

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

NYNEX Telephone Companies)	Transmittal Nos. 435, 442 , and 447
)	
New York Telephone Company)	Transmittal Nos. 1164 and 1172
)	
)	
Tariff F.C.C. No. 1)	CC Docket No. 94-157
)	

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ORDER

Adopted: February 12, 1997; Released: February 13, 1997

By the Chief, Competitive Pricing Division, Common Carrier Bureau:

INTRODUCTION

1. On November 15, 1996, NYNEX Telephone Companies (NYNEX) and New York Telephone Company filed Transmittal Nos. 435 and 1164, respectively,¹ in which they submitted revised price cap indices and revised rates to remove certain exogenous costs related to the implementation of Statement of Accounting Standard No. 106 (SFAS-106), Employers' Accounting for Other Post Employment Benefits (OPEBs). On December 2, 1996, MCI Communications Corporation (MCI) filed a petition to suspend and investigate NYNEX Transmittal No. 435, and on December 12, 1996, NYNEX filed a reply.

BACKGROUND

2. In Transmittal No. 435, NYNEX is proposing to reverse an earlier exogenous cost change that was filed in Transmittal No. 328 and became effective on December 31, 1994. At that time, NYNEX claimed that this exogenous cost change was needed to reflect \$41,959,286 in OPEB costs incurred between January 1, 1993 and December 31, 1994. These costs were in addition to on-going OPEB costs it had claimed earlier. NYNEX chose to implement the

¹ Nynex filed two transmittals, nos. 442 and 447, and New York Telephone Company filed Transmittal No. 1172 to make minor revisions to Transmittal Nos. 435 and 1164. According to NYNEX, the revised rates and indices contained in these transmittals reflect the same exogenous reduction filed under Transmittal No. 435 and 1164, respectively.

exogenous cost increase, termed a "make-whole" adjustment, as a \$21 million adjustment that would be reflected in its price cap indices (PCIs) for two years, not as a one-year \$42 million adjustment. The Common Carrier Bureau (Bureau) suspended Transmittal No. 328 for one day, initiated an investigation, and instituted an accounting order.² In the *Price Cap Performance Review Order*,³ the Commission ordered price cap local exchange carriers (LECs) to remove all OPEB costs from their access rates in the 1995 annual access filing. NYNEX removed a portion of its OPEB costs, but did not remove the \$21 million "make-whole" amount, claiming that this action was not required by the Commission's decision in the *Price Cap Performance Review Order*. The Bureau initially ordered NYNEX to remove the "make-whole" amount from its price cap indices in the *1995 Annual Access Order*.⁴ The Bureau subsequently reconsidered this decision and incorporated NYNEX's 1995 annual access filing into CC Docket No. 94-157, the Commission's on-going investigation of the exogenous treatment of OPEB costs.⁵ The Bureau concluded that NYNEX's proposed 1995 interstate access rates warranted investigation because they reflected the inclusion of 1993 and 1994 OPEB costs.⁶ NYNEX has filed Transmittal No. 435 to reverse the \$21 million exogenous cost change at this time in anticipation of the two-year period ending on December 21, 1996.

3. By way of background, the Bureau's investigation of OPEB costs was initiated as a result of a court remand. Initially, the Commission had determined that changes in LEC OPEB costs caused by the implementation of SFAS-106 were ineligible for exogenous treatment.⁷ The price cap LECs sought judicial review of the decision. On July 12, 1994, the U.S. Court of Appeals for the District of Columbia Circuit reversed the Commission's finding, determined that OPEB costs are eligible for exogenous treatment, and remanded to the Commission the task of

² 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, *et al.*, CC Docket No. 94-157, Memorandum Opinion and Order, 10 FCC Rcd 1594 (Com. Car. Bur., 1994). These transmittals were suspended for one day and included in the Commission's investigation in CC Docket No. 94-157.

³ In the Matter of Price Cap Performance Review for Local Exchange Carriers, First Report and Order, CC Docket No. 94-1, 10 FCC Rcd 8962 (1995).

⁴ In the Matter of 1995 Annual Access Tariff Filings of Price Cap Carriers, Memorandum Opinion and Order Suspending Rates, 11 FCC Rcd 5461 (Com. Car. Bur. 1995).

⁵ In the Matter of 1995 Annual Access Tariff filing of the NYNEX Telephone Company and Pacific Bell, Memorandum Opinion and Order on Reconsideration, Order Suspending and Investigating Rates, 10 FCC Rcd 10860(Com. Car. Bur. 1995)(*Transmittal 328 Order*); 1993 Annual Access Tariff Filings, *et al.*, 10 FCC Rcd 11804 (Com. Car. Bur., 1995)(*OPEB Investigation Order*).

⁶ *Transmittal 328 Order, supra.*

⁷ Treatment of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, Memorandum Opinion and Order, 8 FCC Rcd 1024 (1993) (OPEB Order).

calculating the specific amount of OPEB-related costs that are eligible for exogenous treatment.⁸ The issues designated in the *OPEB Investigation Order* responded to that direction from the Court.

TRANSMITTAL NO. 435

4. In Transmittal No. 435, NYNEX states that it is proposing to remove approximately \$21 million from its PCIs, an amount that reflects one half of the additional OPEB costs that NYNEX incurred from January 1, 1993, the date when NYNEX implemented SFAS-106 accounting, to December 31, 1994. NYNEX further states that in its amended Transmittal No. 328, it had indicated that the \$21 million adjustment would be removed as of January 1, 1997.⁹

PLEADINGS

5. In its petition, MCI alleges that Transmittal No. 435 should be suspended and investigated because NYNEX has used an improper methodology to calculate the amount of OPEB costs it is proposing to remove from its PCIs.¹⁰ As result, MCI contends, NYNEX understates the amount of exogenous costs that it is proposing to remove because NYNEX did not increase the amount of the original adjustment by the growth in demand from 1994 through 1996.¹¹ According to MCI, carriers implementing an exogenous cost change must use the methodology set out in the Commission's price cap rules in order to fully remove the effects of the exogenous cost change on the PCI.¹² In addition, MCI contends that neither the *1995 Annual Access Order* nor the *Price Cap Performance Review Order*, to the extent these orders dealt with such methodology, applies to the NYNEX "make whole" OPEB cost adjustment. MCI claims that the Commission should require NYNEX to revise the PCIs it supplied in Transmittal No. 435.¹³

6. In its reply, NYNEX maintains that, contrary to MCI's assertion, in the *1995 Annual Access Filing Order*, the Commission did not require LECs to adjust the amount of OPEB costs they were removing from their PCIs to take into account any changes in revenue growth that occurred since the original OPEB exogenous cost adjustments were made.

⁸ *Southwestern Bell Telephone Company v. FCC*, 28 F.3d. 165 (D.C. Cir. 1994).

⁹ NYNEX Transmittal No. Description and Justification (D&J) at 2.

¹⁰ MCI Petition at 3.

¹¹ *Id.* at 2-3.

¹² MCI Petition at 3-4.

¹³ *Id.* at 4-5.

Accordingly, NYNEX maintains that the OPEB adjustment it is proposing in Transmittal No. 435 is for "make-whole" OPEB costs. NYNEX contends that it is consistent with the 1995 *Annual Access Filing Order* for NYNEX to remove the same amount of OPEB costs that it originally included in Transmittal No. 328 in December, 1994.

DISCUSSION

7. We have reviewed NYNEX Transmittal Nos. 435, 442, and 447, New York Telephone Transmittal Nos. 1164 and 1172, the supporting documents, and pleadings. We find that the issues raised by these transmittals are the same as the issues under investigation in CC Docket No. 94-157. As indicated above, NYNEX states that it is proposing to revise its interstate access rates to reflect an adjustment of its exogenous costs for SFAS-106. While the Commission grants exogenous treatment to OPEB costs, the question of the specific amount eligible for exogenous treatment is subject to investigation in CC Docket No. 94-157. Therefore, we are suspending these transmittals and including the issues presented therein in CC Docket No. 94-157. However, we are not suspending and investigating these transmittals for the reasons advanced by MCI, which concern NYNEX's methodology for reversing the earlier exogenous cost change. Rather, we are setting Transmittal No. 435 and New York Telephone Transmittal No. 1164 for investigation because the amounts that NYNEX claims as its "make-whole" adjustment are still subject to investigation by the Commission in the on-going OPEB investigation, including whether part of the \$41,929,286 exogenous adjustment for OPEB costs should be disallowed.

8. The original effective date of Transmittal Nos. 435 and 1164 was January 1, 1997, which would have enabled NYNEX to make the correction to its PCIs on the date that the two year period expired. Accordingly, we order NYNEX and New York Telephone Company to advance the effective date of Transmittal No. 435 and Transmittal No. 1164, respectively, to February 12 and suspend these transmittals for one day.

ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to Section 204(a) of the Communications Act, 47 U.S.C. §204 (a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the revised rates set forth in NYNEX Tariff F.C.C. No. 1, Transmittal No. 435 and New York Telephone Transmittal No. 1164 ARE SUSPENDED for one day from its effective date and an investigation of those rates is included in CC Docket No. 94-157.

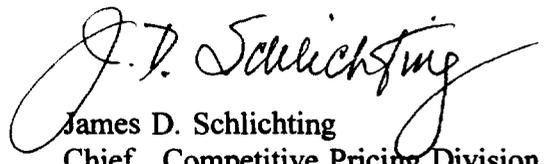
10. IT IS FURTHER ORDERED that NYNEX and New York Telephone shall advance the effective date of Transmittal Nos. 435 and 1164, respectively, from February 13, 1997 to February 12, 1997. FURTHER, NYNEX SHALL FILE supplements reflecting these suspensions no later than five days from the release of this Order and should cite the "DA number" of this Order as the authority for making this tariff filing.

11. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 204(a) of the Communications Act, 47 U.S.C. §§ 154(i), 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, NYNEX SHALL KEEP ACCURATE ACCOUNT of all amounts received that are associated with the rates that are the subject of this investigation.

12. IT IS FURTHER ORDERED that NYNEX SHALL INCLUDE STATEMENTS in all subsequent transmittals revision rates indicating whether, and to what extent, the price change is predicated upon the exogenous cost claim set forth in NYNEX Transmittal No. 435 and New York Telephone Transmittal No. 1164.¹⁴

13. IT IS FURTHER ORDERED that the petition to suspend and investigate NYNEX Transmittal No. 435 filed by MCI Telecommunications Corporation IS GRANTED to the extent discussed above and otherwise IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



James D. Schlichting
Chief, Competitive Pricing Division
Common Carrier Bureau

¹⁴ We anticipate that any such transmittals will be suspended for one day, included in this investigation, and made subject to an accounting order.