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Before the
Fctlrrnl Communications Coniniission
Washington, D.C. 20554

In the Matter of	)	
	)	
Stale or Moot Docketed Proceedings	)	
	)	
1993 Annual Access Tariff Filings Phase I	)	CC Dochet No. 93-193
	)	
1994 Annual Access Tariff Filings	)	CC Dochet No. 94-65
	)	
AT&T Communications Tariff F.C.C. Nos. I and 2. Transmittal Nos. 5160. 5461. 5162. and 5461 Phase II	)	CC Dochet No. 93-193
	)	
Bell Atlantic Telephone Companies Tariff F.C.C. No. I. Transmittal No. 690	)	CC Dochet No. 94-IS7
	)	
NYNEX Telephone Companies Tariff F.C.C No. 1. Transmittal No. 328	)	

ORDER, NOTICE. AND ERRATUM

Adopted: February 25,2003 **Released: February 25,2003**

Direct Case Due by: April 11,2003
Oppositions to Direct Case Due by: May 12, 2003
Rebuttal Due by: May 27,2003

Comments Due: No later than 28 days after the publication of this Notice in the Federal Register
Reply Comments Due: No later than 14 days afler the comments are due

By the Chief. Wireline Competition Bureau

I. INTRODUCTION

1. On June 30. 1995. the Common Carrier Bureau (Bureau) designated for investigation issues in three related tariff proceedings involving clainis for esogenous treatment under price cap regulation of amounts associated with implementation of Statement of Financial Accounting Standards 106 (SFAS-106).[1] SFAS-I Oh addrcssed. *inter alia.* the accounting treatment of "other postrerirement

[1] *1993 Annual Access Tariff Filings,* CC Docket No. 93-193, *1994 Annual Access Tariff Filings*. CC Docket No. 94-65, *AT&T Communications Tariff F.C.C. Nos. 1 and 2. Transmittal Nos. 5460, 5461, 5462, and 5464*. CC Docket No. 93-193. *Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 690*, CC Docket No. 94-157, Order Designating Issues for Investigation, 10 FCC Rcd 11804 (Com. Car. Bur. 1995) (*Combined OPEB*

(continued ...)

employee benefits'. or "OPEBs." In its *Combined OPEB Investigations Order.* the Bureau designated CC Docket No. 94-157 as the docket number for the combined investigation ofrliese issues.'

2. Atrer a period of inactivity in CC Dochet No. 94-15;, on December 21. 2001, the Commission adopted an order that terminated stale or moot docheted proceedings. The Commission stated. with respect to a list of proceedings included in an appendix. that "[t]he niatters at issue in these proceedings were resolved by the issuance of final orders that were not subject to judicial review, or if subject to judicial review, were affirmed and tlie court's inandate was issued."' CC Docker No. 94-157 was among the 119 proceedings listed. Neither AT&T nor any other carrier sought review of the *Termination Order* as it related to CC Docket No. 94-157

3. The present Order. Notice. and Erratum reinstates CC Docket No. 94-157. which was terminated in error, in order to address outstanding issues that are still in dispute. including an issue that AT&T recently brought to our anention. We direct Veriron Communications to submit its direct case and studies upon which it relies to demonstrate that OPEB-related costs incurred prior to January 1. 1993 are eligible for exogenous treatment. We also seek to refresh the record pertaining to OPEB issues discussed in the *1996 Tariff Order*.[1]

4. With respect to other OPEB issues under investigation in CC Docket No. 94-157. CC Dochct No. 94-65. and CC Docket No. 93-193. we request that parties with interest in other OPEB issues under investigation in these dockets (whether or not described below) inform the Bureau of any issue that remains open. If we receive no timely comments in response to this notice. we will terminate our OPEB investisation in CC Docket No. 94-65 and CC Docket No. 93-193 without further action. We note that. ahsent timely comments in response to this notice. we will also limit our further action in Docket No. 94-157 to two specific issues: (1) tlie issue B in the *Combined OPEB Investigations Order* (whether LECs may treat as exogenous the SFAS-106 costs they incurred prior to January 1. *1993):* (2) the issues reparding rate base treatment of OPEBs discussed in the *1996 Tariff Order.*

II. BACKGROUND

5. In December 1990. tlie Financial Accounting Standards Board (FASB) adopted SFAS-106. For companies that follow generally accepted accountins principles (GAAP), SFAS-106 established new financial accounting and reporting requirements for accounting periods beginning after December 15. 1992. for any employer offering postretirement benetirs other than pensions to its employees. This category of benefits. OPEBs. typically consists of lhealth and dental care benefits and life insurance.

6. Before the adoption of SFAS-106. regulated local exchange carriers (LECs) and AT&T accounted for OPEBs on a "pay-as-you-go" or cash basis. recognizing as expenses the amounts actually paid on behalf of retired employees in the current accountins period. SFAS-106 requires companies to account for OPEBs on an accrual basis. treating these benefits as a form of deferred compensation earned

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Investigations Order). The presenr Wireline Competition Bureau was known as the Common Carrier Bureau until 2002.

[2] *See id.* at 11817, para 32

Termination of Stale or Moot Docketed Proceedings, Order. 17 FCC Rcd 1199 (2002) (*Termination Order). 61* Fcd. Keg. 2617 (Jan. *3. 2002*).

[4] *See 1996 Annual Access Tariff Filings, National Exchange Carrier Association Universal Service Fund ond Lifeline Assistance Rorcc: NYNEX Telephone Company Petition to Advance the Effective Date of the 5 3 X-Factor to January 1, 1995.* Transmittal No. 710. Memorandum Opinion and Order. 11 FCC Rcd 7564 (Corn. Car. Bur. 1996) (*1996 Tariff Order*) *See also* paras 13-15. *infra.* for derailed discussion of OPEB Issues in the *1996 Tariff Order*

by employees durinp their working years. Thus. SFAS-106 requires recognition of tlie costs of OPEBs during the years the employees earn tlic benefits before they retire. rather than durinp the years when the company actually pays bciietits.

7 The new accounting standard in **SFAS-**I06 created two categories ***of*** OPEB expenses. -'ongoing amounts" and the "transitional benefit obligation'. (TBO). The '.ongoing amount" represents the yearly expense that a firm recognizes as its current employees earn benefits that will be paid after they retire. SFAS-I06 also requires companies to "book" (*i.e.*, to recoynize on their financial records) tlie amount of their unfunded obligation for OPEBs to retirees. and to active employees existing as of the date oftheir implementation of SFAS-I**06.** This unfunded obligation. referred to as the TBO. reflects the aniounr that a company would have accrued on its books as of tlie effective date of the accounting change if it had been operating under the accrual method.' SFAS-I06 permits companies whose benefits plans have active participants either to recognize the TBO as an immediate expense or to amortize it over the average remaining service years of plan participants. **If** the average remaining service period is less than 20 years. **SFAS-IO6** permits tlie employer to use a 70-year period rattier than an average period.

8. In December 1991. the Bureau. under delegated authority. issued an order approving the requests of two LECs to adopt SFAS-106-type accounting for OPEBs. on or before January I. 1993.[6] The Bureau declined. however. to allow LECs and AT&T to adopt tlie SFAS-IO6 option of immediately recognizing rlie full TBO. because the amounts involved were so large that accounting for them as one-time expenses would have distoned the LECs' earnings during the affected period. Instead. the Bureau required the carriers to use the other SFAS-I06 option of amortizing the TBO expense over either a 20-year period or the average remaining service period of active plan participants.'

9. On May 4. 1992. the Bureau released Responsible Accounting Officer Letter No. 70 (KAO20) to providc carriers with accounting and ratemaking instructions for OPEBs in a manner consistent with SFAS-106.[8] RAO 20 identified thc Pan 32 accounts that carriers must use to record OPEB costs under SFAS-106." It directed the LECs to exclude accrued OPEB liabilities recorded in USOA Account 4310 from their interstate rate base and to include prepaid OPEB benefits recorded in USOA Account 1410 in their intcrstatc rate base.'"

10. After the Bureau required AT&T and the LECs to conform their regulatory accounting practices to SFAS-106. several LECs subject to price cap regulation filed tariff transmittals in 1992 that sought exogenous treatment for the change in OPEB costs.'' The Bureau suspended the 1992 transmittals

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[5] SFAS-I06 defines rlie TBO as "the unrecognized aniounr. as otrhe date this Srarement is initially applied, of (a) the accumulared postretiremenr benefit obligation in excess of (b) the fair value of plan assets plus any recoyired accrued postretirement benefii cost or less any recognized prepaid postretiremenr benefit cost."

[6] *See Southwestern Bell Corporations. GTE Service* ***Corporation. Notification*** *of* ***Intent*** *to* ***Adopt*** *Statement of Financial Accounting Standards No 106, Employers · Accounting for Postretirement Benefits Other Thun Pensions.* ti FCC Rcd 7560 (Corn. Car. Bur 1991).

[7] *Id .See also Uniform Accounting for Postretirement Benefits Other* ***Than*** *Pensions in* ***Part*** *32.* 7 FCC Rcd 2872 (Accounting and Audirs Division. Corn. Car. Bur. 1991)(*RAO Letter 20*).

[8] *See* ***RAO Letter*** *20.* 7 FCC Rcd ai 2872. *See also 1996 Tariff Order*. 11 FCC Rcd at 7567. para. **5.**

[9] *See RAO Letter 20.* 7 FCC Rcd at 2872

[10] *Id.*

[11] *See Bell Atlantic Telephone Companies Tariff F.C.C No 1. Transmittal* ho. *497* (filed Feb. 28. 1992). *L'S West Communications, Inc. Tariff F C.C. Nos 1 and 4. Transmittal h'o 246* (tiled Apr. 3. 1992); and *Pacific Bell Tariff F C.C No 128 Transmittal No 1579* (tiled Apr 16. 1992). The "Price Cap Index" or "PCI" serves as an upper limit on rates This index is adjusted annually for productivity. inflation (GNP-PI) and other factors. including exogenous adjustments

for five months and set them for investigation.[12] The Bureau made all price cap regulated LECs subject to tliis investigation On January 22. 1993. in its *OPEB Order*, the Commission terminated the investigation and denied the LECs' requests tor exogenous treatment of OPEBs.[13]

11. In the *OPEB Order*, tlie Commission addressed the two types of OPEBs separately. With respect to the OPEB amounts accruing after tltc SFAS-106 change -- the ongoing amounts -- tlie Commission found that LECs have substantial control over tlic level of OPEB expenses. Accordingly, the Commission found that. with regard to tltc ongoing amounts, the LECs failed tlie tirsr prong of tlte tesr for exogenous cost treatment which required that a cost to he outside of a carrier's control.[14] With regard to the TBO amounts. the Commission staled that it did iiot have to resolve the control issue because the LECs had failed to establish that the TBO had not affected the economy generally (and was therefore iiot already accounted for the GNP-PI portion of the price cap formula) --the second prong of the test.[15] Finally. the Commission indicated that it might further consider exogenous treatmenr of the TBO amounts based on a better and more complete record and suggested the annual 1993 access tariff filings as a possible forum for such consideration.[16] Accordingly, in the 1993 annual access tariff filings. several LECs included adjustments to their price cap indices and rates based on exogenous treatincnt of certain TBO amounts. Effective July 1. 1993, AT&T also revised its price cap indices to reflect the LECs' proposed changes in access prices and to include adjustments for exogenous treatment of its own TBO amounts.[17] The Commission suspended both the LECs' and AT&T's transmittals for one day and imposed an accounting order.[18] The Commission designated the LEC portion of the investigation as

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[12] *Treatment of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, "Employers Accounting for Postretirement Benefits Other Than Pensions."* CC Docker No. 92-101. Order of Investigation aiid Suspension. 7 FCC Kcd 2724 (Coin Car. Bur. 1997) The Bureau designated the following issues for investigation:

(1) whether the LECs had demonstrated that implementing SFAS-106 results in an exogenous cost change under the Commission's price cap rules. and

(2) if these cost changes were rreared as exogenous. whether:

(a) costs associaccd with implementalion of SFAS-106 prior January 1, 1993 (when rhe accountin: change becomes mandator!) should bc rreated as exogenous:

(b) rhe assumplions made by the individual LECs in calculaung rhese cosrs were reasonable:

(c) given these assumptions, the individual LECs had correctly computed the exogenous cost changes; and

(d) the individual LEC allocations of these costs ainong rhc price cap baskets complied with Comniission rules

Id at 3725-26. para. 10.

[13] *Treatment of Local Exchange Currier Tariffs Implementing Statement of Financial Accounting Standards, "Employers Accounting for Postretirement Benefits Oilier Than Pensions."* CC Docker No 97-101. Memorandum Opinion and Order. 8 FCC Rcd 1024 (1993) (*OPEB Order*). This order direcred Bell Atlantic, US West and Pacific Bell to file tariff revisions removing the OPEB costs from the calculation of their PCI. *Id* ar 1037, para. 75.

[14] *See OPEB Order*. 8 FCC Rcd at 1033. paras. 53-56, *See also* 47 C.F.R. § 61.45(d) (1993).

[15] *See OPEB Order*. 8 FCC Rcd at 1033-34, paras 57-59 *See also* 47 C.F.R. § 61.45(d) (1993).

[16] *See OPED Order*. 8 FCC Kcd ar 1037. para 75

[17] *AT&T Communications Tariff F.C.C. Nos 1 und 2, Transmittal Nos. 5460, 5461, 5462, and 5464*, Memorandum Opinion and Order Suspending Rares and Designating Issues for Invesriyation. 8 FCC Rcd 6227 (Com. Car. Bur. 1993) (*AT&T OPEB Investigation Order*).

[18] *See 1993 Annual Access Tariff Filings*, CC Docket No. 93-193. *National Exchange Currier Association, Transmittal No 556. Universal Service Fund and Lifeline Assistance Rates*, CC Docket No. 93-123, *GSF Order Compliance Filings, Bell Operating Companies Tariffs for the 800 Service Management System und 800 Data Base Access Tariffs*. CC Docket No. 93-129. Memorandum Opinion and Order Suspending Rates and Designating Issues

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"Phase I" and the AT&T portion of the investisation as "Phase II."[19]

12. On July 12, 1994, tlic U.S. Court of Appeals for District of Columbia Circuit reversed and remanded the *OPEB Order*, concluding thar changes in LEC OPEB costs caused by the implementation of SFAS-106 were eligible for exogenous treatment under the Commission's existing rules.[20] Accordingly, the Court directed the Commission to grant exogenous treatment for OPEB-related costs. Because tlic carriers had withdrawn the tariffs that were the subject of the *OPEB Order*, and no tariffs remained pending in the remanded CC Docker No. 92-101, the Commission vacated the *OPEB Order* and terminated the *CC* Docket No. *91*-101 proceeding.[21] In response to tlic Coun's reversal of the *OPEB Order*, however, the Bell Atlantic Telephone Companies (Bell Atlantic) and NYNEX Telephone Companies (NYNEX) filed tariff revisions that sought exogenous treatnieiit of SFAS-106 amounts that they had not previously claimed.[22] The Bureau suspended these tariffs for one day, imposed an accounting order, and initiated an investigation.[23]

13. In April 1995, in its *Performance Review Order*, the Commission adopted new economic cost standards for exogenous treatment of accounting changes:[24] In applying the new standards to SFAS-106, the Commission again rejecred exogenous treatnieiit of OPER related costs.[25] The Commission noted, however, that the new standard.; would operate on a prospective basis only and would not affect the pending investigations of exogenous claims associated with iinplementation of SFAS-106 in CC Dockct No. 93-193 and CC Docket No. 94-157.[26]

14. On June 30, 1995, the Bureau consolidated the above-mentioned three separate pending investigations of exogenous claims (in CC Docker No. 93-193 and CC Docket No. 94-157) into a single proceedin?, designating CC Docket No. 94-157 as the docket number for this investigation.'. As

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for Investigation, 8 FCC Rcd 4960 (Com. Car. Bur. 1993) (*1993 Annual Access Investigation Order*); *AT&T OPEB Investigation Order*, 8 FCC Rcd at 6227.

[19] *AT&T OPEB Investigation Order*, 8 FCC Rcd at 6227.

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

[21] *Treatment of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, "Employers Accounting for Postretirement Benefits Other Than Pensions,"* CC Docket No. 92-101, Memorandum Opinion and Order, 10 FCC Rcd 11821 (1995).

[22] *See Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 690, NYNEX Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 328, Pacific Bell Tariff F.C.C. No. 128, Transmittal No. 1738 and US West Communications, Transmittal No. 550*, CC Docket No. 94-157, Memorandum Opinion and Order, 10 FCC Rcd 1594 (Com. Car. Bur. 1994) (*Bell Atlantic/NYNEX Investigation Order*).

[23] *Id.*

[24] *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, First Report and Order, 10 FCC Rcd 8961, 9090-97, paras. 293-309 (1995) (*Performance Review Order*). The *Performance Review Order* amended the Commission's rules to preclude price cap index adjustments for accounting changes that involve no changes in economic cost "expected to affect prices." *See id.* at 9090, para. 293. Applying the new rule in the *Performance Review Order*, the Commission ordered the price cap indices reduced prospectively, in order to preclude recovery of future, amortized installments of OPEB costs. *See id.* at 9095-97, paras. 306-309.

[25] *Performance Review Order*, 10 FCC Rcd at 9096-97, paras. 306-309.

[26] *Performance Review Order*, 10 FCC Rcd at 9096-97, paras. 306-309. *See also Bell Atlantic Telephone Cos. v. FCC*, 79 F.3d 1195 (D.C. Cir. 1996).

[27] *See Combined OPEB Investigations Order*, 10 FCC Rcd at 11817, para. 32.

discussed above, the first investigation examines several issues relating to the 1993 annual access tariffs,[28] including the LECs' claims for exogenous treatment of tlic TBO portion of SFAS-106.[29] Thc second investigation involves certain AT&T transmittals that proposcd rates designed Io recover LEC access charges tliat included the LECs' SFAS-I06 costs, as well as AT&T's own SFAS-106 amounts.[30] The third investigation iii the *Combined OPEB Investigations Order* involves proposed tariff revisions filed by Bell Atlaiitic and NYNEX, which sought exogenous treatment of SFAS-106 amounts not previously claimed.[31] In addition, the Bureau included four addirioiial proposed tariff revisions in CC Docket No. 94-157.[32] In each ofthe order, initiatinp these OPEB tariff investigations, tlie Bureau suspended the tariffs for one day and imposed accounting orders in the event the carriers' proposed rates were later found Io be unreasonable.[33]

15. On March 7, 1996, tlie Commission rescinded the portion of RAO 20 that addressed the

[28] *See 1993 Annual Access Investigation Ordcr*, 8 FCC Rcd 4960.

[29] Thc *1993 Annual Access Investigation Order* also includes an investigation of Rochester Telephone Corporalion, Tariff F.C.C. No. 1, Transmittal No. 222, for SFAS-I06 TBO amounts that were suspended by the Bureau for one day in the 1994 annual access tariff urder. See *1994 Annual Access Tariff Filings*, CC Docket No. 94-65, Memoranduin Opinion Order Suspending Rates, 9 FCC Rcd 3519 (Com. Car. Bur. 1994) *(1991 Annual Access Investigation Order I)*; *1994 Annual Access Tariff Filings*, CC Docket No. 94-65, Memorandum Opinion and Order Suspending Rares, 9 FCC Rcd 3705 (Coin. Car Bur 1994) *(1991 Annual Access Investigation Order II)*.

[30] *See AT&T OPEB Investigation Order*, 8 FCC Rcd 6227.

[31] *See Bell Atlantic/NYNEX Investigation Order*, 10 FCC Rcd 1594

[32] Ths Bureau included the following four tariff filings in the investigation: *Bcll Atlantic Telephone Companies, Tariff F.C.C. No. 1, Transmittal No. 747*, CC Docker Nos. 94-139 and 94-157, Memorandum Opinion and Order Suspending Rates, 10 FCC Rcd 5027 (Tar. Div., Com. Car Bur. 1995); *Pacific Bell, Tariff F.C.C. No. 128, Transmittal No. 1773 und US West, Tariff F.C.C. No. 5, Transmittal No. 584*, CC Docket No. 94-157, Memorandum Opinion and Order Suspending Rates, 10 FCC Kcd 6038 (Tar Div., Coin. Car. Bur. 1995); *Th: NYNEX Telephone Companies, Tariff F.C.C. No. 1, Transmittal No. 374*, CC Docker No. 94-157, Memorandum Opinion and Order Suspending Rates, DA 95-966 (Tar. Div., Corn. Car. Bur., rel. Apr. 27, 1995).

[33] In the *Combined OPEB Investigations Order*, the Bureau designated the following issues for investigation:

(A) whether AT&T and the individual LECs correctly, reasonably and justifiably calculated thc gross amount of SFAS-IO6 costs that may bc subject to exogenous rreatmenr under price cap regulation:

(B) whether exogenous claims should be permitted for SEAS-I06 costs incurred prior to January 1, 1993, the Commission's dare for mandator\. compliance:

(C) whether AT&T and the individual LECs haw correctly and reasonably allocated and separated amounts associared with implementalion of SFAS-106 in accordance with the Commission's rules and Responsible Accounting Officer (RAO) letters;

(D) hou Voluntary Employee Benefit Association (VEBA) trusts or other funding mechanisms should be rreared:

(1) if implemented before price caps

(2) if iinplemriircd after price caps, bur before the change requircd by SFAS-106; and

(3) if implemented after the change in accounring required by SFAS-106.

(E) whether erogenous cost treatmenr for SFAS-I06 amounts should be limired to costs rhar are funded:

(F) whether exogenous treatmenl should be given only for amounts associared with employee interests that have vested; and

(G) how the deterred tax benefit applicable to OPEBs should be treated for purposes ofesogenous adjustments

See Combined OPER Investigations Oi.de,.. 10 FCC Rcd at 11812-15, paras 16-23.

rate base treatment of OPER related costs.[34] Tlie Coinmission found tliat RAO 20 eiceedcd tlic Burcnu's delegated authority under 47 C F R § 32.1 *i* to the extent that it directed exclusions from, and additions to, a LEC's interstate rate base that are not specifically authorized by Part 65 of tlic Commission's rules.[35] The Commission specifically emphasized that its decision to order such rescission was based on procedural grounds and not on the substantive merits of the ratemaking practices at issue.[36]

16. In resporise to the *RAO Rescission Order*, the LECs proposed to increase tlicir PCIs for the 1996-1997 tariff period by adjusting tlicir rate base treatment of OPEBs for certain prior years, resulting in reduced sharing obligations for those periods.[37] Thus, in filing their 1996 annual access tariffs, Aineritech, Bell Atlantic, BellSouth, Nevada Bell, Pacific Bell, Soutliwestern Bell, U S West, Lincoln Teleplione, GTE, and Sprint LTCs amended their Price Cap Regulation Rate of Return Monitoring Report (FCC Fonn 492A) to include accrued OPEB costs in tlirir interstate rate bases.[38] The inclusion of accrued OPEB costs increased the LECs' interstate rate bases, thereby lowering the reported rates of return and decreasing their calculated price cap shariny obligations.[39] Reduced sharing obligations resulted in higher PCIs.[40] Ameritech amended its FCC Form 492A to reflect OPEB liability costs accrued in the interstate rate base in 1992.1994; Bell Atlantic, Pacific Bell, Southwestern Bell, and Lincoln Telephone amended their earnings reports to reflect OPEB costs in 1993, 1994, and 1995.[41] U S West amended its FCC Form 492A to include OPEB costs accrued in 1993, 1994, and 1995.[42]

17. In a June 24, 1996 order, tlie Bureau found that "the LECs' rate base treatment of OPEBs raises a substantial question of lawfulness under existing rules that warrants investigation."[43] The Bureau also agreed with AT&T that "the LECs . . . failed to document and explain the derivation of the rate base adjustments underlying the [proposcd tariff] revisions."[44] The Bureau determined that it would investigate the extent to which the LECs were seeking to iriclude OPEB costs in their rate bases while simultaneously seeking exogenous treatment for the same costs.[45] The Bureau suspended the LEC tariffs, imposed an accounting order, and initiated an investigation.[46]

18. After a period of inactivity, in December 2001, the Commission adopted an order that

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[34] *Responsible Accounting Officer Letter 20, Uniform Accounting for Postretirement Benefits Other than Pensions in Part 32*, CC Docket No. 96-22, Memorandum Opinion Order and Notice of Proposed Rule Making, 11 FCC Rcd 2957 (1996) (*RAO Rescission Order*).

[35] *Id* at 1961, para. 25

[36] *Id* at 2961, para. 27.

[37] *See 1996 Tariff Order*, 11 FCC Rcd at 7568, para. 7

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id*

[42] *Id*

[43] *Id.* at 7573, para. 19

[44] *id*, para. 20.

[45] *Id.* at 7571, para. 21. The Bureau staled that, "[s]ince the issue of rate base treatmenr of OPEB costs claimed for the 1992-1993 period is similar to the issue before us in our investigation of CC Docket 93-193, we add the tariff revisions filed by Amerirech, Bell Atlantic, U S West, Pacific Bell, Southwestem Bell, and Lincoln to that investigation." *Id*

[46] *Id* at 7566-67, para. 4, 7573-74, para,. 20-21

terminated stale or moot docketed proceedings. The Commission stated. with respect to a list of proceedings included iii an appendix. that "[t]he matters at issue iii these proceedings were resolved by tlic issuance of final orders that were not subject to judicial review. or if subject to judicial review, were affirmed and the court's mandate was issued."[47] CC Docket No. 94-157 was among the 119 proceedings listed.[48] Neither AT&T nor any other carrier sought review of the *Termination Order* as it related to CC Docket No. 93-157.[49] Almost a year later. iii an October 2002 meeting. AT&T urged the Bureau's Pricing Policy Division to take actions on specific issues involving OPED cost claims.[50] One issue. also known as "issue B" in the *Combined OPEB Investigation Order*, involves whether LECs may treat as exogenous the SFAS-IO6 costs they incurred prior to January I. 1993. the date on which the Commission's rules required implementation of SFAS-106.[51] AT&T helieses that Bell Atlantic nos the only LEC that requested exogenous treatment of OPEB costs for periods prior to January I. 1993. and AT&T objects to Bell Atlantic's exogenous clainis for calendar years 1991 and 1992.[52] Another issue involves the proper rate base treattiient *of* OPEBs discussed in the *I Y96 Tariff Order*.[53]

111. DISCUSSION

19. In the *Combined OPPB Investigations Order*. the Bureau designated certain issues for investigation. including issues relating to calculation of the specific amount *of* OPEB-related costs that are eligible for exogenous treatment arid issues involving eligibility *for* exogenous treatment of certain OPEB-related costs (such as Voluntary Employee Benefit Association trusts and costs incurred prior to January I. 1993).[54] As stated above. tlie *Combined OPEB Investigations Order* designates CC Docket No. 94-157 as the docket number for all the OPEB-related issues.[55] We note that the Cottimission also intended to resolve all other subsequent OPEB issues. including tlie proper rate base treatment *of* OPEBs discussed iii the *1996 Tariff Order*, in the same combined OPEB proceeding.[56]

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[47] *Termination Order*. 17 FCC Rcd 1199 (2002); 67 Fed Rep. 3617 (Jan. 25, *2001)*.

[48] *Termination Order*. 17 FCC Rcd 1199 (2002)

[49] We note that at least rwo other dockets with pending issues were terminated in the same *Termination Order*. *See* Trrniinarion of Srale or Moor Docketed Proceedings. *Erratum*. 17 FCC Rcd 4543 (Com. Car. Bur. 2002) (*Termination Order Erratum*). One of those dockets. CC Docket No. 96-198. was a rulemaking in which the Commission had not ruled on reconsideration petitions of AT&T and other parties. AT&T tiled *n* timely petition for judicial review of rhe *Termination Order* on thc grounds that the Coniniission could not lawfully terminare rhe rulemakin: proceedins without disposing ofthe merits of its reconsideration petition. See *AT&T Corp v. FCC*. D C. Ctr. No 02-1084 (2002). In the *Termination Order. Erratum*, rhe Bureau concluded rhar the termination of that rulemaking was an inadvertent. technical error and reinstated CC Docket No 96-198. See *Termination Order-Erratum*. 17 FCC Rcd 4543. para. 2.

[50] *See* Letter from Patrich H. Merrick. Director. ATBT Federal Government Affairs, to Marlene H. Dortch, Secretary, FCC. filed October *13*. 2002 (*AT&T Oct 23 2002 Ex-Parte Letter*)

[51] *Combined OPEB Investigations Order*. 10 FCC Rcd at 11813. pars. 19. *See also id.* at 11812-15. paras. 16-23 (other issues designated for investisation).

[52] *See ATK T Oct. 23, 2002 Ex-Parte Letter*

[53] *Id Sec also 1996 Tariff Order*. 11 FCC Rcd 7567.

[54] *See* footnote 31, *supra*, for more detail. *See also Combined OPEB Investigations Order*, 10 FCC Rcd at 11812-15, paras. 16-23

[55] *See Combined OPEB Investigations Order*. 10 FCC- Rcd at 11817, para. 32

[56] The Commission has consistently rreated the OPEB issues raised in CC Docker 93-193 as part of a group of issues that should be addressed together. For example. by order dated April 17. 1997. rhe Commission expressly declined "to address issues relared lo claims for exogenous treatment under price cap regulation of amounts associated with the implementation of [SFAS-106] relating to [OPEBs]." *In the Matter of 1993 Annual Access Tariff Filings, GSF*

(conrinued ..)

20. Issue B. in tlic *Combined OPEB Investigations Order. (ie.*, whether LECs may treat as exogenous tlir SFAS-106 costs they incurred prior to January 1. 1993. tlic Commission's date for mandatory compliance) remains in dispute.[57] The issues regarding rate base treatment of OPEB discussed in the *1996 Tariff Order* also remain unresolved.[58]

21. The text of the *Termination Order* states tliat "none of the [terniinnted] dockets have any outstaiiding issues."[59] Further. the *Termination Order* states that "the matters at issue in these [terminated] proceedings were resolved by the issuance of final orders that were not subject to judicial review."[60] The appendix of the *Termination Order* explicitly lists CC Docket 94-157 as one oftlie dockets terminated by that order. Bccausr certain issues iii CC Docket 94-157 remain unresolved. we conclude that the inclusion of CC Docket 94-157 in tlic appendix of the *Termination* ***Order*** was an inadvertent technical error: and the Commission never intended to terminate the OPEB tariff investigation in tliis docket."[61]

22. By this Order. Notice. and Erraturn. we reiiisrate the investigation in CC Docket No. 94-157 to address AT&T's objections concerning treatment of OPEB related costs for calendar years 1991 aiid 1992. as well as OPEB-related issues discussed in the *1996 Tariff Order*. Because the record may be stale. we seek to refresh the record. Considering that some of the panies subject to this investigation have merged.[62] we note that the old record may iiot accuratcly retlect tlie successor parties' current positions. In addition. we want to give interested parties the opportunity to provide new evidence. as appropriate. in light of the time that has passed. Accordingly. parties should state in full their arguments on these issues, rather than merely incorporating by reference arguments stated iii their earlier filings in *this* once terminated docket. Parties should also identify clearly the portions of their previous filings that are no longer relevant. as well as those that remain relevant. and why.

23. With respect to issue B. in tlie *Combined OPEB Investigations Order.* we direct Verizon Communications[63] to submit its direct case and studies upon which it relies to deniosrrate that OPEB-related costs incurred prior to January 1. 1993 are eligible for exogenous treatment. **As** discussed above,

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(.continued from previous page)
Order Compliance Filings, In the Matter of 1994 Annual Access Tariff Filings, In the Matter of 1995 Annual Access Tariff Filings, In rhc Matter of 1996 Annual Access Tariff Filings, CC **Docket** 93-19:. Phase I. Pan 2, CC Docket 94-65, Memorandum Opinion and Order. 12 FCC Rcd 6277. 6280. para. 2 n.6 (1997). The Commission noted that "the OPEB issues" would be addressed in a separate proceeding and cited to. among other things. a clause in the *Combined OPEB Investigations Order* that "designated the SFAS- 106 portion of the 1993 Annual Access Order as Phase I. Part I" of the investigation. *Id.*

[57] *See AT&T Oct 23. 2002 Ex-Parte Letter*

[58] *See id. 1996 Tariff Order*, 11 FCC Rcd at 773-74. paras. 19-11

[59] *See Termination Order.* 17 FCC Rcd at 1199, par3 1

[60] *Id*

[61] *See Termination Order Erratum*, 17 FCC Rcd at 4543-44 (reinstating **two** other proceedings with pending issues).

[62] See. e g , *Applications of NYNEX Corporation Transferor, and Bell Atlantic Corporaiion Transferee, Jur* ***Consent*** *to Transfer Control of NYNEX Corporation and its subsidiaries*. File No. NSD-L-96- 10, Memorandum Opinion and Order. 12 FCC Rcd 19985 (1 997): *Application of GTE Corporation Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98.184. Memorandum Opinion and Order. 15 FCC Rcd 14032 (2000)

[63] When Bell Atlantic Corporation and GTE Corporalion merged into one company. they named it Verizon Communication, (Verizon) *See* http://www.fcc.gov web armis COSA History vctr.htm; http://investor verizon com profile history 001 html.

Verizon should state in full its arguments, rather than merely incorporating by reference arguments stated in Bell Atlantic's earlier filings. Parties should also identify clearly the portions of their previous filings that are no longer relevant, as well as those 1/13! remain relevant, and why

3 1. With respect to issues regarding rate base treatment of OPEBs discussed in the 1996 *Tariff Order*, intcrested panies may tile comments in response to this Ordcr, Notice, and Erratum to refresh the record. Parties should also identify clearly the portions of their previous filings that are no longer relevant, as well as those that remain relevant, and why. We note that tlic specific issues that will be thc subject of the investigation will be identified in a future designation ordcr. We may also identify issues in that order that do not warrant further investigation.

25. Finally, with respect to other OPEB issues under investigation in CC Dochet No. 94-157, CC Docket No. 94-65, and CC Docket No. 93-193, we request that parties with interest in such issues (whether or not described above) inform tlic Bureau of any issue that remains open. If we receive no timely comments in response to this order, we will terminate our OPEB investigation in CC Docket No. 94-65 and CC Dochet No. 93-193 without further action. Additionally, absent timely comments in response to this order, we will limit our further action in Docket No. 94-157 to the two specific issues described in paragraph 18 above, and we will similarly terminate that docket once we have resolved those issues. Termination of issues no longer in dispute serves the public interest because it reduces the uncertainty to which carriers are subject in their normal operations, and it pemiits both carriers and tlic Commission to devote their resources niore efficiently to other matters of significance.

IV. PROCEDURAL MATTERS

4. Filing Schedules

26. This Order, Notice, and Erratum combines all OPEB investigations into otic investigation, and this investigation is designated CC Docker No. 94-157.

37. Veriron shall file its direct case on issue 5 designated in the *Combined OPEB Investigations Order*, no later than 45 days after release of this Order, Notice, and Erratum. Pleadings responding to the direct case must be captioned "Opposition to Direct Case" or "Comments on Direct Case" and may be tiled no later than 30 days aticr the direct case is tiled. Veriron may file a "rebuttal" to oppositions no later than 15 days after the oppositions are filed.

28. Interested parties may tile cotnments on other OPE5 issues, as discussed in paragraphs 24 and 25 above, no later than 28 days after the publication of this Order, Notice, and Erratum in the Federal Register. Reply comments are due no later than 14 days after the comments are filed.

29. An original and four copies of all pleadings shall be filed with the Secretary of the Comniission. In addition, parties shall serve with three copies: Pricing Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5A-333, Washington, D.C. 20554, Attn: Nese Guendelsberger. Parries shall also serve with one copy: Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 863-2893, Members of the general public who wish to express their views in an informal manner regarding the issues in this Order, Notice, and Erratum may do so by submitting one copy ofthejr comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. Such comments should specify the docket number of this proceeding, CC Docket No. 94-157. Parties are also strongly encouraged to submit their pleadings via the Internet through the Electronic Comment Filing System at <http:!/\c\\\\ .fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must he filed. In completing the transmittal screen, commenters should include their full name, Portal Service mailing address, and the applicnblc docket number, which in this instance is CC Dockei No 94-157. Parties ma? also submit an electronic comment via Internet c-mail. To get filing instructions for e-

mail comments. comnienters should scnd an e-mail to <ecfs@fcc.gov>, and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply.

30. Interested parties who wish to file comments via hand-delivery are also notified that, effective December 18. 200 I. tlie Coinmission will only receive such deliveries weekdays from 8:00 a.m. to 7:00 p.m., via its contractor, Vistronix, Inc., located at 236 Massachusetts Avenue, NE, Suite 110, Washington. DC 20002. **The Commission no longer accepts these** filings **at 9300** East **Hampton** Drive, Capitol Heights, MD 20743. Please note tliat all hand deliveries must be held together with rubber bands or fasteners. and envelopes must he disposed of before entering the building. In addition. this is a reminder that as of October 18. 2001. the Commission no longer accepts hand-delivered *or* messenger-delivered filings **at** its headquarters at 445 12th Street. SW. Washington. DC 20554. Messenger-delivered documents (*e.g.*, FedEx). including documents sent by overnight mail (other than United States Postal Service (USPS) Express and Priorit! Mail). must be addressed to 9300 East Hampton Drive. Capitol Heights. MD 20743. This location is open weekdays from 8:00 a.m. to 5:30 p.m. **USPS** First-Class. Express. and Prioritp Mail should be addressed to the Coinmission's headquarters at 445 12th Street. SW. Washington. DC 20554. The following chart summarizes this inforination:

TYPE OF DELIVER\'	PROPER DELIVERY ADDRESS
Hand-delivered paper filings	236 Massachusetts Avenue. NE. Suite 110, Washington. DC 20002 (Weekdays - 8:00 a.m. to 7:00 p.m.)
Messenger-delivered docunients (e.:.. Federal Express) including documents sent by overnight mail (this type excludes USPS Express and Priority Mail)	9300 East Hampton Drive. Capitol Heights. MD 20743 (Weekdays - 8:00 a.m. to 5:30 p.m.)
USPS First-Class. Express. and Priority Mail	445 12th Street. SW Washington. DC 20554

31. **All** relevant and timely pleadings will be considered by tlie Commission. In reaching a decision. the Commission may take into account inforination and ideas not contained in pleadings. provided that such information. or a writing containing the nature and source of such information. is placed in the public tile. and provided that the fact of reliance on such information is noted in the order.

B. *Ex Parte* Requirements

32. This proceeding is a permit-but-disclose proceeding and *is* subject to the requirements of section 1.1206(b) of the Commission's rules. 47 C.F.R. § 1.1206(b), as revised. Persons making oral **ex** *parte* presentations are reminded that menioranda summarizing the presentations must contain a summary of the substance of the presentation and not merely a listing of tlie subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.[64] Other rules pertaining to oral and written presentations are also set forth in section 1.1206(b).

33 *Interested* parties *are to* file *any written ex parte presentations in* this proceeding with *the* Commission's Secretary, Marlene Dortcli. 445 12th Street. S.W.. TW-B204, Washington, D.C. 20554. and serve with three copies: Pricing Policy Division. Wireline Competition Bureau. 445 12th Street, S.W.. Room 5 A-333, Washingron. D.C. 20554, Attn: Nese Cuendelsherger. Parties shall also serve with one cop!': Qualex International, Portals II. 445 12th Street, S.W.. Room CY-B402, Washington. D.C.

[64] *See* 47 C.F.R. §1.1206(b)(2), as revised

20554. (202) 863-2893.

C. Paperwork Reduction Act

[illegible] This Order, Notice, and Erratum [illegible] subject to the Paperwork Reduction Act of 1995, Pub. Law 104-13.

V. ORDERING CLAUSES

35. Pursuant to section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), by this Order, Notice, and Erratum, the *Termination Order* is corrected to reinstate as a pending proceeding CC Docket No, 94-157. All references to CC Docket No. 94-157 in the Appendix to the *Termination Order* are hereby DELETED.

36. IT IS also ORDERED that, pursuant to sections 4(i), 4(j), and 204(a) of the Communications Act of 1934, 37 U.S.C. §§ 154(i), 154(j), 204(a), Verizon Communications SHALL RESPOND to the issue B, designated in the *Combined OPEB Investigations* **Order,** no later than 45 days after release of this Order, Notice, and Erratum.

37. The Bureau WILL SEND a copy of this Order, Notice, and Erratum to the entities listed in the Appendix A.

FEDERAL COMMUNICATIONS COMMISSION

William F. Maher, Jr.
Chief
Wireline Competition Bureau

APPENDIX A.

Verizon Communications. Inc.. (including Bell Atlantic Telephone Companies. GTE Telephone Operating Companies GTE System Telephone Companies NYNEX Telephone Companies)

ALLTEL Communications (including Lincoln Telephone Companies)

Frontier Telephone of Rochester. Inc., (including Rochester Teleplione Corporatioil)

SBC Communications. Inc.. (including Ameritech Operating Companies. Nevada Bell Telephone Company. Pacific Bell Telephone Company. Southern Neu England Telephone Company. Southwestern Bell Telephone Company)

Bell South Telecominunications. Inc

Qwest Communications. Inc.. (including U S West Communications. Inc.)

AT&T Communications

WorldCom Communications (including MCI Telecommunications Corporation,

Sprint Communications (including United and Central Telephone Companies. Centel Telephone Companies)

Ad t loc Telecommunications Users Committee

Williams Communications, LLC.. (including Williams Telecommunications Group. Inc.)

Internatioiial Communications Association

United Stares Telecom Association