exceptions to Modification of Final Judgment prohibitions on the BOCs providing interexchange services. *LEC Price Cap Order,* 5 FCC Rcd at 6811-12 n.252

[107] *See LEC Price Cap Order,* 5 FCC Rcd at 6808; *see also* 47 C.F.R. § 61.44(d); Policy and Rules Concerning Rates for Dominant Carriers, Report and Order and Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873, 3026-39 (1989) (AT&T Price Cap Order).

which changes in access charges are imputed to the interexchange basket. Allnet also argues that BellSouth calculated local transport revenue using average revenue-per-minute, when it should have used an average of rate element revenues.[108] Allnet argues that BellSouth's methodology for calculating delta-Y differs from other LECs, produces an exogenous cost adjustment that appears to be greater than the adjustment that would result if it had calculated delta-Y on a per rate element basis as opposed to using an average of all rate elements, and reduces its interexchange rates even further.[109]

43. BellSouth replies that its calculation of delta-Y included all rate elements associated with the provision of access services used for corridor services.[110] BellSouth asserts that its use of "average revenues per minute" to calculate delta-Y is consistent with the methodology it has used to calculate that factor in the past, and the Commission does not require the use of a different methodology.[111] BellSouth further maintains that its calculation of delta-Y using average revenues per minute is correct because this average takes account of switched dedicated transport, TST, and the interconnection charge.[112] Subsequent to its reply, BellSouth amended its transmittal to correct the inadvertent omission of transport rates in developing delta-Y from one of its worksheets.[113]

(c) Discussion

44. We have reviewed BellSouth's transmittal, as amended, and find that it correctly calculates the delta-Y factor. We, therefore, conclude that Allnet has failed to demonstrate that BellSouth's calculation of the delta-Y factor for purposes of imputing access charges to the interexchange basket is patently unlawful. Nor has Allnet raised any question regarding this issue that warrants investigation at this time.

C. Exogenous Cost Issues

1. Exogenous Treatment of Expiration of Equal Access and Network

[108] Allnet Petition at 5.

[109] *Id. citing* NYNEX D&J at 42, 2-1 Exhibit; Southwestern Bell D&J, at Workpaper 8A-3 (as examples of LECs that allegedly correctly itemized the residual interconnection charge (RIC), and also did not average the revenue impacts as BellSouth did).

[110] BellSouth Reply, at 12.

[111] *Id.*

[112] *Id.*

[113] Letter from BellSouth to the Secretary, Federal Communications Commission (filed June 1, 1994), *amending* BellSouth Tariff F.C.C. No. 1, Transmittal No. 197 (filed April 1, 1994).

Reconfiguration Amortization Program

(a) Background

45. In a companion order to the Modification of Final Judgment (MFJ)[114], the U.S. District Court required AT&T to guarantee the BOCs' recovery of the costs of reconfiguring their networks to provide equal access to interexchange carriers (IXCs). The District Court also directed AT&T and the BOCs to develop a procedure to account for the equal access and network reconfiguration (EANR) costs.[115] In 1985, AT&T and the BOCs petitioned the Commission to approve a plan of accounting for EANR costs. AT&T and the BOCs estimated that the total equal access expenditures would exceed $2.6 billion and would be incurred over a short period of time.[116]

46. The *EANR Order* identified only certain costs that would be treated as equal access costs, including: (1) initial incremental costs for hardware and software related directly to the provision of equal access, and not otherwise required; (2) costs of connecting offices that service competitive IXCs; and (3) costs that have been incurred as a result of bona fide requests for conversion to equal access.[117] The Commission required the BOCs to amortize EANR costs over an eight-year period that would expire on December 31, 1993.[118] The Commission concluded that the establishment of a fixed amortization period with a definite termination point of December 31, 1993, would avoid substantial irregular fluctuations in rates and reduce the administrative burdens of tracking EANR costs.[119]

47. When the Commission established the system of price cap regulation for LECs in 1990, it decided that the costs of conversion to equal access should be treated endogenously.[120]

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[114] United States v. American Tel. & Tel. Co., 552 F. Supp. 131 (D.C. Cir. 1983), *aff'd sub nom.*, Maryland v. United States, 460 U.S. 1001 (1983).

[115] United States v. Western Electric Co., Inc., 569 F. Supp. 1057, 1123 (D.D.C. 1983).

[116] Petitions for Recovery of Equal Access Costs, Memorandum Opinion and Order, FCC 85-628, 50 Fed. Reg. 50,910, 50,913-14 n.16 (1985) (*EANR Order*), *aff'd on recon.*, 1 FCC Rcd 434 (1986) (*EANR Reconsideration Order*).

[117] *EANR Order*, 50 Fed. Reg. at 50,912-13; *see also EANR Reconsideration Order*, 1 FCC Rcd at 437 (rejecting proposals to include equal access costs in the amortization "regardless of whether competition exists or a bona fide request for conversion was received").

[118] *EANR Reconsideration Order,* 1 FCC Rcd at 437.

[119] *Id.*

[120] *LEC Price Cap Order*, 5 FCC Rcd at 6808.

The Commission concluded that according exogenous treatment to equal access costs, whether already incurred[121] or newly arisen, would create perverse incentives for the LECs "to inflate the amounts spent on equal access."[122] In the *LEC Price Cap Reconsideration Order*, the Commission affirmed the decision to treat equal access costs endogenously.[123] In the *1994 TRP Order*, the Bureau rejected AT&T's argument that the expiration of the EANR amortization program should be treated exogenously and should result in a downward adjustment to PCI levels. The Bureau noted that the Commission had rejected in *LEC Price Cap Reconsideration Order* a substantially similar argument raised by MCI.[124]

(b) Petitions

48. MCI and AT&T argue that, since the costs of EANR were fully amortized on December 31, 1993, the LECs should be required to treat the expiration of the EANR amortization as an exogenous adjustment.[125] They maintain that all of the price cap carriers have failed to make adjustments to their price cap indices to reflect the full amortization of their EANR costs.[126] AT&T estimates that total cost to the BOCs of converting their exchanges and end offices to equal access is $1.2 billion.[127]

49. MCI and AT&T both liken expiration of the EANR amortization to expirations of the reserve deficiency amortization (RDA) and inside wire amortization (IWA).[128] AT&T cites, as support for its argument, the concern the Commission expressed in its decision in the *LEC Price Cap Order* to accord exogenous treatment to the RDA, that:[129]

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[121] The Commission had found that the largest price cap LECs had already completed conversion to equal access. *LEC Price Cap Order*, 5 FCC Rcd at 6808.

[122] *Id.*

[123] *LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2666-67.

[124] *1994 TRP Order*, 9 FCC Rcd at 1063, *citing LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2666-67 n.77.

[125] MCI Petition at 20-22; AT&T Petition at 4-5.

[126] AT&T Petition at 2-9; MCI Petition at 20-21.

[127] AT&T Petition at 3.

[128] *Id.* at 5-6; MCI Petition at 22-23, *citing LEC Price Cap Order*, 5 FCC Rcd at 6808; *LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2673-75.

[129] AT&T Petition at 5-6 n.8, *citing LEC Price Cap Order*, 5 FCC Rcd at 6808.

it would be unfair to ratepayers who are now bearing the cost of the amortization program if rates were not adjusted downward at the end of the program.

AT&T further contends that the Commission's decision to treat the expiration of IWA exogenously to effect a reduction in LEC rates "applies with equal force to the expiration of the EANR amortization."[130]

50. MCI maintains that, just as the Commission expected when it established the RDA and IWA that costs would be fully recovered and corresponding rates would decrease at the end of the amortization, the Commission similarly expected, in establishing the EANR amortization, that rates would decrease when the EANR amortization expired.[131] MCI and AT&T conclude that the Commission must accord exogenous treatment to the expiration of the EANR amortization and adjust downward the price cap indices in order to achieve consistency in the treatment of amortizations that were in effect at the time price cap regulation was established.[132]

(c) Replies

51. The LECs contend that AT&T and MCI are in error because the Commission has repeatedly rejected proposals to treat the expiration of the EANR amortization exogenously.[133] They assert that the Commission concluded in the *LEC Price Cap Order*, and affirmed in the *LEC Price Cap Reconsideration Order*, that all equal access costs are to be treated endogenously.[134]

52. Southwestern Bell further argues that MCI is incorrect in contending that the Commission's decision in the *LEC Price Cap Order* to accord endogenous treatment to the costs of equal access conversion is distinguishable from, and did not encompass, the EANR amortization program then in effect.[135] Nowhere in the *LEC Price Cap Order*'s discussion of the exogenous treatment of equal access costs, says Southwestern Bell, is such a limitation

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[130] *Id.*, at 6 n.9, *citing LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2673-74.

[131] MCI Petition at 23 n.16, *citing EANR Reconsideration Order*, 1 FCC Rcd at 437.

[132] AT&T Petition at 8-9; MCI Petition at 23-24.

[133] Bell Atlantic Reply at 2-3; BellSouth Reply at 2-3; NYNEX Reply at 1-3; SNET Reply at 4; Southwestern Bell Reply at 3-4; U S West Reply at 5, *citing LEC Price Cap Order*, 5 FCC Rcd at 6808, *LEC Price Cap Recon Order*, 6 FCC Rcd at 2667 n.77; *1994 TRP Order*, 9 FCC Rcd at 1063.

[134] *Id.*

[135] Southwestern Bell Reply at 2-3, *citing LEC Price Cap Order*, 5 FCC Rcd at 6808.