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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

JUN - 3 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
	)	
800 Data Base Access Tariffs and	)	CC Docket No. <u>93-129</u>
the 800 Service Management System	)	
Tariff and	)	
	)	
Provision of 800 Services	)	CC Docket No. 86-10

AT&T COMMENTS

Pursuant to the Commission's Reconsideration Order in this proceeding,<sup>1</sup> AT&T Corp. ("AT&T") submits these comments on the Refund Plans filed by various local exchange carriers ("LECs").<sup>2</sup> In its Reconsideration Order, the Commission delegated to the Common Carrier Bureau the authority to ensure that refunds be paid based upon the disallowances of exogenous costs set forth in the Commission's Report and Order.<sup>3</sup>

<sup>1</sup> In the Matter of 800 Data Base Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Service, CC Docket Nos. 93-129 and 86-10, released April 14, 1997 ("Reconsideration Order").

<sup>2</sup> The Commission ordered the Ameritech Operating Companies ("Ameritech"), Bell Atlantic Telephone Company ("Bell Atlantic"), BellSouth Telecommunications, Inc. ("BellSouth"), NYNEX, Pacific Bell Telephone Company ("Pacific Bell"), Southwestern Bell Telephone Company ("SWBT"), U S WEST Communications, Inc. ("U S WEST"), GTE Service Corporation ("GTE"), Southern New England Telephone Company ("SNET"), and the Sprint Operating Telephone Companies ("Sprint") to file a schedule of proposed refunds and refund plan associated with exogenous cost disallowances for 800 Data Base service. Id. at para. 50.

<sup>3</sup> In the Matter of 800 Data Base Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Service, Report and Order, 11 FCC Rcd 15227 (1996) ("Report and Order").

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## I. INTRODUCTION

The Commission required all LECs to file tariffs to govern their offering of access service using the LEC 800 data base system.<sup>4</sup> In response, the price cap LECs filed their 800 data base tariffs which included, in their Price Cap Indices ("PCI") calculations, exogenous costs allegedly associated with the 800 data base system. The Commission suspended the LECs' tariffs for one day, imposed an accounting order and instituted an investigation to determine, among other things, whether the price cap LECs' 800 data base rates are reasonable.<sup>5</sup>

In the Report and Order the Commission disallowed certain exogenous costs which it found not to have been incurred specifically for the implementation of basic 800 data base service. Accordingly, the Commission ordered the price cap LECs to adjust their PCIs downward by an aggregate \$34.1 million,<sup>6</sup> on a prospective basis, to reflect the disallowances of their overstated exogenous costs.<sup>7</sup>

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<sup>4</sup> See Provision of Access 800 Service, CC Docket No. 86-10, Notice of Proposed Rule Making, 102 F.C.C.2d 1387 (1986); Supplemental Notice of Proposed Rule Making, 3 FCC Rcd 721 (1988); Report and Order, 4 FCC Rcd 2824 (1989); Memorandum Opinion and Order on Reconsideration and Second Supplemental Notice of Proposed Rule Making, 6 FCC Rcd 5412 (1991); Second Report and Order, 8 FCC Rcd 907 (1993); Memorandum Opinion and Order on Further Reconsideration, 8 FCC Rcd 1038 (1993); Order, 8 FCC Rcd 1844 (1993); Memorandum Opinion and Order on Reconsideration, FCC 95-487 (December 7, 1995).

<sup>5</sup> See The Bell Operating Companies' Tariff for the 800 Service Management System, Tariff F.C.C. No. 1 and 800 Data Base Access Tariffs, Order, 8 FCC Rcd 3242 (1993); 800 Data Base Access Tariffs and the 800 Service Management System Tariff, Order Designating Issues for Investigation, 8 FCC Rcd 5132 (1993).

<sup>6</sup> See Report and Order, Appendix D.

<sup>7</sup> See id., paras. 307-15.

In the Reconsideration Order, the Commission acknowledged that it had failed to discuss in the Report and Order refunds associated with several of the incumbent LECs' unlawful tariff provisions.<sup>8</sup> Upon a review of the facts in this case, the Commission determined that refunds are appropriate<sup>9</sup> and required the incumbent LECs with disallowed exogenous costs to file a schedule of proposed refunds.

As noted above, the LECs' initial calculation of their refunds, prior to any adjustments and interest calculations, appear to be correct. However, all of the filing LECs then propose to adjust their refund liability for headroom and/or sharing.<sup>10</sup> As shown below, the LECs have provided no lawful justification for their proposed offsets. Therefore, their proposed adjustments must be denied and their refund plans rejected. The Commission should further require the LECs to make a one-time PCI exogenous cost reduction equal to their total refund liability, without any adjustments, plus daily compound interest.

**II. THE LECs SHOULD BE REQUIRED TO IMPLEMENT A ONE-TIME PCI ADJUSTMENT FOR THEIR TOTAL PCI OVERSTATEMENTS, WITHOUT ADJUSTMENT FOR BELOW-CAP RATES.**

The LECs' initial calculation of their refunds, prior to any adjustments and interest calculations, appear to be correct. However, several LECs then reduce the refund by the amount of available headroom.<sup>11</sup> These LECs attempt to justify their adjustments by

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<sup>8</sup> Reconsideration Order, para. 20.

<sup>9</sup> Id., para. 21.

<sup>10</sup> See Attachment A for a schedule of the LECs refund liability calculations and associated proposed offset adjustments.

<sup>11</sup> The following companies took the headroom offset: Ameritech, Bell Atlantic, BellSouth, NYNEX, SWBT, U S WEST, GTE, and SNET. See Attachment A. See e.g., SWBT,

reiterating the same arguments they made when opposing AT&T's Petition for Reconsideration in this docket. In both instances, the LECs 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.<sup>12</sup> Consequently, the LECs claim that they should be given credit for pricing below cap.

This conclusion misses the point, because the Commission, referring to the Report and Order, stated that the incumbent LECs, with unlawful tariff provisions, are required to adjust "their PCIs based upon the disallowance of certain exogenous costs."<sup>13</sup> The adjustments are made to PCIs, not rates, because "it is clear that these monies represent payments made pursuant to tariff provisions found to be unlawful."<sup>14</sup> The Commission concludes that refunds should be ordered consistent with the Report and Order and the

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(footnote continued from previous page)

pp. 3-4 ("Once [the] annual refund before offset amounts were calculated, the next step was to reduce these amounts by the below cap headroom that existed during the relevant time periods."); NYNEX, p.3.

<sup>12</sup> In the event the Commission allows a headroom offset to the refund amounts, the headroom offsets submitted by the LECs have been calculated incorrectly. The LECs have assumed that the amount of their PCI-API headroom for any given year from 1993 to 1996 represents the total headroom that was available to increase their rates. However, the headroom available to the LECs for rate increases during any rate year is the net of Subcategory Band Indices ("SBI")-SBI Upper Limit headroom and PCI-API headroom, whichever is lower. Thus, even if a LEC has a large amount of PCI-API headroom, the LEC will be able to increase rates only to the extent it has SBI-SBI Upper Limit headroom available in the individual bands. None of the LECs take into account the SBI-SBI Upper Limit headroom in their overall headroom calculations. Consequently, the LECs headroom offsets, which rely only on PCI-API headroom, are incorrect.

<sup>13</sup> Reconsideration Order at para. 20 (emphasis supplied, citation omitted).

<sup>14</sup> Id. (citation omitted).

Reconsideration Order; that is, refunds, based on prospective reductions of PCI, should not be adjusted for below-cap rates.<sup>15</sup>

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.<sup>16</sup> 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.

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 cap during the gross-up period.<sup>17</sup> 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-

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<sup>15</sup> No LEC has made a showing that it priced below caps solely as a result of the 800 data base service exogenous costs, which the LECs knew they may have to refund in the event the Commission disallowed those costs. In fact, there are numerous reasons why, aside from the 800 data base exogenous costs, LECs may choose to keep their rates below cap. Consequently, the LECs are not entitled to a credit in the PCI calculation, even if they priced below cap.

<sup>16</sup> See Policy and Rules Concerning Rates for Dominant Carriers, Order on Reconsideration, 6 FCC Rcd 2637, 2640 (1991) ("Dominant Carrier Reconsideration Order").

<sup>17</sup> See Support Material to be Filed with 1996 Annual Access Tariffs, Tariff Review Plans, 11 FCC Rcd 10255, 10256 (1996).

up.<sup>18</sup> The LECs should not be permitted to ignore these long-standing rules by offsetting their refund amounts for below cap rates.<sup>19</sup>

**III. THE LECS SHOULD BE REQUIRED TO IMPLEMENT A ONE-TIME PCI ADJUSTMENT FOR THEIR TOTAL PCI OVERSTATEMENTS, WITHOUT ADJUSTMENT FOR SHARING.**

Some of the LECs also 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 a one-time PCI reduction would have to be reduced by the sharing benefits already provided to interexchange carriers.<sup>20</sup> 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

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<sup>18</sup> 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 entire \$46 million gross-up. During this entire time, Bell Atlantic's rates were below cap.

<sup>19</sup> Several of the LECs (Bell Atlantic, NYNEX, SWBT, and U S WEST) claim they are entitled to both a sharing offset and a headroom offset for the same year. This claim is paradoxical, in that if a LEC is entitled to one offset, it cannot logically also be entitled to the other. By claiming a sharing offset, a LEC is acknowledging that it has earned the full amount of the disallowed exogenous cost. Only if a LEC has earned the full amount can it have any basis to claim that it returned half of any overearnings to its customers. Thus, the LECs have no claim for a headroom offset, because they admit that they earned the full amount of disallowed exogenous costs, even if their rates were below cap for other reasons. Consequently, in the event the Commission finds that the LECs are entitled to an offset, the LECs should only be allowed to make adjustments in their refund liability for their claims of sharing offsets.

<sup>20</sup> Bell Atlantic, NYNEX, Pacific Bell, SWBT, and U S WEST.

caps – as a result of overearnings.<sup>21</sup> The one-time PCI adjustment, thus has nothing to do with any refunds required under the LECs' sharing obligations.

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.<sup>22</sup> 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 – demonstrate that any sharing obligation resulted from their 800 data base rates.

**IV. THE INTEREST CALCULATION ON THE REFUND SHOULD BE CALCULATED THROUGH THE DATE THE REFUND IS PAID.**

In accordance with the Report and Order,<sup>23</sup> the LECs filed a one-time PCI adjustment to reflect the disallowances ordered by the Commission. Several of the LECs calculated interest on the PCI adjustment only up until the time they filed the adjustment, instead of calculating interest until the time the refund is actually paid. Clearly, the interest

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<sup>21</sup> 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.

<sup>22</sup> Dominant Carrier Reconsideration Order, 6 FCC Rcd at 2679.

<sup>23</sup> Report and Order at para. 307.

owed on the refund amount should continue to accrue until the amount owed is paid. There is no basis to cease calculating interest based on the date the PCI adjustment is made.

V. LEC-SPECIFIC ISSUES.

A. Sprint is Required to File a Schedule of Proposed Refunds and Refund Plan.

Sprint has not filed a schedule of refunds and refund plan because it claims that the Commission incorrectly requires it to do so.<sup>24</sup> Sprint both misreads and confuses the Commission's Reconsideration Order. Sprint correctly notes that the Commission suspended the data base query rates under Section 204(a) of the Communications Act, 47 U.S.C. §204(a), to the extent they exceeded .0067 dollars per query.<sup>25</sup> However, Sprint then improperly concludes that the Commission's decision regarding that independent and separate issue is relevant to Sprint's obligations relating to the lawfulness of 800 data base exogenous costs. That is simply not the case.

The Commission's decision not to order Sprint to issue refunds with respect to its data base query rates,<sup>26</sup> does not mean that Sprint has "no refund liability" arising from the instant proceeding. Contrary to relieving Sprint of its obligation to file a refund plan for its other 800 data base disallowed exogenous costs, the Commission specifically found that Sprint

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<sup>24</sup> See Letter from Warren D. Hannah of Sprint to William F. Caton, Acting Secretary, FCC, dated May 13, 1997.

<sup>25</sup> Section 208 Complaints alleging Violations of the Commission's Rate of Return Prescription for the 1987-1988 Monitoring Period, 8 FCC Rcd 5485 (1993).

<sup>26</sup> See Reconsideration Order at para. 23, where the Commission stated that because Sprint's tariffs never exceeded that rate for data base queries, Sprint need not issue refunds in this matter with respect to those particular rates.

is obligated under the Report and Order (paras. 305-06) to make a PCI adjustment to reflect the disallowance of \$3.577 million of data base exogenous costs not related to its data base query. Therefore, Sprint's failure to file a refund plan is a violation of the Reconsideration Order and Sprint should be required to file a refund plan and make a one-time PCI adjustment.<sup>27</sup>

**B. Bell Atlantic and Pacific Bell Incorrectly Calculated Interest on Their PCI Adjustments.**

Bell Atlantic and Pacific Bell did not begin calculating interest on their PCI adjustments until January 1, 1994, thereby omitting six months of interest from its refund calculations. Pursuant to the Reconsideration Order (para. 22), "the incumbent LECs must include in their refund calculations an interest component computed on a daily compounded basis." Neither Bell Atlantic nor Pacific Bell has demonstrated why, as logic dictates, the interest calculation should not begin with the day the refund is obligated. Therefore, the Commission should require both LECs to compute the interest component from the day their 1993 800 data base tariffs became effective.

**C. Pacific Bell Miscalculated Its Sharing Offset.**

Finally, Pacific Bell has miscalculated its proposed sharing offset by assuming incorrectly that its disallowed exogenous costs were reflected in its sharing obligations beginning with the first year (1993) of the disallowed exogenous costs. Even if Pacific Bell could establish, which it cannot, that its disallowed amount of exogenous costs and PCIs for

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<sup>27</sup> Sprint should calculate its refund liability by adding the per year \$3.577 million disallowance of its 800 data base exogenous costs (plus daily compounded interest) from the date its 1993 800 data base tariff became effective until these disallowed exogenous costs were removed from its PCI.

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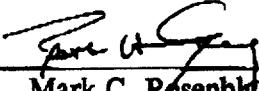
1993 were reflected in its rate of return and sharing, those amounts would not be reflected until the following year. Under the price cap rules, the rate of return and sharing calculations are always based on the earnings of the previous year. Therefore, Pacific Bell would begin sharing its inflated 1993 PCI in 1994 and it would also include sharing in its 1994 PCI calculations, when the current period earnings (1993) serve as the base period earnings for the following year (1994).<sup>28</sup> Consequently, Pacific Bell has not correctly calculated its sharing offset. In the event the Commission allows Pacific Bell to take a sharing offset, Pacific Bell should be required to calculate that offset correctly, as described herein.

For the reasons set forth above, the Commission should reject the LECs' refund plans and should require each LEC to make a one-time PCI exogenous cost reduction equal to its full refund liability (as calculated prior to any proposed offsets).

Respectfully submitted,

AT&T CORP.

By

  
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June 3, 1997

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<sup>28</sup> In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6786, 6805 (1990).

## SUMMARY OF LECS' 800 DATA BASE PLANS

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>TOTAL</u>
<b>AMERITECH</b>						
Disallowance	(3,364)	(5,046)	(5,046)	(5,046)	0	(18,502)
Sharing Offset	0	0	0	0	0	0
Headroom Offset	3,364	5,046	3,103	5,046	0	16,559
Interest	0	0	(236)	0	0	(236)
Net Disallowance	0	0	(2,179)	0	0	(2,179)
<b>BELL ATLANTIC</b>						
Disallowance	(4,573)	(6,860)	(6,860)	(6,860)	(232)	(25,386)
Sharing Offset	0	1,272	2,826	1,592	128	5,818
Headroom Offset	4,573	5,459	1,313	2,965	52	14,362
Interest	0	(28)	(339)	(93)	(2)	(462)
Net Refund	(0)	(157)	(3,060)	(2,396)	(54)	(5,668)
<b>BELL SOUTH</b>						
Disallowance	(43)	(43)	(43)	(43)	0	(172)
Sharing Offset	0	0	0	0	0	0
Headroom Offset	43	43	43	43	0	172
Interest	0	0	0	0	0	0
Net Refund	0	0	0	0	0	0
<b>NYNEX</b>						
Disallowance	(1,073)	(1,598)	(1,598)	(1,554)	0	(5,822)
Sharing Offset	0	268	268	0	0	536
Headroom Offset	224	1,330	1,330	17	0	2,902
Interest	(260)	0	0	(62)	0	(322)
Net Refund	(1,108)	0	0	(1,599)	0	(2,707)
<b>PACIFIC BELL</b>						
Disallowance	(4,053)	(6,079)	(6,079)	(5,900)	0	(22,111)
Sharing Offset	2,647	3,711	1,708	0	0	8,066
Headroom Offset	0	0	0	0	0	0
Interest	(1,241)	(1,343)	(756)	(239)	0	(3,579)
Net Refund	(2,647)	(3,711)	(5,127)	(6,139)	0	(17,624)

## SUMMARY OF LECS' 800 DATA BASE PLANS

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>TOTAL</u>
<b>SWB</b>						
Disallowance	(525)	(787)	(787)	(685)	0	(2,784)
Sharing Offset	198	102	0	0	0	300
Headroom Offset	128	583	787	665	0	2,163
Interest	(61)	(23)	0	0	0	(84)
Net Refund	(260)	(125)	0	(20)	0	(405)
<b>US WEST</b>						
Disallowance	(2,122)	(3,183)	(3,183)	(3,087)	0	(11,575)
Sharing Offset	209	3,183	0	3,087	0	6,479
Headroom Offset	1,704	0	1,163	0	0	2,867
Interest	0	0	0	0	0	0
Net Refund	(209)	0	(2,020)	0	0	(2,229)
<b>GTE</b>						
Disallowance	(4,257)	(6,386)	(6,386)	(6,386)	0	(23,415)
Sharing Offset	0	0	0	0	0	0
Headroom Offset	3,247	5,280	4,568	3,293	0	16,388
Interest	(21)	(111)	(231)	(506)	(340)	(1,209)
Net Refund	(1,031)	(1,217)	(2,049)	(3,599)	(340)	(8,236)
<b>SNET</b>						
Disallowance	(345)	(517)	(517)	(517)	0	(1,896)
Sharing Offset	0	0	0	0	0	0
Headroom Offset	97	334	410	306	0	1,147
Interest	(26)	(38)	(38)	(38)	0	(140)
Net Refund	(274)	(221)	(145)	(249)	0	(889)
<b>TOTAL</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>TOTAL</b>
Total Disallowance	(20,355)	(30,499)	(30,499)	(30,078)	(232)	(111,663)
Total Sharing Offset	3,054	8,536	4,802	4,679	128	21,199
Total Headroom Offset	13,381	18,075	12,717	12,335	52	56,560
Total Interest	(1,609)	(1,543)	(1,600)	(938)	(342)	(6,032)
Net Refund	(5,529)	(5,431)	(14,580)	(14,002)	(394)	(39,936)

**CERTIFICATE OF SERVICE**

I, Rena Martens, do hereby certify that on this 3rd day of June, 1997, a copy of the foregoing "AT&T Comments" was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached Service List.

  
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Rena Martens

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