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

DA 95 - 1485

In the Matter of	)	
	)	CC Docket No. 93-193,
1993 Annual Access Tariff Filings	)	Phase I
	)	
1994 Annual Access Tariff Filings	)	CC Docket No. 94-65
	)	
AT&T Communications	)	CC Docket No. 93-193,
Tariff F.C.C. Nos. 1 and 2	)	Phase II
Transmittal Nos. 5460, 5461, 5462 and 5464	)	
	)	
Bell Atlantic Telephone Companies	)	CC Docket No. 94-157
Tariff F.C.C. No. 1, Transmittal No. 690	)	
	)	
NYNEX Telephone Companies	)	
Tariff F.C.C. No. 1, Transmittal No. 328	)	

ORDER DESIGNATING ISSUES FOR INVESTIGATION

Adopted: June 26, 1995; Released: June 30, 1995

DIRECT CASES DUE: August 14, 1996
COMMENTS ON DIRECT CASES DUE: September 13, 1995
REBUTTALS DUE: September 28, 1995

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In this Order, the Common Carrier Bureau (Bureau) designates issues in three related investigations of claims for exogenous treatment under price cap regulation of amounts associated with implementation of Statement of Financial Accounting Standards 106 (SFAS-106) -- also known as "other postretirement employee benefits" or "OPEBs." The first investigation -- of the 1993 annual access tariffs[1] -- concerns several issues,

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[1] 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 Tariffs for the 800 Service

including the local exchange carriers' (LECs') claims for exogenous treatment of the "transitional benefit obligation"[2] portion of SFAS-106.[3] The Bureau initiated this investigation in June 1993. The second investigation, which also began in 1993, involves certain AT&T Communications (AT&T) transmittals. The rates proposed in these transmittals were designed to recover LEC access charges that included the SFAS-106 costs claimed by the LECs as well as AT&T's own SFAS-106 amounts.[4] The third investigation, initiated in December 1994, involves proposed tariff revisions filed by the Bell Atlantic Telephone Companies (Bell Atlantic) and NYNEX Telephone Companies (NYNEX), which sought exogenous treatment of SFAS-106 amounts not previously claimed.[5] In addition, the Bureau has recently included four additional proposed tariff revisions in CC Docket No. 94-157, the third investigation. These tariff filings each raise

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Management System and 800 Data Base Access Tariffs, CC Docket No. 93-129, Memorandum Opinion and Order Suspending Rates and Designating Issues for Investigation, 8 FCC Rcd 4960 (Com. Car. Bur. 1993) (*1993 Annual Access Investigation Order*).

[2] The "transitional benefit obligation" is explained in paragraph 4, *infra*.

[3] The *1993 Annual Access Investigation Order* also includes an investigation of Rochester Telephone Corporation, Tariff F.C.C. No. 1, Transmittal No. 222, for SFAS-106 TBO amounts that were suspended by the Bureau for one day in the 1994 annual access tariff order. *See* 1994 Annual Access Tariff Filings, Memorandum Opinion and Order Suspending Rates, CC Docket No. 94-65, 9 FCC Rcd 3519 (Com. Car. Bur. 1994)(*1994 Annual Access Investigation Order I*); 1994 Annual Access Tariff Filings, Memorandum Opinion and Order Suspending Rates, CC Docket No. 94-65, 9 FCC Rcd 3705 (Com. Car. Bur. 1994)(*1994 Annual Access Investigation Order II*).

[4] AT&T Communications Tariff F.C.C. Nos. 1 and 2, Transmittal Nos. 5460, 5461, 5462 and 5464, 8 FCC Rcd 6227 (Com. Car. Bur. 1993) (*AT&T OPEB Investigation Order*). While that investigation was pending, the Bureau was investigating whether increases in booked OPEB costs should be treated as exogenous costs. The Commission subsequently concluded that OPEB costs were not exogenous. Treatment of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, "Employers Accounting for Postretirement Benefits Other Than Pensions," Memorandum Opinion and Order, 8 FCC Rcd 1024 (1993) (*OPEB Order*). The United States Court of Appeals for the District of Columbia Circuit, however, reversed and remanded the Commission's *OPEB Order* in 1994. Therefore, the issues presented in the *AT&T OPEB Investigation Order, supra*, remained pending during the appeal process and will now be included in this investigation. For a discussion of the background of this litigation, *see* paras. 6-8, *infra*.

[5] Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 690, NYNEX Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 328, Pacific Bell Tariff F.C.C. No. 128, Transmittal No. 1738 and US West Communications, Transmittal No. 550, CC Docket No. 94-157, Memorandum Opinion and Order, 10 FCC Rcd 1594 (Com. Car. Bur. 1994) (*Bell Atlantic/NYNEX Investigation Order*).

issues directly related to the *Bell Atlantic/NYNEX Investigation Order*.[6] In each of the orders initiating these three investigations, the Bureau suspended the tariffs for one day and imposed accounting orders in the event the carriers' proposed rates were later found to be unreasonable.

II. BACKGROUND

A. SFAS-106

2. In December 1990, the Financial Accounting Standards Board (FASB) adopted SFAS-106, which is entitled "Employers' Accounting for Postretirement Benefits Other Than Pensions." For companies that follow generally accepted accounting principles (GAAP), SFAS-106 established new financial accounting and reporting requirements for accounting periods beginning after December 15, 1992, for any employer offering postretirement benefits other than pensions to its employees. OPEBs typically consist of health and dental care benefits and life insurance.

3. Before adopting SFAS-106, carriers accounted for OPEBs on a "pay-as-you-go" or cash basis, recognizing the amounts actually paid on behalf of employees in the current accounting period -- the so-called "ongoing amounts." SFAS-106 now requires companies to account for OPEBs on an accrual basis, treating OPEBs as a form of deferred compensation earned by employees during their working years. Thus, the costs of OPEBs are recognized during the years the benefits are earned, rather than during the years when the amounts of the benefits are actually paid by the company.

4. In addition to the change from cash-basis to accrual accounting, SFAS-106 requires companies to "book" (*i.e.*, to recognize on their financial records) the amount of their unfunded obligation for OPEBs to retirees and to active employees existing as of the date of their adoption of SFAS-106. This unfunded obligation, referred to as the "transitional benefit obligation" (TBO),[7] reflects the amount that a company would have

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[6] The Bureau included the following four tariff filings in the investigation: Bell Atlantic Telephone Companies, Tariff F.C.C. No. 1, Transmittal No. 747, CC Docket Nos. 94-139 and 94-157, Memorandum Opinion and Order Suspending Rates, 10 FCC Rcd 5027 (Tar. Div., Com. Car. Bur., rel. Mar. 15, 1995); Pacific Bell, Tariff F.C.C. No. 128, Transmittal No. 1773 and U S West, Tariff F.C.C. No. 5, Transmittal No. 584, CC Docket No. 94-157, Memorandum Opinion and Order Suspending Rates, 10 FCC Rcd 6038 (Tar. Div., Com. Car. Bur., rel. Mar. 24, 1995); The NYNEX Telephone Companies, Tariff F.C.C. No. 1, Transmittal No. 374, CC Docket No. 94-157, Memorandum Opinion and Order Suspending Rates, DA 95-966 (Tar. Div., Com. Car. Bur., rel. Apr. 27, 1995).

[7] SFAS-106 defines the TBO as "the unrecognized amount, as of the date this Statement is initially applied, of (a) the accumulated postretirement benefit obligation in excess of (b) the fair value of plan assets plus any recognized accrued postretirement benefit cost or less any recognized prepaid

accrued on its books as of the effective date of the accounting change if it had been operating under the accrual method. SFAS-106 permits companies whose benefits plans have active participants either to recognize the TBO as an immediate expense or to amortize it over the average remaining service years of plan participants. If the average remaining service period is less than 20 years, SFAS-106 permits the employer to use a 20-year period rather than an average period.

5. Since 1985, the Commission has followed a policy of conforming regulatory accounting to GAAP, including new FASB standards, unless adoption of the principle or practice conflicts with the Commission's regulatory objectives.[8] In December 1991, the Bureau, under delegated authority, issued an Order approving the requests of two LECs to adopt SFAS-106-type accounting for OPEBs, on or before January 1, 1993.[9] The Bureau declined, however, to allow carriers to adopt the FASB option of immediately recognizing the TBO, because the amounts involved were so large that accounting for them as one-time expenses would have distorted the LECs' earnings during the affected period. Instead, the Bureau required the carriers to use the other SFAS-106 option of amortizing the TBO expense either over a 20-year period or over the average remaining service period of active plan participants.[10]

6. After the Bureau required AT&T and the LECs to conform their regulatory accounting practices to SFAS-106, several LECs subject to price cap regulation filed tariff transmittals in 1992 that sought permission to treat the change in OPEB costs exogenously.[11] Under price cap regulation, costs deemed "exogenous" may be used by the carrier to increase, or decrease, the price cap indexes (PCIs)[12] to the extent that those

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postretirement benefit cost."

[8] *See* Section 32.16 of the Commission's rules, 47 C.F.R. § 32.16.

[9] *See* Southwestern Bell Corporation, GTE Service Corporation, Notification of Intent To Adopt Statement of Financial Accounting Standards No. 106, Employers' Accounting for Postretirement Benefits Other Than Pensions, 6 FCC Rcd 7560 (Com. Car. Bur. 1991).

[10] *Id.*; *see also* Uniform Accounting for Postretirement Benefits Other Than Pensions in Part 32, 7 FCC Rcd 2872 (Accounting and Audits Division, Com. Car. Bur. 1992)(*RAO Letter 20*).

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

[12] "Price Cap Index" or "PCI" serves as an upper limit on rates. This index is adjusted annually for productivity, inflation and other factors, including exogenous adjustments. *See* 47 C.F.R. § 61.3 (v); *see also* Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, CC Docket No. 87-313, 5 FCC Rcd 6786, 6792 (1990)(*LEC Price Cap Order*).

costs are not otherwise represented in the formula used to set the PCI and are not within the carrier's control.[13] The formula that governs the annual adjustment of the PCIs includes factors that adjust for inflation, productivity of the telecommunications industry as compared to that of the nation as a whole, and exogenous changes. The Bureau suspended the 1992 transmittals for five months and set them for investigation.[14] All price cap regulated LECs were made subject to this investigation. On January 22, 1993, the Commission adopted the *OPEB Order, supra,* terminating the investigation and denying the LECs' requests for exogenous treatment of OPEBs.[15]

7. As discussed above, there are two types of OPEB amounts, "ongoing" amounts and "transitional benefit obligation" amounts. Ongoing amounts represent the accrual accounting of OPEBs that are booked when the employee earns the benefits. The TBO amounts represent the unfunded, accrued OPEBs existing as of the date the company implemented accrual accounting under SFAS-106. The *OPEB Order* distinguished between the two types of OPEBs. The *Order* denied exogenous treatment for ongoing amounts, but indicated that it was not foreclosing further consideration of exogenous treatment of the TBO amounts based on a better and more complete record. The Commission suggested the annual 1993 access tariff filings as a possible forum for such consideration.[16]

8. The price cap LECs sought judicial review of the *OPEB Order* in the U.S. Court of Appeals for the District of Columbia Circuit. On July 12, 1994, the Court reversed and remanded the *OPEB Order* after concluding that changes in LEC OPEB costs

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[13] *See* 47 C.F.R. § 61.45.

[14] 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, Order of Investigation and Suspension, 7 FCC Rcd 2724 (Com. Car. Bur. 1992). The Bureau designated the following issues for investigation: (1) whether the LECs had demonstrated that implementing SFAS-106 results in an exogenous cost change under the Commission's price cap rules; and (2) if these cost changes were treated as exogenous, whether: (a) costs associated with implementation of SFAS-106 prior to January 1, 1993 (when the accounting change becomes mandatory) should be treated as exogenous; (b) the assumptions made by the individual LECs in calculating these costs were reasonable; (c) given these assumptions, the individual LECs had correctly computed the exogenous cost changes; and (d) the individual LEC allocations of these costs among the price cap baskets complied with Commission rules. *Id.* at 2725-26.

[15] This Order directed Bell Atlantic, US West and Pacific Bell to file tariff revisions removing the OPEB material. *Id.* at 1037.

[16] *Id.*

caused by the implementation of SFAS-106 are eligible for exogenous treatment.[17] Although the Court directed the Commission to grant exogenous treatment for such costs, it remanded to the Commission calculation of the specific amount of OPEB-related costs that are eligible for exogenous treatment. The issues we designate in this Order respond to that direction from the Court.

B. Investigations

9. In their 1993 annual access tariff filings, the Ameritech Operating Companies (Ameritech), Bell Atlantic, BellSouth Telecommunications, Inc. (BellSouth), GTE System Telephone Companies (GSTC), GTE Telephone Operating Companies (GTOC), the Lincoln Telephone and Telegraph Company (Lincoln), NYNEX, Rochester, Southern New England Telephone Company (SNET), Southwestern Bell Telephone Company (Southwestern) and US West Communications, Inc. (US West) sought exogenous cost treatment for TBO amounts.[18] Their 1993 annual filings limited these requests to the incremental costs associated with implementation of SFAS-106 for employees retiring before January 1, 1993, the date of SFAS-106 implementation. These exogenous cost claims total more than $200 million. On June 23, 1993, the Common Carrier Bureau suspended the 1993 annual access tariffs for one day and initiated an investigation of, *inter alia*, whether the claimed TBO amounts were just and reasonable.[19]

10. After the LECs' 1993 annual access rates became effective, including amounts for implementing SFAS-106, AT&T increased its rates based in part on the LEC access rate increases and in part on AT&T's own SFAS-106 TBO amounts.[20] The Bureau suspended these tariffs for one day and initiated an investigation of the rates on August 10, 1993.[21] To preserve the rights of ratepayers to a refund in the event AT&T receives a refund from the LECs at the conclusion of the LEC investigation, and because AT&T's claim of its own TBO amounts raised substantially the same issues as the LEC's TBO

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[17] *Southwestern Bell Telephone Company v. FCC*, 28 F.3d 165 (D.C. Cir. 1994).

[18] *See* Ameritech Transmittal 702 Description and Justification (D&J) at 10; Bell Atlantic Transmittal 565 D&J at 4-21 - 4-22; BellSouth Transmittal 105 D&J at A-11 - A-14; GSTC Transmittal 38 D&J at 10; GTOC Transmittal 781 D&J at 10; Lincoln Transmittal 72 D&J at 15-16; NYNEX Transmittal 176 D&J at 53-57; Rochester Transmittal 187 D&J at 1-9; Southwestern Transmittal 2271 D&J at 3-4 - 3-5; and US West Transmittal 345 D&J at 2-14 -2-17.

[19] *See 1993 Annual Access Investigation Order*, 8 FCC Rcd 4960 (Com. Car. Bur. 1993).

[20] *See* AT&T Communications Tariff F.C.C. Nos. 1 and 2, Transmittal Nos. 5460, 5461, 5462 and 5464 (filed July 16, 1993).

[21] *AT&T OPEB Investigation Order*, 8 FCC Rcd at 6227.

claims, we included AT&T's rates in the investigation in CC Docket No. 93-193, designating the investigation of the LEC tariffs as "Phase I" and the investigation of the AT&T tariffs as "Phase II." We stated that issues in Phase II would be designated after consideration of the record in Phase I.[22]

11. The 1993 annual access tariff filings of Ameritech, Bell Atlantic, BellSouth, GTE, NYNEX, Rochester, Southwestern and US West included claims for exogenous costs for the six-month period preceding the 1993 tariff year. In their 1994 annual access tariff filings, these LECs included exogenous PCI adjustments to cancel their previous requests to claim exogenous costs for the 1993 TBO amounts. The Bureau suspended those tariffs, incorporated the OPEB provisions into the Docket 93-193 investigation and made those transmittals subject to the accounting order imposed in that docket.[23] The 1994 annual access Orders also stated that, after the conclusion of the Commission's investigation in Docket 93-193, we would give the LECs an opportunity to present any legal argument or factual circumstances that might lead us to conclude that the decision reached in the 1993 investigation on TBO issues should not control our treatment of the 1994 access tariffs.[24] Because this instant investigation will address all OPEB filings, including the OPEB portions of the 1994 filings that were included in the 1993 investigation, parties should address any specific argument pertaining to their 1994 tariffs in this investigation.

12. On September 1, 1994, Bell Atlantic and NYNEX filed transmittals to increase their rates for interstate access.[25] These transmittals represent the first efforts by LECs to adjust their PCI levels to reflect their implementation of SFAS-106 since the Court of Appeals' decision in *Southwestern Bell Telephone Company v. FCC*.[26] Thus, these transmittals claim all OPEB costs that were not claimed in the 1993 annual access tariffs, including employee TBO amounts and ongoing OPEB amounts. The Bureau suspended these tariffs for one day, initiated an investigation, and imposed an accounting

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[22] *Id.*

[23] *1994 Annual Access Investigation Order I*, 9 FCC Rcd at 3542; *1994 Annual Access Investigation Order II*, 9 FCC Rcd at 3738.

[24] *Id.*

[25] *See* Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 690 (filed Sept. 1, 1994); NYNEX Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 328 (filed Sept. 1, 1994).

[26] *Southwestern Bell Telephone Company v. FCC*, 28 F.3d 165 (D.C. Cir. 1994).

order.[27] In this Order, the Bureau will designate issues, name parties, and establish a pleading cycle for the investigation.

13. Bell Atlantic, NYNEX and the other LECs have subsequently made similar OPEB filings. The LECs base portions of their claimed exogenous costs on studies that address the effects of SFAS-106 on all local telephone companies subject to the price cap rules.[28] These filings either have been or now will be included in this investigation. In light of this, and also the fact that the Commission's price cap plan applies equally to all price cap LECs, the issues associated with the exogenous treatment of the costs related to implementation of SFAS-106 are similar for all LECs subject to price caps. Most price cap LECs included exogenous cost claims to recover SFAS-106 TBO amounts in their 1993 annual access tariff filings. AT&T proposed to increase its rates to recover these costs and its own TBO amounts, all as an exogenous adjustment. In the interest of fairness and efficiency, we believe that these issues associated with the exogenous treatment of the costs associated with implementing SFAS-106 should be considered in a single proceeding. We therefore make all price cap LECs and AT&T parties to this proceeding, including those LECs that may not yet have sought exogenous treatment of the costs to implement SFAS-106. Non-price cap LECs may participate in this proceeding as voluntary parties, as of course may other interested persons.[29]

III. DISCUSSION AND DESIGNATION OF ISSUES FOR INVESTIGATION

14. As discussed above, we are designating one set of issues for all three investigations. For purposes of the *1993 Annual Access Investigation*, Phase I, this is a supplemental designation order. This supplemental designation of issues is necessary because of the Court's remand of the *OPEB Order* and because the time that has passed since the initial designation of issues renders the record stale. For purposes of the instant

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[27] *Bell Atlantic/NYNEX Investigation Order, supra.*

[28] *See* United States Telephone Association, "Post-Retirement Health Care Study Comparison of TELCO Demographic and Economic Structures and Actuarial Basis to National Averages" (1992) (amended 1993) (submitted by Ameritech, Bell Atlantic, BellSouth, GTE, Lincoln, NYNEX, SNET and US West in their 1993 annual access tariff filings); National Economic Research Associates, Inc., "The Treatment of SFAS-106 Accounting Changes Under FCC Price Cap Regulation" (1992)(submitted by Pacific in CC Docket No. 92-101, Pacific Bell Tariff F.C.C. No. 128, Transmittal No. 1579 (filed Apr. 16, 1992) and by Rochester in its 1993 annual access tariff filing).

[29] *See* note 6, *supra.* for a list of the other proceedings we are including in this investigation.

investigation, we designate the SFAS-106 portion of the *1993 Annual Access Investigation* as Phase I, Part 1[30] for the LECs and Phase II for AT&T.

15. In general, this combined investigation seeks to determine whether the assumptions the individual LECs and AT&T made in calculating the costs of postretirement benefits are just and reasonable, in accordance with the Commission's rules and in the public interest. We seek some of the same type of cost information sought in the initial *OPEB Investigation*. The *OPEB Order* did not reach the merits of the record on these cost issues for individual LECs because it determined that SFAS-106 amounts should not receive exogenous treatment generally. Because the record in that proceeding is also stale, we seek in the current investigation to refresh the record on the various issues designated below.

16. We hereby designate the following issues for investigation and request the following specific items of information:

A. Designated Issues and Specific Information Requirements

1. General Information on OPEB Costs Claimed

Issue A: Have AT&T and the individual LECs correctly, reasonably and justifiably calculated the gross amount of SFAS-106 costs that may be subject to exogenous treatment under price cap regulation?

17. We direct the LECs and AT&T to explain the derivation of the gross amount of incremental costs that is the basis of the exogenous claim including: (1) the date the company implemented SFAS-106; (2) the cost basis of the pay-as-you-go amounts that supported the rates in effect on the initial date that the carrier became subject to price cap regulation; (3) the effect of the price cap formula on that amount up to the date of conversion to SFAS-106; (4) the carrier's actual cash expenditures related to SFAS-106 for each year since the implementation of price caps, but prior to the implementation of SFAS-106 accounting methods; and (5) the treatment of these costs in reports to the Securities and Exchange Commission (SEC) and to shareholders, including specific citations to or excerpted materials from, such reports to indicate the amount of liability each party has projected for OPEBs.

18. The LECs and AT&T are directed to: (1) describe each type of benefit being provided that is covered by the SFAS-106 accounting rules; (2) provide, on a year-by-year

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[30] Phase I, Part 2 of the LECs *1993 Annual Access Investigation Order, supra,* will examine all the remaining issues, such as sharing and low-end adjustment and dark fiber rates, raised in that proceeding.

basis, what the pay-as-you-go amounts would have been had the company not implemented SFAS-106 methods; (3) describe the forms of postretirement benefit accrual accounting, if any, that were utilized before the effective date of price cap regulation; (4) describe the type and provide the level of SFAS-106-type expenses reflected in rates before they were adjusted for any exogenous treatment related to SFAS-106; and (5) provide the level of SFAS-106 expenses that was reflected in the rates in effect on the initial date that the carrier became subject to price cap regulation.

Issue B: Should exogenous claims be permitted for SFAS-106 costs incurred prior to January 1, 1993, the Commission's date for mandatory compliance?

19. On December 19, 1991, the Bureau adopted an order authorizing accounting changes due to the adoption of SFAS-106 for carriers subject to our Uniform System of Accounts on or before January 1, 1993.[31] Some LECs have included, in their claims for exogenous treatment of SFAS-106, costs incurred before January 1, 1993, which is prior to the date that the Bureau authorized adoption of SFAS-106 accounting methods. Issue B addresses the issues raised by such claims.

2. Regulatory Separations and Allocations

Issue C: Have AT&T and the individual LECs correctly and reasonably allocated and separated amounts associated with implementation of SFAS-106 in accordance with the Commission's rules and Responsible Accounting Officer (RAO) letters?

20. The following information shall also be provided in the direct cases: (1) the amount associated with implementation of SFAS-106 for the total company (including telephone operations and non-telephone operations); (2) an explanation of how the carrier arrived at the total company SFAS-106 amounts; (3) the amounts allocated to the telephone operating companies, including the specific Part 32 Accounts used and the amounts allocated to each of those accounts; (4) the method of allocating amounts to the telephone operating companies (head counts, actuarial studies, *etc.*); (5) the amounts allocated between regulated and non-regulated activities of the telephone company, with a description and justification of the methodology for the allocations; and (6) the allocation of costs to baskets, by year.

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[31] Southwestern Bell, GTE Service Corporation, Notification of Intent to Adopt Statement of Financial Accounting Standards No. 106, Employers' Accounting for Postretirement Benefits Other Than Pensions, AAD 91-80, 6 FCC Rcd 7560 (Com. Car. Bur. 1991); *see also,* 47 C.F.R. § 32.1 *et seq.*

3. VEBA Trust Information

Issue D: **How should Voluntary Employee Benefit Association trusts or other funding mechanisms for these expenses be treated: (1) if implemented before price caps; (2) if implemented after price caps, but before the change required by SFAS-106; and (3) if implemented after the change in accounting required by SFAS-106?**

Issue E: **Should exogenous treatment for SFAS-106 amounts be limited to costs that are funded?**

21. The following information shall be provided by companies that have Voluntary Employee Benefit Association (VEBA) trusts or other funding mechanisms for SFAS- 106 expenses that were established prior to the adoption of SFAS-106:[32] (1) describe any VEBA trust or other funding mechanisms for the expenses that were established prior to the adoption of SFAS-106; (2) provide the amounts, placed in these funds for each year since they were implemented, including the 1990-91 tariff year for LECs and the 1989-90 tariff year for AT&T; (3) describe and provide the amounts in the trust that were for ongoing OPEBs and those that were for TBO; (4) describe the assumptions made when the funds were set up, including, but not limited to, the time value of money, expected long-term rate of return on plan assets, future compensation levels, and retirement age factors affecting the amount and timing of future benefits;[33] (5) state the purpose of the VEBA funds and describe what SFAS-106 benefits packages are covered by each VEBA fund; and (6) describe the restrictions, if any, that prevent these VEBA funds from being used for other than SFAS-106 benefits.

4. Vesting of OPEB Interests

Issue F: **Should exogenous treatment be given only for amounts associated with employee interests that have vested?**

22. We direct the LECs and AT&T to provide documentation showing when the employees' interests in the OPEBs vest. Also, companies must explain how they determine when an employee's interest vests in the OPEBs.

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[32] If the company does not maintain such a trust, it should make a statement to that effect in its direct case.

[33] *See* para. 26, *infra*.

5. Treatment of Deferred Tax Benefits

Issue G: How should the deferred tax benefit applicable to OPEBs be treated for purposes of exogenous adjustments?

23. AT&T and the LECs are directed to describe on a year-by-year basis any exogenous adjustments made to reflect any deferred tax benefit associated with their OPEB accrual amounts. Companies are also directed to provide an explanation if there are no such adjustments.

6. Supporting Studies and Models

24. We require each company to include in its direct case all studies upon which the company seeks to rely in its demonstration that these accounting changes should receive an exogenous cost adjustment. This includes studies demonstrating that the change is not reflected in the current price cap formulas, factors for inflation, productivity, allowed exogenous changes, the rates in effect on the initial date that the carrier became subject to price cap regulation, or, for the LECs, the sharing and low-end formula adjustment mechanisms.

25. Parties and commenters relying on a macroeconomic model shall fully describe and document the model, including the method of estimation, parameter estimates, and summary statistics. These same data should be submitted for any alternate functional forms that were modeled, including the data used to estimate the model, the data used in making forecasts from the model, and the results of any sensitivity analyses performed to determine the effect of using different assumptions.

26. AT&T and the LECs shall provide a complete copy of all actuarial reports and studies used to determine SFAS-106 amounts and should provide descriptions and justifications of the actuarial assumptions, and the assumptions unique to postretirement health care benefits, made in computing the SFAS-106 expenses. These assumptions should include, but are not limited to, the time value of money, expected rate of return on plan assets, participation rates, retirement age, per capita claims cost by age, health care cost trend rates, medical reimbursement rates, salary progression (if a company has a pay-related plan), and the probability of payment (turnover, dependency status, mortality, etc.). Parties and commenters should also discuss what assumptions, if any, were made about other future events such as capping or elimination of benefits, or the possible advent of national health insurance.

27. We also direct AT&T and the LECs to submit all options provided by actuaries from which information was selected to derive SFAS-106 amounts including, but not limited to: the ranges of data on the age of the workforce; the ages at which

employees will retire; mortality rates; the gross eligible charge table by age; and the length of service of retirees. For comparison purposes, carriers should also provide the actuarial assumptions and data used for SFAS-112 computations. [34] Carriers should provide information on whether they took into account the possibility of future downsizing of the workplace. Carriers should provide information on what adjustments they have made to their SFAS-106 amounts for downsizings in the workforce that have occurred since the adoption of SFAS-106. Carriers should give full details of these adjustments.

28. Further, since part of the growth in Gross Domestic Product Price Index (GDP-PI)[35] presumably occurs due to growth in medical costs, we seek information on what adjustment, if any, should be made in the exogenous adjustment to avoid any double-counting. If an adjustment has been made, parties and commenters shall document how the adjustment was computed. Moreover, parties and commenters should describe and quantify any wage changes that will be reflected in the GDP-PI that are expected to occur as a result of the introduction of SFAS-106. In particular, parties and commenters should discuss what adjustment, if any, should be reflected in the exogenous adjustment for this change.

7. Miscellaneous Supporting Information

29. Each carrier shall provide information on its average total compensation per employee and the amount of this total compensation represented by OPEBs. We ask parties and commenters to provide similar data for the economy as a whole for comparison. This comparison is consistent with the Commission's price cap formula, which includes a productivity factor. By using this factor, the price cap index takes into account the productivity of the carrier regulated under price caps as compared to the economy as a whole. Historically, the telecommunications industry has had a higher level of productivity than the economy as a whole.[36]

30. Because the accruals for OPEBs generally represent non-cash expenses that may never be paid, we direct parties to describe the provisions they have made, if any, to return to ratepayers the over-accrual, if any, of the non-cash expenses if exogenous

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[34] SFAS-112 is "Employers' Accounting for Postemployment Benefits."

[35] The Commission began using GDP-PI instead of Gross National Product Price Index (GNP-PI) for calculating the PCI in *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, FCC 95-132, paras. 347-351, rel. Apr. 7, 1995. In that Order, the Commission adopted the use of GDP-PI because the latter is a more appropriate measure of the state of the economy for price cap purposes.

[36] *See*, para. 6, *supra*.

treatment is given for these amounts. Parties should describe any plans they have to return such monies to customers through voluntary PCI reductions or other means. Parties shall also describe how they recognize these gains from such over-accruals on their books of account.

31. The accrual calculations used by the companies to develop their claims for exogenous treatment for SFAS-106 amounts are, in part, based on the OPEBs provided pursuant to contracts between the companies and their employees. These contracts are currently being renegotiated. The OPEB benefits represent a significant issue in these negotiations. Any change in OPEBs will affect future accrued amounts and will be useful to compare prior calculated accruals to the new OPEB contracts to aid in determining whether the former calculations were reasonable. In particular, we are interested in determining whether the underlying actuarial assumptions have changed. Therefore, on an ongoing basis, parties shall document any and all changes made in OPEBs offerings to employees. Any new contracts with employees and their representative unions shall be submitted as they are negotiated.

F. Investigation Procedures

32. This combined investigation will be conducted as a notice and comment proceeding pursuant to Section 1.411 of the Commissions Rules.[37] CC Docket No. 94-157 will be used as the designation for this investigation. The carriers listed in Appendix A to this Order are designated as parties. These parties shall file their direct cases no later than 45 days after release of this Order. The direct cases must present the parties' positions with respect to the issues described in this Order. Pleadings responding to the direct cases may be filed no later than 30 days after the direct cases are filed, and must be captioned "Opposition to Direct Case" or "Comments on Direct Case." Parties may each file a "rebuttal" to oppositions or comments no later than 15 days after the oppositions or comments are filed.

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

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[37] 47 C.F.R. § 1.411.

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

35. *Ex parte* contacts (*i.e.*, written or oral communications that address the procedural or substantive merits of the proceeding and that are directed to any member, officer, or employee of the Commission who may reasonably be expected to be involved in the decisional process in this proceeding) are permitted in this proceeding until a public notice of scheduled Commission consideration of a final Order is released and after the final Order itself is issued. Written *ex parte* contacts must be filed on the day of the contact and must be submitted with the Secretary and Commission employees receiving each presentation. For other requirements, *see generally* Section 1.1200 *et seq.* of the Commissions rules.[38]

36. The investigation established in this Order has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection, or recordkeeping, labeling, disclosure or other record retention requirements as contemplated under the statute.[39]

VII. ORDERING CLAUSES

37. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 4(j), and 204(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 154(j), 204(a), AT&T Communications and the local exchange carriers listed in Appendix A SHALL RESPOND to the issues designated in this Order Designating Issues for Investigation, no later than 45 days after release of this Order. Interested parties may file pleadings responding to the direct cases no later than 30 days after the direct case is filed, and AT&T Communications and the local exchange carriers may file rebuttals no later than 15 days after the responses to the direct cases are filed.

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[38] *See* 47 C.F.R. § 1.1200 *et seq.*

[39] *See* 44 U.S.C. § 3502(4)(A).

38. IT IS FURTHER ORDERED that, this investigation includes matters discussed herein and in the following proceedings: the 1993 Annual Access Investigation, Phase I, Part 1, CC Docket No. 93-193; the 1993 Annual Access Investigation, Phase II, CC Docket No. 93-193; the 1994 Annual Access Investigation, CC Docket No. 94-65; Bell Atlantic Telephone Companies, Tariff F.C.C. No. 1, Transmittal No. 690, NYNEX Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 328; and the transmittals listed in note 6, *supra*.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen M.H. Wallman
Chief, Common Carrier Bureau

APPENDIX A

List of Parties to Investigation

Ameritech Operating Companies
Bell Atlantic Telephone Companies
BellSouth Telecommunications, Inc.
Centel Telephone Companies
GTE Telephone Operating Companies
GTE System Telephone Companies
Lincoln Telephone Company
Nevada Bell
NYNEX Telephone Companies
Pacific Bell
Rochester Telephone Corporation
Southern New England Telephone Company
Southwestern Bell Telephone Company
United and Central Telephone Companies
US West Communications, Inc.
AT&T Communications