

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

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JUN 15 1997

Federal Communications Commission  
Office of Secretary

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

**NYNEX<sup>1</sup> REPLY COMMENTS**

AT&T and MCI do not oppose NYNEX's proposal to implement the refund for 800 Data Base Service though a prospective adjustment to the price cap index of the Traffic Sensitive basket. Instead, they argue that NYNEX should not have applied headroom or sharing offsets in calculating the amount of the refund.

AT&T's and MCI's arguments are contrary to the Commission's price cap rules and would result in a windfall to AT&T, MCI and other access customers. Their opposition should be rejected and NYNEX's refund plan should be approved.

**I. Price Cap Refund Adjustments Must Be Based on the Actual Prices Charged**

AT&T and MCI argue that the Commission should ignore the level of NYNEX's actual prices during the period for which refunds are required (May 1, 1993 through December 20,

<sup>1</sup> The NYNEX Telephone Companies ("NYNEX") are New York Telephone Company and New England Telephone and Telegraph Company.

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1996) and base refund amounts on the total disallowance amount without adjustment for headroom. But actual prices are crucial to determining whether 800 Data Base customers were overcharged.

In ordering a refund, the Commission found that the LECs should return the revenues they received from the disallowed portions of the exogenous cost adjustment associated with 800 Data Base service. Consistent with Commission rules, the exogenous adjustment that NYNEX originally made was to the index that caps the maximum allowable prices (“Price Cap Index” or “PCI”) in the Traffic Sensitive basket. However, to the extent that NYNEX’s actual prices were below the maximum allowable prices (i.e., the Actual Price Index or API was below the adjusted PCI), any revenue obtained through the associated rates would not have been reduced by the full amount of the disallowance that was incorporated in the PCI.

As MCI acknowledges, the purpose of the refund here is to “reflect actual overcharges paid by customers.”<sup>2</sup> If NYNEX were to “refund” the disallowed amounts regardless of whether they actually charged for them or not, it would refund more than the “actual overcharges” and would be providing a windfall to AT&T, MCI and other access customers.

MCI claims that “the Commission has never permitted PCI reductions to be offset by headroom amounts from prior periods.”<sup>3</sup> But MCI contradicts its own argument and acknowledges that, in fact, the methodology proscribed in the recent decision on the 1993-96 access tariffs “allows a form of headroom offset.”<sup>4</sup> In contrast, the examples cited by AT&T

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<sup>2</sup> MCI Comments at 5.

<sup>3</sup> MCI Comments at 3.

<sup>4</sup> MCI Comments at 6.

were not refunds, but rather prospective adjustments that were not trying to capture actual overcharges.

AT&T and MCI also argue that if the Commission allows headroom, the LEC refunds must take band limits into account.<sup>5</sup> In fact, the restrictions on pricing among the bands, which contain specific restrictions below the basket level, had no impact on the total level of NYNEX's maximum allowable prices in the Traffic Sensitive basket. In a few cases where a particular SBI may have been exceeded, there was more than enough headroom in the Local Switching service category to offset it. Therefore, the constraint on pricing would have been on the basis of headroom in the basket (API vs. PCI), not on the basis of service categories. Since the exogenous adjustment relates to the basket as a whole, it is the total basket revenue amount that is relevant for calculating refunds.

MCI also argues that in calculating headroom offsets, actual rates should be compared to the PCIs that were in effect on January 1 and July 1 and that LECs should not be allowed to use an annual headroom offset.<sup>6</sup> NYNEX used headroom offsets on an annual basis to achieve consistency with the annual disallowance amount and annual sharing offsets, as well as to simplify the refund calculations. AT&T itself had also proposed refunds based on an annual view. If the use of annual periods is not approved, NYNEX should be allowed to calculate headroom at any and all times that the PCI or API changed.

## **II. Price Cap Refunds Should Be Net of Sharing Impacts**

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<sup>5</sup> MCI Comments at 4; AT&T Comments at 4, note 12.

<sup>6</sup> MCI, pp. 7-9.

AT&T and MCI also argue that NYNEX should ignore the impact of the adjustment on sharing. But through the sharing mechanism, NYNEX has already returned a portion of the increase in rates that the Commission has disallowed. If the Commission were to require NYNEX to calculate its refund without reference to amounts previously shared, the actual impact would be to pay twice -- first through increased sharing, and second through the PCI reduction that implements the refund.

AT&T argues that sharing is based on "total earnings" and therefore is unrelated to the provision of 800 data base service, which is "only a portion of the total interstate earnings."<sup>7</sup> But AT&T can not dispute that there is a direct and calculable relationship between the additional earnings achieved through the disallowed 800 data base exogenous adjustments and the resulting increased sharing. In addition, AT&T is incorrect in asserting that the refunds are associated with only 800 Data Base service. The refund is associated with any rates that may have been impacted by the disallowance under the price cap rules which, in NYNEX's case, are all those in the Traffic Sensitive basket.

AT&T argues that LECs are not entitled to both a sharing offset and a headroom offset for the same year. AT&T's argument is valid only when there is no headroom; if rates are at the maximum allowed (no headroom and therefore no headroom offset), then the sharing offset would equal one-half of the PCI disallowance. However, this does not mean that when there is headroom, there should be no sharing offset. Headroom represents allowable rate increases that were not reflected in actual prices, and therefore should not be refunded. Headroom is a legitimate refund offset to the total disallowance amount. Sharing, on the other hand, represents

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<sup>7</sup> AT&T Comments at 7.

actual rates and revenues that have already been refunded. Therefore, when there is headroom, the sharing offset should be based on one-half of the disallowance minus headroom since this represents the actual revenues and the amounts shared.<sup>8</sup>

### **III. No Further Adjustments to NYNEX's Proposed Refund Are Warranted**

Consistent with the Commission's mandate, NYNEX included in its refund additional amounts for interest, compounded daily. AT&T nevertheless complains that some LECs started accruing interest too late and finished too early.<sup>9</sup> But NYNEX's methodology is fully consistent with Commission rule and precedent. NYNEX began to accrue interest starting January 1 in the calendar year immediately following the tariff filing in question.<sup>10</sup> Consistent with the Commission's decision on the 1995-96 access tariffs,<sup>11</sup> NYNEX's proposed refund amount includes interest accrued up until the time a prospective reduction in its PCI to account for the refund is proposed to be effective, i.e., July 1, 1997.

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<sup>8</sup> Attached as revised Exhibit A is a recalculation of NYNEX's proposed refund adjusted to reflect the sharing offset based on the disallowance minus headroom amount rather than the total disallowance included in the original filing. This revision does not change the refund amount originally proposed.

<sup>9</sup> AT&T Comments at 7-9.

<sup>10</sup> See Section 208 Complaint, 8 FCC Rcd 5485, 5495 (1993).

<sup>11</sup> 1993-96 Annual Access Tariff Filings, CC Docket No. 93-193, Memorandum Opinion and Order (April 17, 1997) at ¶ 105.

**IV. Conclusion**

The Commission should approve NYNEX's refund plan.

Respectfully submitted,

NYNEX Telephone Companies

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Dated: June 13, 1997

EXHIBIT A (Revised 6-13-97)

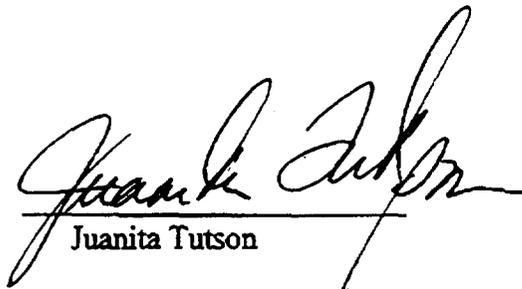
800 Data Base Refund Calculation  
 NYNEX

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>
a) No. of days of disallowance	245	365	365	355
b) Pro-rated disallowance = \$1,597,885 * (a)/365	\$ (1,072,553)	\$ (1,597,885)	\$ (1,597,885)	\$ (1,554,107)
c) Headroom offset from Exhibit B	\$ 224,299	\$ 1,596,424	\$ 6,124,553	\$ 17,221
d) Sharing offset (see note)		\$ 212,064	\$ 212,064	
e) Net disallowance = (b) + (c) + (d)	\$ (848,254)	\$ 210,603	\$ 4,738,732	\$ (1,536,886)
f) Refund obligation = (e) if less than 0	\$ (848,254)	\$ -	\$ -	\$ (1,536,886)
g) Interest through 6/30/97 (IRS rates compounded daily beginning Jan. 1)	\$ (260,070)			\$ (62,189)
h) Refund including interest = (f) + (g)	\$ (1,108,324)			\$ (1,599,075)
<b>TOTAL REFUND DUE 1993-1996</b>		<b>\$ (2,707,399)</b>		

Note: Sharing generated from 1993 ROR; total offset equals 1/2 of 1993 disallowance net of headroom (\$424,127), 1/2 of which is allocated to 1994 and 1/2 to 1995.

**CERTIFICATE OF SERVICE**

I, Juanita Tutson, certify that a copy of the foregoing **NYNEX REPLY** was served on the parties listed below, this 13th day of June, 1997, by first class United States mail, postage prepaid.

  
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