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

In the Matter of	)		
	)		
1995 Annual Access Tariffs	)	CC Docket No. 96-5	
	)		
GTE Telephone Operating Companies	)		
GTE System Telephone Companies	)		

ORDER TERMINATING INVESTIGATIONS

Adopted: September 14, 2009 **Released: September 15, 2009**

By the Commission:

I. INTRODUCTION

1. In 1995, the Commission initiated an investigation into the lawfulness of the annual access tariffs filed by GTE Services Corporation (GTE) on behalf of its affiliated GTE Telephone Operating Companies (GTOC) and GTE System Telephone Companies (GSTC) regarding the exogenous cost adjustments to its price cap indexes (PCI) that GTE proposed to reflect the sale of several local exchange properties. In 2007, interested parties were asked to update the record in this proceeding. For the reasons explained below, we find the PCI revisions at issue to be lawful and thus terminate this investigation.

II. BACKGROUND

2. On July 21, 1995, the Common Carrier Bureau (Bureau)[1] released the *Price Cap Carriers' 1995 Annual Access Order*, which suspended for one day and initiated an investigation into the lawfulness of the annual access tariffs filed by GTE.[2] The Bureau concluded that the exogenous cost adjustments to its PCIs that GTE proposed to reflect the sale of several local exchange properties warranted further investigation.[3] On January 23, 1996, the Bureau released a *Designation Order*, which set forth several issues in the investigation of the 1995 GTE annual access filing.[4] The first question the Bureau asked was whether the GTOC and GSTC exogenous cost adjustments related to the sale of telephone exchanges were adequately supported.[5] The Bureau directed GTE to explain fully the

[1] The Common Carrier Bureau became the Wireline Competition Bureau in 2002 as part of organizational changes at the Commission. *See generally Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau*, Order, 17 FCC Rcd 4672 (2002).

[2] *1995 Annual Access Tariff Filings of Price Cap Carriers*, Memorandum Opinion and Order Suspending Rates, 11 FCC Rcd 5461 (CCB 1995) (*Suspension Order*).

[3] *Suspension Order*, 11 FCC Rcd at 5481, para. 43.

[4] *1995 Annual Access Tariffs, GTE Telephone Operating Companies, GTE System Telephone Companies*, CC Docket No. 96-5, Order Designating Issues for Investigation, 11 FCC Rcd 5390 (CCB 1996) (*Designation Order*).

[5] *Designation Order*, 11 FCC Rcd at 5391, para. 8.

methodology used to calculate the exogenous cost adjustments related to the sale of GTOC and GSTC telephone exchanges during the period covered by the 1995 annual access tariff filing.[6] Specifically, the Bureau asked GTE to explain the calculations and the data underlying the proposed increases to GTOC's PCIs attributable to the sale of exchanges in California, Missouri, Oregon, and Washington in light of the Commission's requirement that LECs lower their PCIs to reflect the effects of such sales.[7]

3. In addition, the Bureau sought comment from GTE and interested parties regarding the most effective method for assigning costs from a study area to particular exchanges when those exchanges are sold.[8] The Bureau noted that, in its 1994 annual access filing, US West Communications, Inc. (US West) proposed a methodology for allocating costs aggregated at the study area level among individual exchanges within the study area.[9] US West first calculated historical revenues for the exchanges being sold, and then calculated the capital and operating costs associated with these exchanges.[10] Where necessary, US West used an allocator to assign a portion of study area costs to the exchanges sold.[11] Under US West's methodology, the total costs attributed to the sold exchanges equaled the sum of the total annual capital and operating expenses attributable to them.[12] For purposes of adjusting the PCIs, the exogenous cost change related to an exchange sale transaction equaled the revenues generated by the operation of the exchanges sold less the total costs attributed to the exchanges.[13] Therefore, applying US West's methodology would lower a LEC's PCI if the costs attributed to exchanges that were sold exceeded the revenues generated by those exchanges.[14] Because the Bureau was concerned that GTOC and GSTC did not use an appropriate methodology, the Bureau directed GTE to use US West's methodology to calculate the downward exogenous adjustment to GTE's PCIs required to reflect the sale of GTOC and GSTC telephone exchanges during the period covered by the 1995 annual access tariff filing.[15]

4. GTE was also directed to discuss whether it would be preferable to require GTOC and GSTC to use an alternative methodology based upon cost causation to assign costs from the study area to the exchange sold.[16] Accordingly, the Bureau directed GTE to use a cost causation methodology to calculate downward exogenous cost adjustments to GTOC's and GSTC's PCIs attributable to the sale of telephone exchanges covered by the 1995 annual access tariff filing.[17] The Bureau sought comments from

[6] *Id.*

[7] *Id.*

[8] *Id.* at 5391-92, para. 9.

[9] *Id.* at 5392, para. 10.

[10] *Id.* at 5392, para. 11.

[11] *Id.*

[12] *Id.* at 5392, para. 12.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.* at 5392, para. 13.

[17] *Id.*

interested parties on the cost causation methodology and its comparative advantages and disadvantages.[18] Finally, the Bureau sought comment on the methodology LECs should be required to use to determine the exogenous adjustment required by the sale or swap of an entire study area.[19]

5. GTE filed its Direct Case on February 20, 1996.[20] GTE explained its methodology for calculating the exogenous cost adjustments related to the sale of the exchanges, which identified costs through associated revenue losses.[21] GTE stated that, although it believed its methodology was correct when used, it agreed that it would be more appropriate to identify the exogenous costs attributable to the sale of exchanges using the method proposed by US West.[22] GTE claimed that the Bureau's suggested cost causation method was too broad in nature to properly calculate the exogenous impacts.[23] Accordingly, GTE argued that, while the various methods for the most part did not produce substantially different results, GTE believed that the method proposed by US West more accurately determines the exogenous cost and thus was the preferable approach.[24]

6. AT&T and US West filed comments on GTE's direct case.[25] US West supported the use of the US West methodology to determine the exogenous adjustment of PCIs required by the sale of exchanges.[26] AT&T also supported using the US West methodology; however, AT&T claimed that GTE did not provide adequate support of its exogenous cost adjustments and that the Bureau should continue its investigation into that matter.[27] AT&T also argued that only exogenous adjustments which result in reductions to a LEC's PCI are appropriate and that the Commission should not permit GTE to raise its PCI when it sells a below-average cost local telephone exchange.[28]

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[18] *Id.*

[19] *Id.* at 5393, para. 17.

[20] *1995 Annual Access Tariffs, CC Docket No. 96-5, GTE Telephone Operating Companies, Transmittal No. 963, GTE System Telephone Companies, Transmittal No. 146,* GTE's Direct Case (filed Feb. 20, 1996) (GTE Direct Case).

[21] GTE Direct Case at 3-4.

[22] *Id.* at 4-6.

[23] *Id.* at 7.

[24] *Id.* at 8.

[25] *See 1995 Annual Access Tariffs, CC Docket No. 96-5, GTE Telephone Operating Companies, Transmittal No. 963, GTE System Telephone Companies, Transmittal No. 146,* US West Comments on Direct Case (filed Mar. 5, 1996) (US West Comments), AT&T Corp.'s Comments on GTE's Direct Case (filed Mar. 5, 1996) (AT&T Comments). AT&T filed these comments prior to its mergers with BellSouth Corporation and SBC Communications, Inc. *See AT&T Inc. and BellSouth Corporation Application for Transfer of Control,* WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662 (2007); *SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control,* WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290 (2005).

[26] US West Comments at 2-4.

[27] AT&T Comments at 4-6.

[28] *Id.* at 6-7.

7. GTE, AT&T, and US West filed rebuttal comments.[29] Both GTE and US West argued that the Commission should allow both upward and downward exogenous cost adjustments from exchange sales.[30] GTE also disputed AT&T's contention that it had not adequately supported its adjustments.[31] AT&T argued that the Commission should not allow any price cap carrier to effect an upward exogenous cost adjustment to its PCI upon the sale or swap of telephone exchanges.[32]

8. On March 12, 2007, the Bureau invited interested parties to update the record pertaining to the issues identified in the *Designation Order*.[33] The Bureau noted that, since the *Designation Order* was released, carriers have sold multiple local exchanges and made corresponding adjustments to their PCIs. The Bureau asked parties to comment on how they have made exogenous cost adjustments to their PCIs for the sale of local exchanges that occurred subsequent to 1995, and whether a dispute still exists over the appropriate methodology that should be used. The Bureau also asked whether carriers should be permitted to make upward as well as downward exogenous adjustments to their PCIs.

9. Verizon filed updated comments and argued that the Commission should terminate the investigation.[34] Verizon explained that the issue regarding the treatment of exogenous costs for sales of local exchanges has been settled.[35] According to Verizon, carriers now agree that the US West methodology is the appropriate methodology for calculating exogenous costs attributable to the sale of local telephone exchanges and that this method has been used consistently since 1996.[36] Verizon also argued that the Commission should permit upward as well as downward exogenous cost adjustments.[37] No other party filed comments or responded to Verizon's comments.

III. DISCUSSION

10. Based on the record before us, we conclude that the issues designated for investigation by the Bureau have been resolved and we therefore terminate the investigation. With regard to the exogenous cost treatment for the sale of local exchanges, the record reflects that the US West methodology

[29] *1995 Annual Access Tariffs, CC Docket No. 96-5, GTE Telephone Operating Companies, Transmittal No. 963, GTE System Telephone Companies, Transmittal No. 146,* Rebuttal of GTE (filed Mar. 19, 1996) (GTE Rebuttal), Rebuttal Comments of AT&T Corp (filed Mar. 19, 1996) (AT&T Rebuttal), Reply Comments of US West Communications, Inc. (filed Mar. 19, 1996) (US West Reply).

[30] GTE Rebuttal at 2-3; US West Reply at 2-5.

[31] GTE Rebuttal at 3-5.

[32] AT&T Rebuttal at 2-4.

[33] *Parties Asked to Refresh Record Regarding Order Designating Issues for Investigation Regarding GTE Sale of Several Local Exchange Properties*, CC Docket No. 96-5, Transmittal Nos. 963, 146, Public Notice, 22 FCC Rcd 4875 (WCB 2007).

[34] *1995 Annual Access Tariffs, CC Docket No. 96-5, GTE Telephone Operating Companies, Transmittal No. 963, GTE System Telephone Companies, Transmittal No. 146,* Verizon Comments (filed Apr. 11, 2007).

[35] *Id.* at 2-3.

[36] *Id.* at 3-4.

[37] *Id.* at 4-6.

reasonably determines the relevant exogenous costs and has been used consistently since 1995.[38] Indeed, every party to this proceeding – GTE (now Verizon), US West, and AT&T -- supported use of this methodology. Nothing in the record persuades us that this method is not appropriate or justifies a finding that an alternative method should be adopted. GTE submitted PCI revisions using the US West methodology on the record that did not differ materially from the PCI revisions at issue, and thus we find GTE's PCI revisions to be lawful.

11. Finally, we do not decide here the general question whether carriers should be permitted to make upward adjustments to their PCIs when selling low cost exchanges, as well as downward adjustments when carriers sell above-average cost exchanges.[39] Although our prior orders make clear that downward adjustments are appropriate when above-average cost exchanges are sold,[40] the Commission has not previously determined whether upward adjustments are appropriate when low-cost exchanges are sold. As noted above, the US West methodology for calculating exogenous adjustments -- both downward and upward -- associated with sales of exchanges has been used consistently since 1995. Every party to this proceeding supports this methodology, and Verizon, the only party that responded to our March 2007 request to refresh the record, indicated that we should permit both upward and downward adjustments. We conclude that it would be better to resolve general questions regarding upward adjustments to PCIs in the context of a rulemaking of general applicability rather than in the context of a particular sale of exchanges.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to sections 4(i)-4(j), 201-205, 403, and 404 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 201-205, 403, and 404, GTE's exogenous treatment of sales of exchanges investigated in CC Docket No. 96-5, WAS LAWFUL.

13. IT IS FURTHER ORDERED that the investigation into the exogenous treatment of GTE's sales of exchanges initiated in CC Docket No. 96-5 IS TERMINATED.

14. IT IS FURTHER ORDERED that the accounting order applicable to the sale of the GTOC and GSTC local exchange properties identified in CC Docket No. 96-5 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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[38] *See* Verizon Comments at 2-4.

[39] *See id.* at 4-6.

[40] *See Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, First Report and Order, 10 FCC Rcd 8961, 9104, para. 328 (1995).