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

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DEC 23 1996

In the Matter of)
)
800 Data Base Access Tariffs and)
the 800 Service Management System)
Tariff and)
)
Provision of 800 Services)

CC Docket No. ~~98-129~~

CC Docket No. 86-10

AT&T REPLY

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Pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, AT&T Corp. ("AT&T") hereby replies to the oppositions filed against AT&T's Petition for Reconsideration.¹ In its petition, AT&T seeks reconsideration of the 800 Data Base Report and Order,² specifically requesting that the Commission require the local exchange companies ("LECs") to refund the disallowed exogenous costs included in their price cap index ("PCI") calculations for the past three and one-half years by

¹ AT&T filed its petition on November 27, 1996. The NYNEX Telephone Companies ("NYNEX"), Southwestern Bell Telephone Company ("SWBT"), U S WEST Communications, Inc. ("U S WEST"), Pacific Bell and Nevada Bell ("Pacific"), GTE Service Corporation ("GTE"), and Sprint Corporation ("Sprint") filed oppositions.

² 800 Data Base Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Services, Report and Order, CC Docket Nos. 93-129 and 86-10, released October 28, 1996 ("Report and Order").

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reducing their PCIs on a one-time basis by an aggregate \$153.4 million.

The commenters oppose AT&T's petition arguing that a refund is inappropriate because (1) the Commission is not required to order refunds; (2) the price cap LECs may have priced their services below cap during the three and one-half year period; and (3) some LECs were required to "share" a portion of earnings in excess of the rate of return ceiling prescribed by the Commission. As shown below, the Commission should require the price cap LECs to effect a one-time PCI reduction of \$153.4 million by requiring each LEC to reduce its PCI by an appropriate amount and nothing that the LECs' arguments justifies any adjustment to this amount of PCI reduction.³

Most of the commenters focus on the fact that the Commission's refund authority, under Section 204 of the

³ See Attachments 1 and 2 to AT&T's Petition for Reconsideration for the amount of the PCI reductions by LEC. GTE contends (p. 4) that if the Commission were to require refunds and interest, Commission precedent supports simple interest. The Commission order cited by GTE (Policy and Rules Concerning Rates for Dominant Carriers, Order on Reconsideration, 6 FCC Rcd 2637, 2688 (1991) ("Dominant Carrier Reconsideration Order")) does not require simple interest; rather, it requires that the "rate at which interest is calculated must not penalize or disadvantage the LEC." The use of compound interest does not disadvantage the LEC. To the contrary, the use of simple interest will penalize the LECs' customers who could have earned compound interest, just as the LEC did, if they had had access to their money during this period.

Communications Act, 47 U.S.C. § 204(a), is not mandatory.⁴ AT&T agrees that the Commission has discretion in deciding when to order refunds. Local Exchange Carrier Access Tariff Rate Levels, Memorandum Opinion and Order, 8 FCC Rcd 6202, 6203 (1993). However, by failing to consider and address the refund issue it raised in its own accounting order in this proceeding, the Commission has failed to exercise its discretion at all. Upon reconsideration, and on the grounds discussed by AT&T in its petition, the Commission should exercise its discretion and require the LECs to refund the disallowed exogenous costs.⁵

⁴ See NYNEX, p. 2; SWBT, p. 2; U S WEST, p. 2; Pacific, p.3; and GTE, p. 2.

⁵ The commenters' claims (SWBT, p.2; Pacific, p. 4; and U S WEST, pp. 5-6) that they would have made different business decisions had they known earlier that their PCI's would be adjusted are irrelevant. The fact is that each of the LECs knew that the Commission was investigating their 800 data base access tariffs and, therefore, had the opportunity to plan their business activities accordingly. Moreover, the LECs were not harmed, as they were able to use the inflated PCIs in setting their rates for the three and one-half year period. Finally, there is no legal basis for the LECs to expect that a one-time PCI adjustment would not be required.

Several of the commenters also claim that the Commission cannot require a refund in this case, because the Commission failed to conclude its investigation within 15 months. See Pacific, p. 2 and U S WEST, p. 3, n.8. Section 204(a)(2)(A) of the Communications Act requires, among other things, the Commission to conclude hearings within 15 months. However, none of the commenters argued, or provided legal grounds to support the notion, that a refund order issued after 15 months is unlawful.

(footnote continued on following page)

The commenters also contend that because their rates were below their price caps (that is, the Actual Price Indices ("APIs") have been below their PCIs), a one-time PCI reduction would not require a dollar-for-dollar rate reduction.⁶ The LECs' conclusion misses the point, because the Commission has determined in the Report and Order that the LECs' PCIs (not their rates) have been overstated since May 1993. Thus, it is the PCIs that should be adjusted regardless of the rates charged.

Indeed, historically LECs have not been given credit in the PCI calculation for pricing below cap during the previous year. For example, in the annual price cap filings, LECs are required to adjust their PCIs without consideration of whether they priced their services below cap.⁷ In those cases, the LECs are not permitted to apply a credit to their annual PCI adjustments even if they had foregone the opportunity to earn more revenues by pricing below cap.

(footnote continued from previous page)

The time period is thus irrelevant to a determination as to whether a refund in this case is warranted.

⁶ See NYNEX, pp. 2-3; SWBT, pp. 3-4; U S WEST, pp. 3-5; Pacific, p. 4; GTE, pp. 3-4.

⁷ See Dominant Carrier Reconsideration Order, 6 FCC Rcd at 2640.

Similarly, when LECs were required to reduce their PCIs the year after being permitted to gross them up, for the 11-month adjustment in the 1996 annual tariff filing, no credit was given to the LECs, even if they had priced below caps during the gross-up period.⁸ Even when the LECs have initiated their own PCI gross-ups and reversals, and have priced below cap, they have not sought or received credit when reversing out the amount of the gross-up.⁹

Despite the LECs' attempts at directing attention away from this issue, AT&T's petition simply asks that the Commission apply these long-standing rules to the current situation where the LECs have inflated their PCIs with subsequently disallowed exogenous costs.¹⁰

⁸ See Support Material to be Filed With 1996 Annual Access Tariffs, Tariff Review Plans, 11 FCC Rcd 10255, 10256 (1996).

⁹ See Bell Atlantic's 1993 Annual Filing Tariff, Transmittal No. 565, in which Bell Atlantic grossed-up its PCIs by \$46 million to collect other post-employment benefit exogenous costs. In its 1994 Annual Tariff Filing, Transmittal No. 644, Bell Atlantic reversed out the gross-up. During this entire time, Bell Atlantic's rates were more than the \$46 million below cap.

¹⁰ In addition to the instant 800 data base investigation, the Commission is investigating at least \$500 million in past LEC PCI calculations for other reasons. See Attachment 1 herein. Therefore, the LECs cannot demonstrate that they had set their rates below cap solely to forego revenues related to 800 data base exogenous costs.

Finally, some commenters claim that because they were required to "share" a portion of earnings in excess of the rate of return ceiling prescribed by the Commission, any price reduction triggered by an one-time PCI reduction would have to be reduced by the sharing benefits already provided to interexchange carriers.¹¹ However, a LEC's sharing obligation does not mean that a LEC subject to that obligation has made a refund to the customers for its overstated PCI. Any PCI adjustment requirement is separate and apart from the LECs' sharing obligation, which arises -- independently of whether the LECs' prices are set at their caps -- as a result of overearnings.¹² The one-time PCI adjustment advocated in AT&T's Petition thus has nothing to do with any refunds required under the LECs' sharing obligations.

¹¹ See, e.g., SWBT, pp. 4-5; U S WEST, pp. 6-7 ("U S WEST has already refunded a portion of these amounts"); Pacific p. 4; and GTE, pp. 3-4.

¹² Sharing meets two purposes. First, it serves as a backstop to the price cap plan by ensuring "that LEC price cap rates remain[] reasonable in the event that X-Factor was in error for the industry as a whole or . . . for individual LECs." Price Cap Performance Review for Local Exchange Carriers, First Report and Order, 10 FCC Rcd 8961, 9045 (1995). If the X-factor is set too high or too low, the backstop sharing mechanism helps adjust the PCI to correct the error and helps keep the LECs' rates within a range of reasonableness. Id. Second, sharing allows LECs to earn more than under rate of return if they operate their business more efficiently.

This distinction is underscored by the fact that the sharing obligation is measured by total interstate earnings, because the price cap plan stresses LEC overall productivity.¹³ The provision of 800 data base services is only a portion of the total interstate earnings. Therefore, to the extent that a sharing obligation was triggered for some of the LECs, the direct link to their 800 data base revenues is tenuous at best. Thus the LECs cannot -- and have not been able to -- support their claims that any sharing obligation resulted from their 800 data base rates.

Moreover, even if the sharing could be associated with the 800 data base services -- which it cannot -- recent Commission findings indicate that LECs' overearnings from 1991-1995 were due to an X-factor error and not due to rates charged for 800 data base services.¹⁴ Therefore, the Commission required the LECs to correct their PCIs on a prospective basis.¹⁵ AT&T estimates roughly that the

¹³ Dominant Carrier Reconsideration Order, 6 FCC Rcd at 2679.

¹⁴ Because some portion of the LECs' increased earnings were obtained without any productivity improvements, their rates were not as low as intended. See Price Cap Performance Review for Local Exchange Carriers, 10 FCC Rcd at 9070.

¹⁵ Price Cap Performance Review for Local Exchange Carriers, 10 FCC Rcd at 9069. The Commission found that the LECs' X-factors were too low during from 1991 through 1995 and required the LECs to make a 2.8% adjustment to their PCIs.

cumulative effect of the error was approximately \$1.4 billion overstatement of the LECs' PCIs from 1991 through 1995.¹⁶ Therefore, most, if not all, of the LECs' overearnings during 1993-1995 were due to the X-factor error. Consequently, the LECs cannot show that their overearnings were due to the rates they charged for their 800 data base services.

For the reasons set forth in AT&T's Petition for Reconsideration, the Commission should reconsider its Report and Order and require the LECs to refund the disallowed

¹⁶ See Attachment 2 herein for calculation.

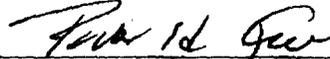
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exogenous costs included in their PCI calculations for the past three and a half years by reducing their PCIs, on a one-time basis, by an aggregate \$153.4 million.

Respectfully submitted,

AT&T CORP.

By



Mark C. Rosenblum
Peter H. Jacoby
Seth S. Gross

Its Attorneys

295 North Maple Avenue
Room 3245H1
Basking Ridge, New Jersey 07920
(908) 221-4243

December 23, 1996

Attachment 1

Issues Under Investigation in CC Docket 93-193

Docket 93-193 Issues under investigation (1):	LECs involved	Tariff Years (2):
Omission of End User Rev. in connection with Sharing	Bell Atlantic, Pacific	1993, 1994, 1995, 1996
Development of g Factor	BA	1993, 1994, 1995, 1996
LFA/Addback	SNET, NYNEX	1993, 1994
Dem Factor	U S WEST	1993
OPEB	All LECs (3)	1993, 1994, 1995, 1996
RAO20 (4)	Most LECs	1992, 1993, 1994, 1995
Sale of Exchanges	GTE	1995, 1996

Notes:

1. The issues identified are part of the Investigation in Docket 93-193. 1993 Annual Access Tariff Filings, Memorandum Opinion and Order Suspending Rates and Designating Issues for Investigation, 8 FCC Rcd 490 (1993). It is expected that the Commission will set additional RAO20 issues in a subsequent order.
2. The periods identified are the tariff years in which the LECs initially made their PCI calculations. LECs' PCIs continue to be overstated.
3. NYNEX and Pacific continue to have "make whole" OPEB dollars in their PCIs. NYNEX has recently removed its "make whole" OPEB amounts and Pacific is scheduled to remove its "make whole" amounts no later than March 25, 1997.
4. LECs made the RAO20 adjustments in the 1995 annual filing for the periods 1993-1995. Ameritech was the only LEC who went back to 1992.

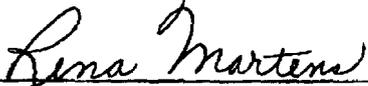
Attachment 2

**Estimate of LECs' PCI Overstatements from 1991-1995
Due to 0.7% Lower X-Factor**

Rate Period	Approximate Average Access Annual Industry Revenues	Cumulative PCI Impact of Lower X-Factor	Cumulative Revenue Impact of Lower X-Factor
	A	B	C=A*B
1991-1992	20,000,000,000	0.70%	140,000,000
1992-1993	20,000,000,000	1.40%	280,000,000
1993-1994	20,000,000,000	2.10%	420,000,000
1994-1995	20,000,000,000	2.80%	560,000,000
1991-1995			1,400,000,000

CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 23rd day of December, 1996, a copy of the foregoing "AT&T Reply" was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached Service List.



Rena Martens

SERVICE LIST

John Bartlett
Robert Butler
Wylie, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20004-2608
Counsel for Aeronautical Radio, Inc.

Kevin DiLallo
Levine, Blaszak, Block & Boothby
Suite 500
1300 Connecticut Ave., NW
Washington, DC 20036-1703
Attorneys for Ad Hoc Telecommunications
Users Committee

Roy L. Morris
Allnet Communication Services, Inc.
Suite 500
1990 M Street, NW
Washington, DC 20036

Randolph J. May
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, NW
Washington, DC 20004-1008
Attorneys for Compuserve Incorporated

David Gross
Richard Whitt
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, NW
Washington, DC 20004-1008
Counsel for First Financial
Management Corporation

Alan Buzacott
MCI Telecommunications Corporation
1801 Pennsylvania Ave., NW
Washington, DC 20006

Joseph Markoski
Kerry Murray
Squire, Sanders & Dempsey
1201 Pennsylvania Ave., NW
Washington, DC 20004
Attorneys for National Data Corporation

Jay C. Keithley
Sprint Communications Company
1850 M Street, NW, Suite 1100
Washington, DC 20036

Thomas E. Grace
John T. Lenahan
Ameritech
Room 4H70
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196

Paul J. Berman
Ellen K. Snyder
Covington & Burling
1201 Pennsylvania Ave., NW
PO Box 7566
Washington, DC 20044
Attorneys for Anchorage Telephone
Utility

Stephen G. Kraskin
Kraskin & Associates
Suite 810
2120 L Street, NW
Washington, DC 20037
Attorney for Atlantic Telephone
Membership Corporation; Coastal
Utilities, Inc.; Farmers Telephone
Cooperative, Inc.; Hargray Telephone
Company, Inc.; Horry Telephone
Cooperative, Inc.; Millington
Telephone Company, Inc.; Mt. Horeb
Telephone Company; Pineland
Telephone Cooperative, Inc.;
Southeast Telephone Company of
Wisconsin, Inc.; Warwick Valley
Telephone Company

Thomas J. Moorman
 General Counsel
 Regulatory and Industry Affairs
 John Staurulakis, Inc.
 6315 Seabrook Road
 Seabrook, MD 20706
 Attorney for Atlantic Telephone
 Membership Corporation; Coastal
 Utilities, Inc.; Farmers Telephone
 Cooperative, Inc.; Hargray Telephone
 Company, Inc.; Horry Telephone
 Cooperative, Inc.; Millington
 Telephone Company, Inc.; Mt. Horeb
 Telephone Company; Pineland
 Telephone Cooperative, Inc.;
 Southeast Telephone Company of
 Wisconsin, Inc.; Warwick Valley
 Telephone Company

Edward Shakin
 Edward D. Young, III
 Michael E. Glover
 The Bell Atlantic Telephone Companies
 1320 North Court House Road
 Eighth Floor
 Arlington, VA 22201

M. Robert Sutherland
 Richard M. Sbaratta
 Helen A. Shockey
 BellSouth Telecommunications, Inc.
 4300 Southern Bell Center
 675 West Peachtree St., N.E.
 Atlanta, GA 30375

Alfred Winchell Whittaker
 Stuart A.C. Drake
 Kirkland & Ellis
 Suite 1200
 655 15th Street, NW
 Washington, DC 20005
 Attorneys for the Participating Bell
 Operating Companies, Cincinnati
 Bell, Inc. and Southern New England
 Telephone Company

Marlin D. Ard
 Randall E. Cape
 Pacific Bell and Nevada Bell
 140 New Montgomery St., Room 1517
 San Francisco, CA 94105

Robert M. Lynch
 Durward D. Dupre
 Mary W. Marks
 J. Paul Walters, Jr.
 Southwestern Bell Telephone Company
 One Bell Center, Room 3520
 St. Louis, MO 63101

Jeffrey Bork
 U S WEST Communications, Inc.
 1801 California St., Suite 5100
 Denver, CO 80202

Thomas E. Grace
 The Ameritech Operating Companies
 Location 4H94 - Legal Department
 2000 W. Ameritech Center Drive
 Hoffman Estates, IL 60196-1025

Shirley A. Ransom
 BellSouth Telecommunications, Inc.
 3535 Collonade Pkwy., South E9D1
 Birmingham, AL 35243

Jay C. Keithley
 Central Telephone Companies
 1850 M Street, NW, Suite 1100
 Washington, DC 20036

Stephen G. Kraskin
 Kraskin & Associates
 2120 L Street, NW, Suite 810
 Washington, DC 20037
 Attorney for Century
 Telephone of Ohio, Inc.

Thomas J. Moorman
 General Counsel
 Regulatory and Industry Affairs
 John Staurulakis, Inc.
 6315 Seabrook Road
 Seabrook, MD 20706
 Attorney for Century
 Telephone of Ohio, Inc.

William D. Baskett, III
 Thomas E. Taylor
 David S. Bence
 Frost & Jacobs
 2500 PNC Center
 201 East Fifth Street
 Cincinnati, OH 45202-4182
 Attorneys for Cincinnati Bell
 Telephone Company

Rodney Thiemann
 Revenue Requirements Manager
 Great Plains Communications, Inc.
 1635 Front Street
 PO Box 500
 Blair, NE 68008-0500

Richard McKenna, HQE03J36
 GTE Service Corporation
 PO Box 152092
 Irving, TX 75015-2092

Gail L. Polivy
 GTE Service Corporation
 1850 M Street, NW, Suite 1200
 Washington, DC 20036

Paula Wagner
 GVNW, Inc./Management
 2270 La Montana Way
 Colorado Springs, CO 80918

Howard J. Symons
 Keith A. Barritt
 Mintz, Levin, Cohn, Ferris,
 Glovsky & Popeo, P.C.
 Suite 900
 701 Pennsylvania Avenue, NW
 Washington, DC 20004
 Attorneys for LaFourche
 Telephone Company

Benjamin H. Dickens
 Gerard J. Duffy
 Brian D. Robinson
 Blooston, Mordofsky, Jackson & Dickens
 2120 L Street, NW
 Washington, DC 20037
 Attorneys for Lufkin-Conroe Telephone
 Exchange, Inc.

Diane Smith
 Vice President of Federal Government
 Affairs
 ALLTEL Service Corporation
 Suite 1000
 1710 Rhode Island Ave., NW
 Washington, DC 20036

Robert A. Mazer
 Nixon, Hargrave, Devans & Doyle
 Suite 800
 One Thomas Circle, NW
 Washington, DC 20015
 Attorneys for Lincoln Telephone &
 Telegraph Company

Joanne Salvatore Bochis
 National Exchange Carrier Association,
 Inc.
 100 South Jefferson Road
 Whippany NJ 07981

Edward R. Wholl
 William J. Balcerski
 NYNEX Telephone Companies
 111 Westchester Avenue
 White Plains, NY 10604

Margaret E. Garber
Pacific Bell and Nevada Bell
1275 Pennsylvania Ave., NW
Washington, DC 20004

Michael J. Shortley, III
Rochester Telephone Corporation
180 South Clinton Avenue
Rochester, NY 14646

George Petrutsas
Paul J. Feldman
Fletcher, Heald & Hildreth
11th Floor
1300 North Seventeenth St.
Rosslyn, VA 22209
Attorneys for Roseville
Telephone Company

Rochelle D. Jones
Director-Regulatory
The Southern New England
Telephone Company
227 Church Street, 4th Floor
New Haven, CT 06506

Brian D. Thomas
Assistant Vice President
Pacific Telecom, Inc.
1726 M Street, NW, Suite 801
Washington, DC 20036-2477
For Telephone Utilities Exchange
Carrier Associaton

Jay C. Keithley
United Telephone Companies
1850 M Street, NW, Suite 1100
Washington, DC 20036

Richard A. Karre
Dan L. Poole
U S WEST Communications, Inc.
1020 19th St., NW, Suite 700
Washington, DC 20036