would be reflected in the 1995 tariff filing based upon 1993 historical data.[120] The City of Brookings Municipal Telephone which participates in NECA's common line pool but elected to file its own traffic sensitive tariff for the first time in 1993, asserts that it correctly based its traffic sensitive rates on NECA's average schedule pool settlement method pursuant to Section 61.39 (b)(2).[121]

3. Discussion

48. We have reviewed each carrier's GSF tariff transmittal and all associated pleadings and conclude that most carriers' costs and rates properly reflect the GSF allocation in the 1993 annual filings. We conclude that there may have been a double recovery of a portion of GSF costs by carriers that participated in NECA's common line tariff but filed individual tariffs for the traffic sensitive rates, pursuant to Section 61.39 of the Commission's rules.[122] These overcharges would have occurred from July 1, 1993 through June 30, 1995; for these carriers the GSF reallocation may have been first reflected in traffic sensitive rates effective on July 1, 1995. These carriers fully recovered their GSF expense through their traffic sensitive rates, because their traffic sensitive rates were based on 1992 costs before the GSF reallocation on June 17, 1993. At the same time, NECA's rates which became effective on July 1, 1993 reflected the reallocation of GSF cost to the common line category, pursuant to Section 61.38 of the Commission's Rules. Therefore, there was a double recovery for these Section 61.39 companies that recovered their full GSF expense through their traffic sensitive rates and again through the NECA common line pool, unless they adjusted their individual traffic sensitive rates.

49. Coastal and GVNW are correct that the GSF reallocation occurred after the 1992 calendar year upon which the traffic sensitive rates were based. The rates in question, however, were unreasonable to the extent carriers were recovering the same cost through both the carrier common line (CCL) rates and traffic sensitive rates and should have eliminated this double recovery in light of the Commission's determination in the *GSF Order* that it was necessary to correct for the misallocation of GSF costs because the exclusion of the common line category from the formula for allocating GSF investment allocated too little GSF investment to the

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[120] GVNW Direct Case at 3.

[121] City of Brookings Municipal Telephone Rebuttal at 1-2. *See also* Section 61.39(b)(2) of the Commission's rules, 47 C.F.R. § 61.39(b)(2).

[122] *See* Section 61.39 of the Commission's rules, 47 C.F.R. § 61.39. In *Regulation of Small Telephone Companies*, the Commission reduced the regulatory burdens on small telephone companies. Regulation of Small Telephone Companies, CC Docket No. 92-222, Report and Order, 2 FCC Rcd 3811 (1987) (*Regulation of Small Telephone Companies*). The Commission held that small companies who chose to file their own interstate access rates rather than use NECA tariffs, may use historical costs and demand to calculate those rates. In their 1993 annual filings, the companies filing under the small company rules used historical data to develop access rates, and thus did not reflect the GSF reallocation, which took place in 1993. In contrast, NECA used forecast data to develop its rates and thus was able to reflect the GSF reallocation. The companies filing under the small company rules were required to file again in 1995 using updated historical costs, so their access rates now reflect the GSF reallocation.

common line category and too much GSF investment to other access categories.

50. The record is not clear that each of these LECs did not correct their individually filed traffic sensitive rates. We direct the carriers that participated in NECA's common line pool and filed individual tariffs for traffic sensitive rates pursuant to Section 61.39 to provide a complete explanation of any rate adjustments they made to prevent the double recovery described above. This shall include explanations detailing the allocation of GSF costs and revisions to traffic sensitive rates and tariffs previously filed to eliminate any double recovery. We further direct these LECs to submit a plan for any corrective action that may be necessary to eliminate the double recovery of GSF costs. Carriers may be required to make refunds, depending on the facts submitted. We require this information to be submitted by May 1, 1997. We will delegate to the Chief, Common Carrier Bureau authority to review the LECs' explanations of GSF allocations, rate adjustments, and any plans for corrective action that may be necessary to correct for double recovery of GSF costs, as well as to take any further actions that may be necessary to ensure compliance with our requirements.

F. Category Assignment for Line Information Data Base Query Charge

1. Background

51. When setting up calls, interexchange carriers pay LECs for access to the Line Information Data Base (LIDB) to validate LEC-issued calling cards through the LEC data bases. In the 1993 annual access filings, the LECs incorporated LIDB service for the first time into the price cap baskets and placed that service in the traffic sensitive basket. With the exception of one LEC, they included the per query charges (LIDB query and LIDB transport) in the local transport service category within that basket. The LIDB query charge is the charge for making a data base inquiry to validate a customer's calling card number. The LIDB transport charge, for connection between the switching transfer point port and a LIDB data base, is also charged on a per query basis.[123] United is the only carrier that placed the per query elements in the local switching category of the traffic sensitive basket.

52. On January 29, 1993, the Commission created a new, separate service category within the traffic sensitive basket for data base access services,[124] effective March 1, 1993.[125] As noted

[123] *See* Section 69.120 of the Commission's rules, 47 C.F.R. § 69.120. The remaining two LIDB service rate elements are the signalling transfer point port termination charge, which recovers the costs of the port on the signalling network side of the signalling transfer point, and the signalling link charge, which is a charge per line that recovers the costs of the transport facility linking the signalling transfer point to the LIDB.

[124] Provision of Access for 800 Service, CC Docket No. 86-10, Second Report and Order, 8 FCC Rcd 907 (1993) (*800 Data Base Order*), Memorandum Opinion and Order on Reconsideration, 11 FCC Rcd 2014 (1995); *see also* 8 FCC Rcd at 913, Appendix A (in adopting rate structure and pricing rules for 800 data base access services, the Commission adopted Section 61.42(e)(1)(vi), 47 C.F.R. § 61.42(e)(1)(vi), to create a new category within the traffic sensitive switched access basket for "[d]ata base access, including basic 800 data base access, call validation, POTS translation, alternate POTS translation, multiple carrier routing, and traffic routing services as described in [*the 800 Data Base Order*] . . . and other such services as the Commission shall permit or

previously, the LECs filed their 1993 annual access tariffs on April 2, 1993. In the *1993 Annual Access Order*, we concluded that we should investigate the proposed tariff changes of those price cap companies that incorporated LIDB charges into the price cap baskets.[126]

2. Positions of the Parties[127]

53. United and Allnet assert that transporting a LIDB query from the interexchange carrier (IXC) to the LEC switching transfer point requires the use of transport facilities, while transporting the query among the facilities of the LEC and determining where to route the underlying call requires only the use of switching facilities.[128] United and Allnet maintain that switching facilities are used to route calls to their destination or to determine whether calls should be completed at all. According to these parties, the LIDB similarly makes logical decisions concerning call routing. Thus, they reason, LIDB should be included in the local switching category of the traffic sensitive basket.[129]

54. Many of the LECs, however, argue that the LIDB per query charges should be assigned to the transport category in the traffic sensitive basket.[130] Ameritech asserts that, because

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require"); *see also id.* at 912 (creating a new data base service category to include the new 800 data base elements and subelements would "help protect customers against excessive prices for 800 services while granting LECs sufficient pricing flexibility"); *see also* Transport Rate Structure and Pricing, Second Report and Order, 9 FCC Rcd 615 (1994) (*Second Transport Order*) (as part of a more comprehensive revision to the LEC price cap plan, modified Section 61.42(e)(1)(vi) to read "Data base access services" (thereby eliminating the clause "including basic 800 data base, call validation, . . . and other such services as the Commission shall permit or require") and redesignated that provision as Section 61.42(e)(1)(iii)); *see also id.* (shifting transport services, including all the transmission-related elements, the tandem switching charges, and the interconnection charge, from the price cap basket for traffic sensitive services, into a new "trunking" basket containing both transport and special access services).

[125] *800 Data Base Order*, 8 FCC Rcd 913.

[126] *1993 Annual Access Order*, 8 FCC Rcd at 4969.

[127] We note that the pleadings addressing the appropriate category assignment for the LIDB charge were filed prior to the *Second Transport Order* which, as noted above, revised the price cap service basket and category structure, shifting transport services into the new trunking basket. The parties' arguments thus discuss the pre-existing basket and category structure, and the following paragraphs summarize their positions as written.

[128] United Direct Case at 4; Allnet Comments at 9-10.

[129] United Direct Case at 5; Allnet Opposition at 9-10; *see also* Ad Hoc Comments at 25 (asserting that the LIDB per query charge belongs in the local switching category because "the nature and function of the LIDB per query charge is closer to the nature and function of traditional local switching elements than traditional local transport elements").

[130] *See* Ameritech Direct Case at 4; Bell Atlantic Direct Case at 14; BellSouth Direct Case at 10-11; GTE Direct Case at 32; NYNEX Direct Case, Exhibit 4, at 1-2; Pacific Direct Case at 12; SNET Direct Case at 12; Southwestern Direct Case at 53-54; US West Direct Case at 14.

LIDB includes a charge for call transport, both the LIDB per query charges should be placed in the local transport service category within the traffic sensitive basket.[131] Southwestern argues that LIDB validates billing information; it does not provide call routing and delivery information. The fact that the query is associated with a call is not enough to justify placing LIDB in the local switching category, according to Southwestern.[132] Several LECs assert that because LIDB validation service is dependent on network interconnection, and because network interconnection costs and revenues are included in the transport category, LIDB validation service costs and revenues should also be placed in the transport category.[133]

55. A number of LECs also argue that the LIDB rates are properly placed in the local transport category because this placement corresponds to how LIDB investment is assigned. They maintain that under Part 32 of the Commission's rules, LIDB investment is recorded in Account 2212 - Digital Electronic Switching. These LECs state that the investment is then categorized as central office equipment (COE) Category 2 - Tandem Switching in Part 36 of the rules. Under Part 69, Tandem Switching Investment is assigned to the local transport category. Therefore, in order to maintain consistency between the assignment of investment and revenues, these carriers argue, LIDB rates are properly placed in the local transport category.[134]

56. AT&T argues that a new service category, with five percent upper and lower band limits, should be established within the traffic sensitive basket for the LIDB per query charges because there is no competition for LIDB and, therefore, there is the danger that the LECs will raise the LIDB per query charges in order to lower the prices for other more competitive services.[135]

57. The LECs generally oppose establishing a new service category for the LIDB query element, arguing that a new category is unnecessary and would conflict with the Commission's price cap goal of simplifying regulation.[136] They assert that the practical effect of establishing a new service category for the LIDB query charge would be to create rate element level banding, which the Commission rejected during the price cap proceeding.[137]

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[131] Ameritech Direct Case at 4.

[132] Southwestern Rebuttal at 28.

[133] *See* NYNEX Direct Case, Exhibit 4, at 1-2; SNET Direct Case at 12; Southwestern Direct Case at 53; US West Direct Case at 14.

[134] *See* Pacific Direct Case at 12; Bell Atlantic Direct Case at 14; Ameritech Rebuttal at 10; Southwestern Rebuttal at 28-29.

[135] AT&T Opposition at 38.

[136] GTE Rebuttal at 11.

[137] BellSouth Direct Case at 11; Ameritech Rebuttal at 10; GTE Rebuttal at 11; NYNEX Rebuttal at 27; Pacific Rebuttal at 5; Southwestern Rebuttal at 29.

58. GTE asserts that, while it believes that the most appropriate category for the LIDB query charge is the local transport category in the traffic sensitive basket, as an alternative, the charge could be included in the 800 data base category, the category established by the *800 Data Base Access Order*.[138] This alternative, GTE argues, should resolve AT&T's concern that the LECs might increase the rate for this element in order to reduce other rate elements in the local transport basket.[139]

3. Discussion

59. As discussed above, the Commission in the *800 Data Base Order* created a separate service category within the traffic sensitive basket for data base service.[140] Interexchange carriers pay LECs' LIDB rates to verify LEC-issued calling cards through the LECs' data bases. Thus, LIDB service is actually a data base service and, therefore, is most appropriately placed in the data base service category within the traffic sensitive basket.

60. Including the LIDB charges in the data base service category, along with services such as 800 data base services, is consistent with the price cap principle that calls for grouping similar services together to limit the LECs' ability to shift costs among services in a potentially anti-competitive manner.[141] Specifically, grouping services with common characteristics, such as similar functionalities and levels of competition, within the same category is intended to give the LECs pricing flexibility with respect to comparable services and to restrict the ability of LECs to offset increases for some services with rate decreases for dissimilar services.[142] LIDB service and 800 data base services are not only functionally similar (in that they both provide access to data base information), but they share similar competitive circumstances (*i.e.*, neither service is subject to competitive pressures).

61. The fact that the LIDB service involves switching functions (*i.e.*, call routing and completion functions) does not persuade us that the LIDB charge should be included in the former local switching category of the traffic sensitive basket, as United proposes. Further, because transport services face increasing competition as a result of the Commission's expanded interconnection policies, while the LECs have a virtual monopoly over the information contained in the line information data base, placing the LIDB query charges in the transport category would

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[138] GTE Rebuttal at 12 (*citing 800 Data Base Order*).

[139] *Id.*

[140] *800 Data Base Order*, 8 FCC Rcd 907; *see also* then-existing Section 61.42(e)(1)(vi) of the Commission's rules, § 61.42(e)(1)(vi).

[141] *See LEC Price Cap Order*, 5 FCC Rcd at 6788, 6811-12; *see also Second Transport Order*, 9 FCC Rcd at 617 ("price cap constraints applicable to the baskets and service categories permit the LECs to change their rates to reflect more economically efficient cost allocations and underlying cost changes, but avoid precipitous price changes and prevent LECs from disadvantaging one class of ratepayers to the benefit of another class").

[142] *LEC Price Cap Order*, 5 FCC Rcd at 6810-11.

be inconsistent with the Commission's price cap principle of grouping services with similar demand elasticities.

62. We conclude that the data base service category within the traffic sensitive basket is the appropriate category in which to place the LIDB query charges. We therefore direct the LECs referenced in Appendix B to place the LIDB query charges in the data base service category within the traffic sensitive basket and to revise their price cap indices, upper limits on the service band indices in the service categories and subcategories, and maximum carrier common line rates, and to implement refunds for the 1993 annual access tariff in accordance with the directions in Section V of this Order.

63. Although the issue of the proper service category placement for LIDB query charges was not designated for investigation in the 1994, 1995, and 1996 annual access filings, we also find the LECs' placement of the LIDB query charges in service categories other than data base service category in these years to be unlawful for the reasons discussed, *supra*. We do not direct the LECs, referenced in Appendix B, to make a refund for placing the LIDB query charges in the incorrect service category for the 1994, 1995, and 1996 annual access filings because under Section 204(a)(1), the rates must be suspended before refunds can be ordered and the Commission did not suspend the 1994 through 1996 annual access rates of these LECs with respect to their placement of LIDB query charges in service categories other than the data base service category.[143]

G. Roseville Cash Working Capital

1. Background

64. Cash working capital is an estimate of the average amount of investor-supplied capital needed to fund a carrier's day-to-day operations.[144] This amount is one element of the investment component of a rate-of-return carrier's revenue requirement used to compute rates.[145] In order to determine the working capital requirements for day-to-day operations, lead-lag studies measure the patterns of cash inflows and outflows relative to the time when service associated with those costs and revenues is rendered. "Lead" describes those revenues and expense items that are received or paid before a service is rendered. "Lag" describes those revenue and expense items that are received or paid after service is rendered. The Commission's rules permit carriers to compute their cash working capital by using either a full lead-lag study, the "Simplified Formula

[143] *See* n. 100, *supra*.

[144] Amendment of Part 65 of the Commission's Rules to Prescribe Components of the Rate Bases and Net Income of Dominant Carriers, *Order on Reconsideration*, 4 FCC Rcd 1697 (1989)(*Rate Base Component Reconsideration Order*). *See* Section 65.820(d) of the Commission's rules, 47 C.F.R. § 65.820(d).

[145] The four elements of the rate base are: telecommunications plant; material and supplies; noncurrent assets; and cash working capital.

Method," or the "Standard Allowance Method."[146] Because the computation by Roseville, a rate-of-return carrier, of its cash working capital was inconsistent with those of other LECs, the Common Carrier Bureau suspended its filing for one day, issued an accounting order and included it in this investigation.

2. Positions of the Parties

65. Roseville admits that, in amending Part 65, the Commission concluded that "properly developed lead-lag studies are the most appropriate method for determining interstate cash working capital."[147] Nonetheless, Roseville contends that nothing in those orders precluded a carrier from using a lead-lag study based on individual company circumstances.[148]

66. Roseville contends that its cash working capital allowance was based on a properly performed lead-lag study. According to Roseville, evaluating the reasonableness of its cash working capital allowance by comparing it with those of carriers using the Standard Allowance Method is improper because Roseville's result is more accurate. Therefore, Roseville maintains, its calculation of its cash working capital allowance results in just and reasonable rates.[149] No oppositions or rebuttal were filed addressing this issue.

3. Discussion

67. We have reviewed Roseville's lead-lag study and have determined that this study contains several flaws. First, the lead-lag study is outdated because it used 1989 data and there is no way for us to determine if these data are representative of Roseville's 1993 operations covered by the tariff under review.

68. Second, the months studied for individual revenue categories were not consistent. For example, Roseville used September-December 1989 to calculate the Carrier Access Billing revenue lag, but used April-June 1989 to calculate the Other Common Carrier Revenue lag.

69. Third, Roseville included in its lead-lag study adjustments to prior period data that, although permitted under NECA's internal procedures, lead to unreasonable results when computing cash working capital requirements. NECA's procedures allow for adjustments to prior period data for up to 24 months after rates based on the data became effective. NECA's retroactive adjustment mechanism allows carriers to adjust their previously submitted data to

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[146] *See* Section 65.820(d) of the Commission's rules, 47 C.F.R. § 65.820(d).

[147] Roseville Direct Case at 14 (*citing* Amendment of Part 65 of the Commission's Rules to Prescribe Components of the Rate Bases and Net Income of Dominant Carriers, *Report and Order*, 3 FCC Rcd 269, 279 (1987)(*Rate Base Component Order*)).

[148] *Id.*

[149] *Id.*

account for such events as erroneous separations studies, clerical errors, rule changes, and extraordinary accounting adjustments. For its lead-lag study, Roseville chose a 12-month period that included a substantial retroactive adjustment (*i.e.*, an adjustment that resulted in Roseville's receiving a large late payment from the NECA settlement process) that significantly increased Roseville's revenue lag. Because there is little, if any, correlation between retroactive adjustments and current expenses, we conclude that the former are not a reasonable indicator of the cash working capital needed by Roseville to finance its day-to-day operations. We note also that LECs have not previously included these types of retroactive adjustments from NECA in their lead-lag studies and we believe that the inclusion of such adjustments by Roseville distorted its lead-lag results.

70. Finally, Roseville's computation of its income tax lag is flawed because it includes delays in the receipt of tax refunds for overpayment of estimated taxes. We find it is inappropriate to permit Roseville to include tax overpayments as part of its lead lag study used to support its 1993 cash working capital allowance. Ratepayers should not bear the cost of management's decision to overpay the company's estimated taxes. The overpayment of taxes is not a day-to-day cost of doing business and thus, it does not warrant inclusion in a carrier's working capital allowance. Collectively, these observations lead us to conclude that Roseville's lead-lag study cannot be used to compute its cash working capital allowance because the study produces an inaccurate estimate of its revenue requirement. We therefore require Roseville to utilize the standard 15-day allowance method to calculate its cash working capital,[150] and to implement refunds in accordance with the directions in Section V.D. of this Order. To determine the carrier's working capital allowance under the standard 15-day allowance method, the carrier's total annual cash operating expenses are divided by 365 days to determine the average daily cash operating expenses. A carrier's average daily cash operating expenses are then multiplied by the standard cash working capital allowance of 15 days to derive its cash working capital determination.[151]

III. AT&T'S APPLICATION FOR REVIEW

1. Background

71. In a companion order to the Modification of Final Judgment (MFJ),[152] the U.S. District Court required AT&T to guarantee the Bell Operating Companies' (BOCs') recovery of

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[150] Amendment of Part 65 of the Commission's rules to Prescribe Components of the Rate Base and Net Income of Dominant Carriers, CC Docket No. 86-497, Report and Order, 3 FCC Rcd 269 (1987), *on recon.*, 4 FCC Rcd 1697, 1698 (1989) (establishing a 15-day lag period as an appropriate standard) (*Part 65 Reconsideration Order*), *remanded*, Illinois Bell v. FCC, 911 F.2d 776 (D.C. Cir. 1990), on remand, 7 FCC Rcd 296 (1991).

[151] *Part 65 Reconsideration Order*, 4 FCC Rcd at 1698, n.17. *See* Section 65.820(d) of the Commission's rules, 47 C.F.R. § 65.820(d).

[152] United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom.*, Maryland v. United States, 460 U.S. 1001 (1983).

the costs of providing equal access to IXCs. The District Court also directed AT&T and the BOCs to develop a procedure to account for equal access and network reconfiguration (EANR) costs.[153] In 1985, AT&T and the BOCs petitioned the Commission to approve an accounting plan for EANR costs. AT&T and the BOCs estimated that total equal access expenditures would exceed $2.6 billion and would be incurred over a short time.[154]

72. In response, the Commission in the *EANR Order* identified only certain costs that would be treated as equal access costs, including: (1) initial additional costs for hardware and software related directly to the provision of equal access, and not otherwise required; (2) costs of connecting offices that serve competitive IXCs; and (3) costs that have been incurred as a result of *bona fide* requests for conversion to equal access.[155] The Commission required the BOCs to amortize equal access costs over an eight-year period that would expire on December 31, 1993.[156] 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 equal access costs.[157]

73. In the *LEC Price Cap Order*, the Commission decided to treat all equal access costs endogenously because the mandatory price cap LECs had converted most of their end offices to equal access and most of these equal access costs were embedded in their initial price cap rates. The Commission thus found that it was unnecessary to further promote equal access conversion among price cap carriers by treating those costs as exogenous.[158] The Commission also noted the potential difficulties associated with assessing future equal access exogenous cost claims by LECs, and the corresponding risk that carriers "could willfully or inadvertently shift switched access costs into the equal access category. . . ."[159]

74. In the *LEC Price Cap Reconsideration Order*, the Commission affirmed its

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

[154] Petitions for Recovery of Equal Access Costs, Memorandum Opinion and Order, FCC 85-628, 50 Fed. Reg. 50,910, 50913-14 n.16 (1985 (*EANR Order*), *aff'd on recon.*, 1 FCC Rcd 434 (1986) (*EANR Reconsideration Order*).

[155] *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").

[156] *EANR Reconsideration Order*, 1 FCC Rcd at 437, para. 33.

[157] *Id.*

[158] *LEC Price Cap Order*, 5 FCC Rcd at 6808; *see also LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2665.

[159] *LEC Price Cap Order*, 5 FCC Rcd at 6808; *see also LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2665; *see also id.* at 2666-67 (according exogenous treatment to equal access costs might create incentives for the price cap LECs to "inflate the amounts spent on equal access").

decision to treat equal access costs endogenously.[160] In addition, the Commission rejected a proposal that would have required a downward exogenous cost adjustment to the BOCs' PCIs upon the termination of the equal access cost amortization.[161] In reaching its decision, the Commission found that endogenous cost treatment for the elimination of equal access costs is consistent with its treatment for changes in depreciation levels.[162] The Commission determined that nothing in the "meager factual record"[163] persuaded the Commission "to depart from our practice of not adjusting PCI levels to reflect levels of cost recovery"[164] so as to require a downward exogenous cost adjustment in 1994 to eliminate all equal access costs.[165]

75. In the *1994 Annual Access Orders,* the Bureau denied AT&T's and MCI's petition to suspend and investigate the 1994 annual LEC access tariff filings on the grounds that the price cap carriers had failed to make adjustments to their price cap indices to reflect the full amortization of equal access costs.[166] The Bureau stated that, in the *LEC Price Cap Reconsideration Order*, the Commission had rejected a proposal that would "require a downward adjustment in PCI levels in 1994 to eliminate all equal access costs."[167] The Bureau found that, even if the equal access cost amortization did warrant exogenous treatment, such treatment would require a substantive rule change because Section 61.45(d) does not provide for exogenous treatment of the equal access cost amortization and no LEC has otherwise petitioned for, and been

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[160] *LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2667; *see also id.* ("we distinguish equal access costs from other costs that we treat as exogenous, such as rule changes, in which the cost change is derived solely from a change in regulation").

[161] *LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2667 n.77; *see also id.* ("We . . . decline to adopt MCI's suggestion to treat BOC equal access costs in the same way we do amortizations, and require a downward adjustment in PCI levels in 1994 to eliminate all equal access costs"); *see also id.* (noting that "the issue to be addressed is whether the BOCs will experience any cost change in 1994 that stems from factors beyond their control").

[162] *Id.*; *see also id.* (under price cap regulation, the Commission does not treat changes in depreciation levels as exogenous, so that when a piece of equipment is fully depreciated, there is no PCI change); *see also id.* ("Nor is there a PCI change if carrier speeds up or slows down the rate at which it recovers investment").

[163] *Id.*

[164] *Id.*

[165] *Id.*; *see also* Commission Requirements for Cost Support Material to be Filed with 1994 Annual Access Tariffs and for Other Cost Support Material, 9 FCC Rcd 1060, 1063 (Com. Car. Bur. 1994) *(1994 TRP Order)* (rejecting AT&T's suggestion to treat as exogenous the completion of amortization of equal access costs, *citing LEC Price Cap Reconsideration Order,* 6 FCC Rcd at 2667 n.77, where MCI's proposal was rejected "because the Commission considered equal access costs to be within the control of LECs").

[166] *First 1994 Annual Access Tariff Order*, 9 FCC Rcd at 3727; *Second 1994 Annual Access Tariff Order*, 9 FCC Rcd at 3535-36.

[167] *First 1994 Annual Access Tariff Order*, 9 FCC Rcd at 3727-28 and *Second 1994 Annual Access Tariff Order*, 9 FCC Rcd at 3535 *(citing LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2667 n.77).

granted, a waiver of that rule.[168] AT&T filed an application for review of that decision.[169] MCI filed comments in support of AT&T's application for review.[170] Bell Atlantic, BellSouth, NYNEX, Pacific, Southwestern, and US West filed oppositions.[171]

2. Positions of the Parties

76. AT&T alleges that the Bureau erred in "deny[ing] exogenous treatment of [the expiration of] equal access cost amortizations for . . . LECs subject to price cap regulation."[172] AT&T contends that, because equal access costs were fully amortized on December 31, 1993, the LECs should be required to treat the expiration of the equal access cost amortization as an exogenous adjustment.[173] AT&T asserts that, contrary to the Bureau's finding in the *1994 Annual Access Orders*, the Commission's decision in the *LEC Price Cap Order* to accord endogenous treatment to the ongoing costs of equal access conversion "did not preclude exogenous treatment of the LECs' equal access cost amortization."[174] AT&T claims that the Commission in the *LEC Price Cap Order* "addressed the appropriate treatment of the LECs' ongoing costs of converting to equal access, rather than the amortization of non-capitalized equal access costs previously incurred by those carriers under rate of return regulation."[175] AT&T contends that the Commission's decision in the *LEC Price Cap Order* "to treat ongoing equal access costs endogenously" was based on the difficulty of assessing equal access costs and to prevent deliberate or inadvertent cost shifting.[176] AT&T claims that these considerations are inapplicable to the "amortization of previously incurred equal access conversion expenses because those amounts had already been reflected in the carriers' books well prior to the adoption of incentive

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[168] *First 1994 Annual Access Tariff Order*, 9 FCC Rcd at 3731; *Second 1994 Annual Access Tariff Order*, 9 FCC Rcd at 3536.

[169] AT&T Application for Review (filed July 25, 1994) (AT&T Application for Review).

[170] MCI Comments (filed Aug. 8, 1994) (MCI Comments).

[171] Opposition of Bell Atlantic (filed Aug. 9, 1994) (Bell Atlantic Opposition); Opposition of BellSouth (filed Aug. 9, 1994) (BellSouth Opposition); Opposition to AT&T's Application for Review (filed Aug. 9, 1994) (NYNEX Opposition); Opposition of Pacific (filed Aug. 9, 1994) (Pacific Opposition); Opposition of Southwestern (filed on Aug. 9, 1994) (Southwestern Opposition); US West Opposition (filed on Aug. 9, 1994) (US West Opposition).

[172] AT&T Application for Review at 1; *see also id.* at i (alleging that the carriers in their 1994 annual access filings "failed to reduce their . . . [PCIs] to reflect the conclusion of their equal access cost amortization as an exogenous cost change.").

[173] *Id.* at 4.

[174] *Id.* at 7.

[175] *Id.* at 8.

[176] *Id.*

regulation, thereby obviating the likelihood of deliberate or unintentional misallocation of switched access costs."[177]

77. AT&T contends that the *LEC Price Cap Reconsideration Order* similarly does not preclude exogenous treatment of the termination of equal access cost amortization.[178] AT&T asserts that the *LEC Price Cap Reconsideration Order* declined to treat the expiration of the amortization as exogenous based on the "meager factual record" that was then available.[179] AT&T argues that "[n]o such concerns are present . . . because all of the BOCs have made filings with the Decree Court affirming that they have fully recovered their equal access and network reconfiguration expenses."[180] AT&T also states that none of the other LECs subject to the equal access cost amortization submitted any showing in their 1994 annual access tariff filings that they have not also fully recovered those costs.[181] AT&T argues that the Bureau incorrectly determined in the *1994 Annual Access Orders* that allowing exogenous cost treatment of the LECs' equal access expense amortization requires a rulemaking or a successful LEC waiver request because Section 61.45(d)(1)(vi) provides exogenous cost treatment for "such . . . other extraordinary exogenous costs changes as the Commission shall permit or require . . . ."[182]

78. MCI urges the Commission to grant AT&T's application for review. MCI maintains that the BOCs "will experience [a] . . . cost change in 1994 that stems from factors beyond their control"[183] because "there is a reduction in the LECs' costs which results from the completion of a Commission-mandated amortization, and not from productivity-enhancing efforts undertaken by the LECs."[184]

79. Bell Atlantic, BellSouth, Pacific, Southwestern, NYNEX, and US West contend that the Commission has repeatedly rejected arguments that the ongoing costs of converting to equal access, as well as the completion of the amortization of such costs, should be accorded exogenous

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[177] *Id.*

[178] *Id.* at i.

[179] AT&T Application for Review at 9 (*citing LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2667 n.77).

[180] AT&T Application for Review at 9.

[181] *Id.*

[182] *Id.* at 10; *see also id.* at 1, 2, 10.

[183] MCI Comments at 6 (quoting *LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2667 n.77).

[184] MCI Comments at 6.

cost treatment.[185] They assert that the Commission has consistently held that all equal access costs are to be treated endogenously.[186] Bell Atlantic and NYNEX claim that there has been no relevant change in the law or the facts since the Commission first decided this issue that would warrant a change in the treatment of these costs.[187] Bell Atlantic, BellSouth, NYNEX, and Pacific argue that the Bureau would violate the Commission's rules if it were to provide for exogenous treatment for the expiration of equal access costs.[188] NYNEX asserts that a change in the classification of equal access costs would require a rulemaking proceeding or a grant of a LEC petition to waive the rule.[189] NYNEX argues that the "meager factual record" noted by the Commission in the *LEC Price Cap Reconsideration Order* concerned the issue of control over equal access costs. NYNEX asserts that AT&T has failed to present any new facts that were not before the Commission in the original price cap orders to warrant a change in the treatment of equal access costs.[190]

80. Southwestern asserts that AT&T's claim that the BOCs have made filings with the Decree Court affirming that they have all fully recovered their equal access and network reconfiguration expenses is incorrect. For example, Southwestern states that it is currently making equal access conversion by means of alternate technology to 73 Oklahoma central offices, and is upgrading 11 other Oklahoma central offices to equal access by full switch replacement.[191]

3. Discussion

81. In the *LEC Price Cap Order* and in the *LEC Price Cap Reconsideration Order*, we determined that the amortization of equal access costs, as well as the expiration of the amortization of such costs, should be treated endogenously under the LEC price cap plan.[192] Section 61.45(d) restricts the categories of cost changes that price cap LECs are allowed to treat

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[illegible] 2; BellSouth Opposition at 2-6, US West Opposition at 1- 2; Pacific Opposition at 2; Southwestern Opposition at 1; NYNEX Opposition at 2 *(citing LEC Price Cap Order*, 5 FCC Rcd at 6808; *LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2667 n.77; Commission Requirements for Cost Support Material to be Filed with 1994 Annual Access Tariffs and for Other Cost Support Material, 9 FCC Rcd 1060, 1063 (Com. Car. Bur. 1994); *1994 Annual Access Tariff Order*, 9 FCC Rcd at 3727-31.

[186] *Id.*

[187] Bell Atlantic Opposition at 2; NYNEX Opposition at 5.

[188] Bell Atlantic Opposition at 3-4, Pacific Opposition at 2; BellSouth Opposition at 2, NYNEX Opposition at 3 (*citing* 47 C.F.R. § 61.45(d)); *see also* Southwestern Opposition at 2 .

[189] NYNEX Opposition at 3; *accord* Pacific Opposition at 1, 3-4.

[190] NYNEX Opposition at 4.

[191] Southwestern Opposition at 1-2.

[192] *LEC Price Cap Order*, 5 FCC Rcd at 6808; *LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2666-2667, and n.77.

exogenously to those specifically listed in that rule and those that the Commission may subsequently designate as exogenous. That section does not include equal access costs among those eligible for exogenous cost treatment. Therefore, a plain reading of Section 61.45(d) precludes exogenous treatment of equal access costs. In addition, even if the completion of the equal access cost amortization does warrant exogenous treatment, such treatment would require a substantive rule change or a waiver of Section 61.45(d) of the Commission's rules.[193]

82. Because exogenous treatment of amortized equal access expenses would require a rulemaking, a waiver application, or an application for declaratory ruling, we deny AT&T's application for review of the *1994 Annual Access Orders*. We have invited comment in the access charge reform rulemaking proceeding on whether to amend our rules to require incumbent LECs to make an exogenous decrease to one or more of their PCIs to account for the completion of the equal access expense amortization on December 31, 1993.[194] We will address this issue in that rulemaking proceeding.

IV. SOUTHWESTERN'S PETITION FOR CLARIFICATION OR RECONSIDERATION

1. Background

83. Southwestern's petition addresses two issues raised by the 1994 investigations. First, in the *1994 Annual Access Orders*, the Bureau concluded that certain carriers' proposals to treat Commission regulatory fees as exogenous costs in their tariff filings violated the price cap rules.[195] The Bureau reasoned that Section 61.45(d)[196] limits the categories of exogenous costs to those listed in the rule and those designated as such by Commission order and that Commission regulatory fees are neither listed as exogenous in the rule nor have they been designated as such by Commission order.[197] The Bureau stated that, absent a rulemaking, the

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[193] *See* Section 61.45(d) of the Commission's rules, 47 C.F.R. § 61.45(d). In the *LEC Price Cap Reconsideration Order*, the Commission noted that petitions for waivers of Section 61.45(d) may be filed. *See LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2667, n. 76. Subsequent to the filing of AT&T's application for review, the Commission stated further in the *LEC Performance Review* that exogenous cost treatment may be considered through a rulemaking proceeding, a waiver of the Commission's rules, or through a petition for declaratory ruling. *LEC Performance Review*, 10 FCC Rcd at 9099.

[194] *See* Access Charge Reform, CC Docket No. 96-262, Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Transport Rate Structure and Pricing, CC Docket No. 91-213, Usage of the Public Switched Network by Information Service and Internet Access Providers, CC Docket No. 96-263, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, FCC 96-488 at paras. 291-93. (rel. Dec. 24, 1996).

[195] *First 1994 Annual Access Order*, 9 FCC Rcd at 3734-35; *Second 1994 Annual Access Order*, 9 FCC Rcd at 3539.

[196] *See* Section 61.45(d) of the Commission's rules, 47 C.F.R. § 61.45(d).

[197] *First 1994 Annual Access Order*, 9 FCC Rcd at 3734-35; *Second 1994 Annual Access Order*, 9 FCC Rcd at 3539.

only means available to obtain exogenous treatment for the regulatory fees is to secure a waiver of Section 61.45(d).[198] Southwestern, although it was not one of the carriers that included Commission regulatory fees as exogenous costs in its tariff filings, requested that the Commission "clarify or reconsider that part of . . . [the *First 1994 Annual Access Order*] that implies that local exchange carriers (LECs) subject to price cap regulation that wish to treat the new regulatory fees as exogenous costs should petition for a waiver of the Commission's rules."[199]

84. The second issue raised in Southwestern's petition concerns its $6.04 fixed mileage charge for DS1 services with zero miles of interoffice transport, applicable to the link between the distribution (DSX) bay and the switch. In the *First 1994 Annual Access Order,* the Bureau found that Southwestern's DS1 zero mileage rate element was below the applicable PCIs and within the governing service bands. The Bureau also found that Southwestern had sufficiently responded to a petition filed by MFS Communications Company concerning this charge. Nonetheless the Bureau, concerned about the potential for double recovery through the DS1 direct-trunked transport charge (DTT) for transmission between the DSX bay and the switch and again through the residual interconnection charges (RICs), suspended the tariff revisions that increased the fixed mileage charge for DS1 services with zero miles of interoffice transport and made them subject to the Commission's on-going expanded interconnection investigation in CC Docket No. 93-162 and the accounting order in that proceeding.[200] In its current petition, Southwestern has requested that the Commission "clarify that. . . [Southwestern's] proposed $6.04 fixed mileage charge for DS1 services with zero miles of interoffice transport is not subject to the expanded interconnection investigation."[201]

85. As previously stated, in its 1994 annual access filing, Southwestern had proposed the $6.04 DS1 zero-mileage charge in the switched transport portion of its tariff under Transmittal No. 2344. Then in response to an informal request from Commission staff, Southwestern also provided for the $6.04 charge in the expanded interconnection portion of its tariff under Transmittal No. 2364. Prior to these two transmittals, Southwestern filed Transmittal No. 2330, which clarified that the $6.04 DS1 charge for a given link would be paid by either the expanded interconnection customer using the link or the switched transport customer using the link but not by both.[202] The Bureau's Order made both Transmittal Nos. 2344 and 2364 subject to the expanded interconnection investigation. The Bureau did not designate the matter of these transmittals for investigation in any subsequent supplemental designation orders that would have established a notice and comment filing cycle.

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[198] *First 1994 Annual Access Order*, 9 FCC Rcd at 3734-35; *Second 1994 Annual Access Order*, 9 FCC Rcd at 3539.

[199] Southwestern Petition at 1.

[200] *First 1994 Annual Access Order,* 9 FCC Rcd at 3724-25, regarding Southwestern's Transmittal Nos. 2344 and 2364.

[201] Southwestern Petition at 1-2.

[202] *See* Southwestern Tariff F.C.C. No. 73, Transmittal No. 2330, (filed February 14, 1994).

2. Position of the Parties

86. With respect to the treatment for ratemaking purposes of Commission regulatory fees paid by price cap LECs, Southwestern claims that LECs have not always been required to file petitions for waiver to obtain exogenous cost treatment of items not included under Section 61.45(d)(1)(vi) of the Commission's rules,[203] and that absent a rule change, a petition for waiver should not be required.[204] With respect to the carrier's fixed mileage charge for DS1 services with zero miles of interoffice transport, Southwestern notes that the Bureau found in the *First 1994 Annual Access Order* that the charge was below the applicable price cap indices and within the applicable service bands. Southwestern maintains that in light of that determination, the $6.04 charge for the DS1 zero-mileage rate element should have been allowed to take effect without further investigation.[205]

87. BellSouth, filing comments in support of Southwestern's petition concerning exogenous costs, stated that the Bureau misinterpreted the Commission's rules when it claimed that Section 61.45(d) limited the categories of costs eligible for exogenous treatment to those listed in the rule and that carriers must file waiver requests to obtain exogenous treatment for unlisted costs.[206] BellSouth argues that Section 61.45(d) does not present an exhaustive list of exogenous cost changes, but also includes any other cost changes that the Commission shall permit.[207] BellSouth also argues that the Commission has in the past permitted, without a waiver request, exogenous treatment of cost changes that were neither specifically listed in Section 61.45(d) nor designated as permitted exogenous cost changes by Commission order.[208]

88. MCI filed comments urging the Commission to reject Southwestern's petition concerning exogenous costs.[209] MCI points to the Commission's *United Depreciation Order* in which the Commission ruled that, "since general depreciation rate changes are treated endogenously under price caps, United used the correct procedural device by seeking waiver of

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[203] *See* Section 61.45(d)(1)(vi) of the Commission's rules, 47 C.F.R. § 61.45(d)(1)(vi).

[204] Southwestern Petition at 1-3.

[205] *Id.*

[206] BellSouth Telecommunications, Inc. Comments at 1-2 (filed Aug. 9, 1994) (BellSouth Comments).

[207] BellSouth Comments at 3-4.

[208] BellSouth claims that exogenous cost treatment of costs associated with the Telecommunications Relay Fund and public utility tax increases have been permitted by the Commission without the filing of waiver requests by LECs. BellSouth Comments at 4-5 (*citing* BellSouth Telecommunications, Inc. Transmittal No. 135, filed Aug. 17, 1993, effective Oct. 16, 1993; Bell Atlantic Telephone Companies, Tariff F.C.C. No. 1, Transmittal Nos. 492 and 501, 7 FCC Rcd 2165 (1992); Bell Atlantic Telephone Companies, Tariff F.C.C. No. 1, Tr. No. 473, 7 FCC Rcd 1486 (1992)).

[209] MCI Telecommunications Corporation Comments (filed Aug. 9, 1994) (MCI Comments).

the Commission's rules when it sought exogenous treatment for plant-related expenses."[210] MCI claims that there is no basis for distinguishing between costs previously denied exogenous treatment and costs not specifically granted exogenous treatment.[211] MCI argues that the Bureau was correct to reject exogenous claims until a cost is declared to be exogenous in some forum other than the tariff review process. MCI claims that this requirement would confer the fullest due process on all affected parties.[212]

89. In its reply, Southwestern argues that the tariff process does allow parties to comment on exogenous cost issues to the extent that they affect rates. Southwestern claims that the tariff process thus adequately protects the due process rights of all parties and that the waiver process is thus unnecessary for evaluating exogenous cost issues.[213] Southwestern also challenges MCI's claim that there is no difference between costs previously denied exogenous treatment and costs not specifically granted exogenous treatment until the Commission deems otherwise through a rulemaking or a waiver.[214] Southwestern argues that a waiver is only necessary when there is a request to deviate from an established rule. Southwestern claims that under Section 61.45(d)(1)(vi), there is no need to request a waiver to allow a price cap carrier to file for exogenous cost treatment for a cost for which the propriety of such treatment has not been specifically addressed in the past.[215]

3. Discussion

90. In the *Regulatory Fees Order*,[216] the Bureau on its own motion, granted common carriers subject to price cap regulation a waiver of the rules to permit them to treat as exogenous costs regulatory fees and changes to those fees imposed by Section 9 of the Communications Act of 1934, as amended.[217] In light of the Bureau's decision, the issue raised by Southwestern is now moot. We thus dismiss as moot Southwestern's petition for clarification or reconsideration

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[210] MCI Comments at 2-3 (*citing* Petition for Waiver of the Commission's Rules to Recover Network Depreciation Costs, 9 FCC Rcd 377 (1993) (*United Depreciation Order*)).

[211] *Id.* at 3.

[212] *Id.*

[213] Southwestern Bell Telephone Company Reply Comments at 1-2 (filed Aug. 24, 1994) (Southwestern Reply).

[214] *Id.* at 2.

[215] *Id.* at 3.

[216] Price Cap Treatment of Regulatory Fees Imposed by Section 9 of the Communications Act, 9 FCC Rcd 6060 (Com. Car. Bur., 1994) (*Regulatory Fees Order*), *Erratum*, 9 FCC Rcd 6487 (Com. Car. Bur., 1994).

[217] *Id.* at 6061. On November 7, 1994, MCI filed a petition for reconsideration of the Bureau's *Regulatory Fees Order* which was subsequently denied. *See* Assessment and Collection of Regulatory Fees for Fiscal Year 1995, MD Docket No. 95-3, Report and Order, 10 FCC Rcd 13512, 13560 (Com. Car. Bur., 1995).

of this issue.

91. As for the second issue raised in Southwestern's petition, we find upon reconsideration that Southwestern's $6.04 DS1 zero-mileage charge does not warrant an investigation at this time. We note that the Bureau found that the $6.04 switched transport charge was below the applicable PCIs and within the governing service bands. The price cap rules grant pricing flexibility for rate elements within an individual basket as long as the average price of all the rate elements within that basket falls below the applicable PCI and the rate elements are within the governing service bands. Therefore, Southwestern Bell's $6.04 charge is a presumptively reasonable rate under price caps because it falls below the applicable PCIs and within the governing service bands. We note further that no party has filed an opposition to Southwestern's petition on this issue. We therefore grant Southwestern's petition for reconsideration of this issue.

92. We conclude further that Southwestern Bell's $6.04 DS1 charge is a switched access rate element which under price cap regulation is in the trunking basket because it is not a rate element that an interconnector would have to obtain in order to achieve interconnection to Southwestern's facilities. It is, however, a rate element that a switched access customer, either directly or through an interconnector, would have to obtain in order to connect a high capacity circuit to the switch. To avoid any customer confusion, and more importantly, to ensure that an interconnector is not assessed this charge to obtain interconnection, we instruct Southwestern to eliminate the $6.04 charge for the DS1 zero-mileage rate element from the expanded interconnection portion of its tariff as filed under Transmittal No. 2364 and to eliminate the language filed under Transmittal No. 2330 stating that either the switched transport customer or the expanded interconnection customer would be assessed the $6.04 rate element but not both.

V. REMEDIAL ACTIONS

A. Overview

93. We direct the LECs found by this Order to have violated the Commission's rules and decisions, to apply the remedial actions in this Section V.[218] In Subsection B, we describe the method for price cap LECs to lower on a going-forward basis the price cap indices and other pricing limits to the pricing limits that would have been in place had they been set consistent with the Commission's rules and decisions. These new PCIs will become effective on June 30, 1997, and will be used to calculate annual PCI adjustments on July 1, 1997.

94. In Subsection C, we direct each LEC to lower the PCIs for one year from July 1, 1997 through an exogenous cost change, as a refund of overcharges that may have occurred during the course of this investigation. The LECs' 1997 tariff review plans (TRPs) were filed

[218] As discussed in Section II.D.3., *supra*, no refund liability will be imposed on Pacific Bell for the omission of EUCL revenues in the common line basket for sharing purposes in its 1993 annual access filing.

on April 2, 1997.[219] We direct these LECs to document the development of the PCI changes in Subsections B and C in amended TRPs to be filed on May 1, 1997, in support of their annual PCI adjustments. The effects on rates from these PCI changes must be reflected in the annual access tariff filings to become effective on July 1, 1997.

95. In Subsection D, we direct Roseville, a rate-of-return carrier, to implement a refund for its overstated cash working capital allowance by using the standard 15-day allowance method discussed in Section II.G.3., *supra*. Roseville is directed to submit its refund plan and supporting documentation on May 1, 1997, and is required to implement refunds by lowering its tariff rates over a one-year period from July 1, 1997 through June 30, 1998.

96. These remedial actions are applicable to: 1) U.S. West's incorrect method of calculating exogenous costs associated with a change in the method of allocating local switching equipment costs between state and interstate jurisdictions in its 1993 annual access tariff; 2) Bell Atlantic and SNET's incorrect calculation of growth in minutes of use per line and, consequently, the maximum carrier common line rates in their 1993, 1994, 1995, 1996 annual access tariffs and 1993 annual access tariff, respectively; 3) Bell Atlantic's and Pacific Bell's improper exclusion of end-user revenues from the common line basket, which led to an incorrect allocation of sharing obligations among the price cap baskets in their 1993, 1994, 1995, and 1996 annual access tariffs and 1994, 1995, and 1996 annual access tariffs, respectively; 4) price cap LECs' incorrect placement of LIDB charges in service categories other than the data base service category within the traffic sensitive basket in their 1993 annual access tariffs; and 5) Roseville's use of an overstated allowance for cash working capital, which resulted in an unjustifiably high increase in the revenue requirement in its 1993 annual access tariff. We will delegate to the Chief, Common Carrier Bureau authority to review the remedial actions discussed in this Section V and to take any action necessary to ensure compliance with these remedial actions.

B. PCI and Pricing Band Recalculations to Correct for Violations of the Rules

97. In this Subsection B, we provide instructions for the price cap LECs needing to correct their PCIs and other pricing limits on a going-forward basis so that those PCIs are what would have been in place had they been calculated consistent with the Commissions rules and decisions. Recalculations are to be made for the price cap index in each basket, the SBI upper limit in each service category and subcategory, and the maximum CCL rates in the common line

[219] Pursuant to the Commission's adoption of the Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, CC Docket No. 96-187, FCC 97-23, Report and Order, at paras. 96-102 (rel. Jan. 31, 1997) (*LEC Tariff Streamlining Report and Order*), price cap LECs electing to file annual access tariffs on a streamlined basis must continue filing their TRPs 90 days prior to July 1 of each year but without the proposed rate changes. The annual access tariffs would become effective on July 1st of each year on 7-days notice for tariffs that solely decrease rates or 15-days notice for tariffs involving other rate changes. For non-price cap LECs electing to file annual access tariffs on a streamlined basis, the TRPs and the tariffs would be filed at the same time on 7-days notice for rate decreases only or 15 days-notice for other rate changes. For both price cap and non-price cap LECs that do not elect to file tariffs on a streamlined basis, TRPs and annual access tariffs would continue to be filed together 90 days prior to July 1.

basket, from the date the tariffs subject to this investigation took effect through the date the PCIs, SBI upper limits, and maximum CCL rate changes pursuant to this Order take effect on June 30, 1997. Our method accounts for the intertemporal nature of the LEC price cap system -- *i.e.*, each tariff year's PCIs, SBI upper limits, and maximum CCL rates depend upon the prior year's values.[220] Accordingly, LECs must recalculate their PCIs, SBI upper limits, and maximum CCL rates as required by the decisions in this Order, starting with the PCIs, SBI upper limits, and maximum CCL rates in effect during the 1993 tariff year. The LECs must then recalculate their PCIs, SBI upper limits, and the maximum CCL rates in effect during the 1994 tariff year as required by the decisions in this Order, using the recalculated 1993 PCIs, SBI upper limits, and maximum CCL rates. This process is to be repeated to recalculate the PCIs, SBI upper limits, and maximum CCL rates for the 1995 and 1996 tariff years.

98. The tariff year begins on July 1st and ends on June 30th; *e.g.*, the 1993 tariff year is the period from July 1, 1993 through June 30, 1994. Even though the LECs revise the PCIs, SBI upper limits, and maximum CCL rates at the start of each tariff year, the LECs sometimes adjust those PCIs, SBI upper limits, and maximum CCL rates as the tariff year progresses. Because it would be burdensome to recalculate each and every change to PCI, SBI upper limit, and maximum CCL rate as it occurred throughout each year, we will only require recalculations at the beginning and middle of each tariff year. This procedure will reasonably approximate the changes that occurred throughout the tariff year, because the preponderance of those changes became effective at the beginning and middle of the tariff year and, thus, the benefit from recalculating at more frequent intervals is insignificant. Therefore, in addition to recalculating the PCIs, SBI upper limits, and maximum CCL rates in effect on July 1st of each year, the LECs must recalculate the PCIs, SBI upper limits, and maximum CCL rates in effect on January 1st of each year. In the 1995 tariff year, the LECs must substitute the PCIs, SBI upper limits, and maximum CCL rates in effect on August 1, 1995 for those in effect on July 1, 1995 because of the one-month deferral in the 1995 annual filings.[221] Thus, the price cap LECs are to apply the following four steps to recalculate their PCIs, SBI upper limits, and maximum CCL rates to become effective on June 30, 1997.

99. Step 1: Recalculate the PCI for each basket as required by the decisions in this Order, for the PCIs in effect on July 1, 1993.[222] The LECs must then recalculate the PCIs in

[220] The basket PCI in any year equals the PCI in the prior year adjusted by the annual change in the PCI. Thus, an uncorrected error in one year's PCI causes an error in the next year's PCI. In addition, the SBI pricing limit equal the SBI in the prior period adjusted by the annual change in the PCI and applicable scaling factor (typically, plus 5 percent for the upper limit). *See* Sections 61.45-47 of the Commission's rules, 47 C.F.R. § 61.45-47.

[221] The Common Carrier Bureau granted United States Telephone Association's request for a waiver of Part 69 of the Commission's rules to allow price cap LECs to file their 1995 annual access tariffs 30 days after the release of the *LEC Price Cap Performance Review* and the Bureau on its own motion established August 1, 1995, as the effective date for the 1995 price cap LECs' annual access tariffs. *See* 1995 Annual Access Tariffs, United States Telephone Association Application for Waiver, 10 FCC Rcd 4332 (Com. Car. Bur. 1995).

[222] For Pacific Bell the PCI recalculations would begin with the PCIs that were in effect on July 1, 1994.

effect on January 1, 1994, as required by the decisions in this Order, using the recalculated July 1, 1993 PCIs. This recalculation process must be repeated with respect to the PCIs for the remaining half-year periods in the 1994, 1995 and 1996 tariff years except that for tariff year 1995, the half-year periods would fall on August 1, 1995 and January 1, 1996, as explained above.

Step 2: Recalculate the SBI upper limits in each service category and subcategory in effect on July 1, 1993, using the recalculated July 1, 1993 PCIs -- *e.g.*, if a basket is composed of four service categories, each containing two subcategories, the LECs must reduce a total of twelve SBI upper limits: the limits in the four service categories and the limits in the eight service subcategories.

100. If any service subcategory SBI in effect on July 1, 1993 exceeds its recalculated upper limit then lower that subcategory SBI to its recalculated upper limit. This procedure will produce the subcategory SBI that should have been in effect. There is no change to a service subcategory SBI, if the SBI in effect is at or below the recalculated upper limit. This part of Step 2 may be omitted if there are no service subcategories within the service category.

101. For any service subcategory SBI exceeding its recalculated upper limit, adjust the service category SBI to which the subcategory belongs, since a service category SBI is a weighted average of its subcategory SBIs. If any service category SBI in effect on July 1, 1993, as adjusted, exceeds its recalculated upper limit then lower that service category SBI to its recalculated upper limit. This procedure will produce the category SBI that should have been in effect. Adjust the basket API in effect on July 1, 1993, since an API is a weighted average of its service category SBIs. In addition, the LECs are directed to recalculate the maximum CCL rate in effect on July 1, 1993, using the recalculated PCI in Step 1.[223]

102. Step 3: Lower the subcategory SBIs on January 1, 1994 to flow through any adjustments to the previous period's SBI as calculated in Step 2. Lower the service category SBI to reflect these adjusted subcategory SBIs on January 1, 1994. If any service category SBI in effect on January 1, 1994, as adjusted, exceeds its recalculated upper limit then lower that service category SBI to its recalculated upper limit. Adjust the API to reflect these adjustments to the service category SBIs on January 1, 1994. In addition, the LECs are directed to recalculate the maximum CCL rate in effect on January 1, 1994 to flow through any adjustment to the maximum CCL rate as calculated in Step 2.

103. Step 4: Return to Step 2 to recalculate upper SBI limits for the service categories and subcategories, and the maximum CCL rate on January 1, 1994. The LECs are directed to apply the PCIs adjusted in Step 1, the maximum CCL rate and the service category and subcategory SBIs adjusted in Step 3 for January 1, 1994. The LECs must repeat this procedure

[223] As discussed in Section II.C.1. *supra*, the maximum CCL rate is the upper limit on CCL rates and is calculated through the common line formula as a function of the PCI change, revenues from subscriber line charges, number of subscriber lines and minutes of use, growth in minutes of use per line, and maximum CCL rate for the preceding period. *See* Section 61.46 of the Commission's rules, 47 C.F.R. § 61.46.

for the remaining half-year intervals in the 1994, 1995, and 1996 tariff years. The PCIs, SBI upper limits, and maximum CCL rate recalculated for June 30, 1997 are the ones to be adjusted in the tariff filings making the annual adjustments to the PCIs on July 1, 1997, as adjusted for other index revisions that may occur beforehand. The amended TRPs to be filed May 1, 1997, showing the PCIs to become effective on July 1, 1997, must include documentation demonstrating that those indexes will comply with the decisions in this Order. Any rate effects from lowering the PCIs, SBI upper limits, and maximum CCL rates pursuant to this Subsection B must be reflected in each LEC's 1997 annual access tariff filing. The LECs not subject to remedial action are not required to file such documentation.

C. PCI and Pricing Band Recalculations to Effectuate Refund Liability

104. In this Subsection C, we set forth the refund mechanism for price cap LECs that based on the findings of this investigation must compensate customers for overcharges incurred during the course of this investigation.[224] The LECs, specified in paragraph 96, *supra*, tariff filings of which were suspended, set for investigation, and made subject to accounting orders must refund to their customers all amounts, plus interest, collected as a result of overcharges. The refunds will be implemented through a one-year exogenous cost adjustment to the PCIs incorporated in the annual access tariff filings to become effective on July 1, 1997. We conclude the LECs overcharged customers to the extent that:

> 1) any API, adjusted in Step 2 or 3 of Subsection B to incorporate changes to its service category SBIs, exceeds its PCI as recalculated in Step 1 of Subsection B;
>
> 2) any service category SBI, adjusted in Step 2 or 3 of Subsection B to incorporate changes to its subcategory SBIs, exceeds its SBI upper limit as recalculated in Step 2 of Subsection B;
>
> 3) any subcategory SBI in effect exceeds its upper limit as recalculated in Step 2 of Subsection B; and
>
> 4) any CCL rate in effect exceeds the maximum CCL rate as recalculated in Step 2 in Subsection B.

105. We direct the price cap LECs to apply the following six steps in order to calculate the exogenous cost change to implement refunds:

> 1) calculate the percent by which any API exceeds its PCI, or any SBI exceeds its SBI upper limit, or any CCL rate exceeds the

[224] We find the LECs' supporting information insufficient to establish either substantial cause for an SBI that exceeds its revised upper pricing band pursuant to Section 61.49(c) or the reasonableness of an API that exceeds its revised PCI pursuant to Section 61.49(e). *See* Section 61.49(c), (e) of the Commission's rules, 47 C.F.R. § 61.49(c), (e).

maximum CCL rate in the four instances set forth in the preceding paragraph, at the beginning and middle of each tariff year from 1993 through 1996, from July 1, 1993 through June 30, 1997, except that LECs should substitute August 1, 1995 for July 1, 1995 as a result of the one month deferral in the 1995 annual filings;

2) multiply the relevant basket, or service category or subcategory revenue by the above percentages, using the base year revenue in effect for the tariff year;

3) multiply each amount calculated in Step 2 by the relevant basket, service category or subcategory ratio of revenue in 1993, the last year of this investigation, to the base year revenue to reflect the change in index value over time;

4) convert the amounts calculated in Step 3 from an annual basis to a half year basis by multiplying each amount by the ratio of number of days in the half-year interval to number of days in the tariff year;

5) add interest to each amount calculated in Step 4, using the lowest of the overpayment interest rates of the US Internal Revenue Service in effect at the midpoint of this investigation, July 1, 1995, and compound the interest at the end of each half-year refund interval until June 30, 1997; and

6) sum the amounts calculated in Step 5 by service basket. These are the exogenous cost changes to the corresponding basket's PCI.

106. These exogenous cost changes will become effective on July 1, 1997, and the LECs may remove these PCI adjustments on July 1, 1998. The amended TRPs to be filed on May 1, 1997, showing the PCIs that will become effective on July 1, 1997, must include documentation demonstrating compliance with the decisions in this Order. Any rate effects from lowering the PCIs, SBI upper limits, and maximum CCL rates pursuant to this Subsection C must be reflected in each LEC's annual access tariff filing to become effective on July 1, 1997. The LECs not subject to remedial action are not required to file such documentation.

D. Roseville

107. With respect to Roseville, we conclude that the refund plus interest should reflect the amount by which Roseville's calculations for cash working capital allowance exceeded the permissible allowance in the 1993 tariff year, to be recalculated using the standard 15-day allowance method as discussed in Section II.G.3., *supra*. Interest shall be added to the refund amount, using the lowest of the overpayment interest rates of the US Internal Revenue Service in effect at the midpoint of this investigation, July 1, 1995, and compounded at six month

intervals from January 1, 1995 through June 30, 1997. Roseville is directed to submit its refund plan and supporting documentation on May 1, 1997, and is required to implement refunds by lowering its tariff rates over a one-year period from July 1, 1997 through June 30, 1998.

VI. ORDERING CLAUSES

108. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201(b), 202(a), 203(a), 204(a), 205, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201(b), 202(a), 203(a), 204(a), 205, 403, that the price cap local exchange carriers found to be liable for refunds SHALL FILE: recalculations of their PCIs, SBI upper limits, and maximum CCL rates; information showing the relationship of these limits to their APIs, SBIs and CCL rates; refund plans, and supporting documentation, as discussed in Section V of this Order, *supra*, to the Common Carrier Bureau pursuant to our delegation of authority, in an amended 1997 Tariff Review Plan to be filed May 1, 1997, and it is ORDERED that any refunds plus interest as specified in Section V.C., *supra*, shall be reflected in the revised tariff rates to be filed with the 1997 annual access tariffs to become effective on July 1, 1997.

109. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201(b), 202(a), 203(a), 204(a), 205, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201(b), 202(a), 203(a), 204(a), 205, 403, that Ameritech Operating Companies, Bell Atlantic Telephone Companies, BellSouth Telecommunications, Inc., GTE Service Corporation (GTE), Lincoln Telephone Company, Nevada Bell, NYNEX Telephone Companies, Pacific Bell, Rochester Telephone Corporation, Southern New England Telephone Company, Southwestern Bell Telephone Company, United Telephone Companies (Centel Telephone Companies), and US West Communications, Inc., SHALL PLACE the Line Information Data Base query charges in the data base service category within the traffic sensitive basket to become effective on June 30, 1997.

110. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201(b), 202(a), 203(a), 204(a), 205, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201(b), 202(a), 203(a), 204(a), 205, 403, that the Roseville Telephone Company (Roseville) SHALL FILE its refund plan and supporting documentation displaying its calculation of the refund amount to the Common Carrier Bureau pursuant to our delegation of authority May 1, 1997, and it is ORDERED that Roseville SHALL FILE its revised tariffed rates to correct for its incorrect calculation of cash working capital and to effectuate any refunds, plus interest as specified in Section V.D., *supra*, to become effective on July 1, 1997.

111. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201(b), 202(a), 203(a), 204(a), 205, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201(b), 202(a), 203(a), 204(a), 205, 403, that the carriers that participate in NECA's common line tariff but file individual tariffs for the traffic sensitive rates, pursuant to Section 61.39 of the Commission's rules, 47 C.F.R. § 61.39, SHALL FILE the information regarding the allocation of General Support Facility costs as discussed in Section II.E.3., *supra*, on May 1, 1997.

112. IT IS FURTHER ORDERED that the investigation and accounting order imposed by the Common Carrier Bureau in CC Docket No. 93-193 with respect to the tariff filings of local exchange carriers in compliance with the Amendment of the Part 69 Allocation of General Support Facility Costs, 8 FCC Rcd 3697 (1993), as discussed in Section II.E.3 of this Order, *supra*, IS TERMINATED.

113. IT IS FURTHER ORDERED that the investigation and accounting order imposed by the Common Carrier Bureau in CC Docket No. 93-193 with respect to the local exchange carriers specified in Appendix B for the designated issues in the corresponding annual access tariff filings as discussed herein IS TERMINATED.

114. IT IS FURTHER ORDERED, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5) and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, that the application for review filed by AT&T of the Common Carrier Bureau's decision in the 1994 Annual Access Tariff Filings, CC Docket No. 94-65, National Exchange Carrier Association Universal Service Fund and Lifeline Assistance Rates, Transmittal No. 612, Memorandum Opinion and Order Suspending Rates, 9 FCC Rcd 3705 (Com. Car. Bur. 1994) (*First 1994 Annual Access Order*); 1994 Annual Access Tariff Filings, CC Docket No. 94-65, Nevada Bell, Transmittal No. 196, Pacific Bell, Transmittal No. 1701, Rochester Telephone Corporation, Transmittal No. 222, Vista Telephone Companies, Transmittal No. 30, Memorandum Opinion and Order Suspending Rates, 9 FCC Rcd 3519 (Com. Car. Bur. 1994) (*Second 1994 Annual Access Order*) (collectively, *1994 Annual Access Orders*), with respect to exogenous treatment for the completion of the equal access expense amortization IS DENIED.

115. IT IS FURTHER ORDERED, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5) and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, that the petition for clarification or reconsideration filed by Southwestern Bell Telephone Company of the Common Carrier Bureau's decisions in the *First 1994 Annual Access Order* with respect to exogenous treatment of regulatory fees IS DISMISSED but with respect to Southwestern Bell Telephone Company's $6.04 DS1 zero mileage charge IS GRANTED.

116. IT IS FURTHER ORDERED that the investigation and accounting order imposed by the Common Carrier Bureau in CC Docket No. 93-162 with respect to Southwestern Bell Telephone Company's $6.04 DS1 zero mileage charge IS TERMINATED and Southwestern Bell Telephone Company SHALL FILE tariff revisions as discussed in Section IV.3, *supra*, to become effective on July 1, 1997.

117. IT IS FURTHER ORDERED that Section 61.59 of the Commission's Rules, 47 C.F.R. § 61.59, IS WAIVED for the purposes of compliance with this Order. Carriers should cite the "FCC" number of this Order as authority for the tariff filings.