Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)))	CC Docket No. 96-98

REPLY COMMENTS OF QWEST CORPORATION

Qwest Corporation ("Qwest") hereby replies to Comments responsive to the Federal Communications Commission's ("Commission" or "FCC") *Public Notice* of July 12, 2001 in the above-captioned docket.[1]

The Commission seeks comment on which issues, if any, raised in the September 30, 1996 Petitions for Reconsideration of the FCC's *First Report and Order*[2] should be treated at this time. Qwest submits that the record in this

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[1] *Public Notice*, *Parties Asked to Refresh Record Regarding Reconsideration of Rules Adopted in 1996 in Local Competition Docket*, CC Docket No. 96-98, DA 01-1648, rel. July 11, 2001 ("*Public Notice*"); *see also* 66 Fed. Reg. 38611 (July 25, 2001). Comments filed Aug. 23 and 24, 2001 by AT&T Corp. ("AT&T"), the National Exchange Carrier Association, Inc. ("NECA"), and WorldCom, Inc. ("WorldCom"). Sprint Corporation ("Sprint") filed its Supplemental Notice on Aug. 24, 2001 withdrawing its Petition for Limited Reconsideration and/or Clarification of the *First Report and Order*.

[2] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, *First Report and Order*, 11 FCC Rcd. 15499 ("*First Report and Order*"), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Util. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part, rev'd in part, and remanded sub nom. AT&T Corp. v. Iowa Util. Bd.,* 525 U.S. 366 (1999), *aff'd in part and vacated in part on remand*, *Iowa Util. Bd. v. FCC,* 219 F.3d 744 (8th Cir. 2000)*, cert. granted sub nom. Verizon Communications Inc. v. FCC*, 121 S.Ct. 877 (2001), *Order on Reconsideration*, 11 FCC Rcd. 13042 (1996), *Second Order on Reconsideration*, 11

proceeding is too stale for the Commission to make a reasoned decision on any of these issues, and that the filings of various petitioning parties in response to the *Public Notice* serve to highlight this fundamental fact. It would be a failure of reasoned decision-making for the Commission to act in these critical areas without a record which was both timely and accurate. The passage of time since the filing of the Reconsideration Petitions has left the Commission with a record which would not meet the test of reasoned decision-making.[3]

The proceeding at issue is the Commission's landmark local competition docket, the massive proceeding in which the Commission sought to implement, among other things, Section 251 of the 1996 Telecommunications Act. The *First Report and Order* was subject to 34 Petitions for Reconsideration, all of which were filed on or before September 30, 1996. Since the filing of these petitions, the *First Report and Order* has been stayed and later vacated in part by the United States Court of Appeals for the Eighth Circuit, reinstated in part and reversed in other parts by the Supreme Court, vacated again in part by the Eighth Circuit, subject to an ongoing appeal at the Supreme Court, and subject to a complete remand rulemaking proceeding and order on certain issues in response to the Supreme Court's first decision, which remand is itself on appeal in the United States Court of Appeals for the D.C. Circuit.[4] Many of the issues determined initially in the *First*

FCC Rcd. 19738 (1996), *Third Order on Reconsideration and Further Notice of Proposed Rulemaking*, 12 FCC Rcd. 12460 (1997), *further recon. pending.*

[3] *See Motor Vehicle Mfrs. Assoc. v. State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29 (1983).

[4] *See* note 2, *supra* and note *5, infra.*

Report and Order are subject to separate ongoing proceedings at the Commission.[5] Moreover, incumbent local exchange carriers ("LEC") and competitive LECs have negotiated literally hundreds of interconnection contracts under the Act and under the existing Commission rules, none of which are part of the record thus far before the Commission.

In light of the developments that have occurred since the filing of the *First Report and Order* Petitions for Reconsideration, the Commission issued a *Public Notice* inviting petitioning parties to advise the Commission of which, if any, issues raised in the original petitions remained alive and should be considered by the Commission. Any party that did not respond to the *Public Notice* would be deemed to have abandoned its petition. The Commission announced that it planned to take action on the pending reconsideration issues identified by petitioning parties as still meriting consideration, and to dismiss the rest.

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[5] Examples include line sharing and next generation loops, *In the Matter of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98,* 16 FCC Rcd. 2101 (2001), *appeals pending sub nom., United States Telecom Ass'n v. FCC*, Nos. 00-1012, *et al.* (D.C. Cir.), *Order Clarification*, 16 FCC Rcd. 4628 (2001); collocation, *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, *Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98*, 15 FCC Rcd. 17806 (2000), *pets. for recon. pending*; and circuit flipping, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order Clarification*, 15 FCC Rcd. 9587 (2000).

Only four petitioners filed comments in response to the *Public Notice*. Sprint simply observed that the issues it had raised in its Petition had been resolved in other proceedings. The other three petitioners point to an important facet of this proceeding: there are critical issues that remain to be resolved in the proper implementation of Section 251 of the 1996 Telecommunications Act. However, these filings also document that these issues cannot be addressed properly on the current record, or in the current proceeding.

NECA pointed out that the Commission has not adequately addressed the critical interrelationship among the interconnection rules and the Commission's accounting, separations, universal service and access charge rules, especially in the area of separations.[6] NECA again raises the issue of separations reform, noting that the Commission's recent interim decision to freeze separations levels was a stop-gap measure only, and did not address fundamental reform matters.[7] However, NECA correctly points out that separations reform issues are currently before the Commission in a separate proceeding which, while itself now four years old, is far more comprehensive than the treatment of separations in the instant docket.[8] The Commission should move quickly on separations reform, but Qwest submits that the best vehicle for addressing separations issues is the pending CC

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[6] NECA at 2.

[7] *Id.* at 1-2. *And see In the Matter of Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, *Notice of Proposed Rulemaking*, 12 FCC Rcd. 22120 (1997).

[8] NECA at 3.

Docket No. 80-286 proceeding.[9] This docket should be activated immediately.

AT&T states that the portion of its Petition dealing with non-recurring costs of providing unbundled elements should be reinstated and addressed, but it offers no supporting facts to demonstrate that these issues remain current or valid. This failure is highlighted by the fact that AT&T sought clarification, not reconsideration, of the Commission's rules regarding nonrecurring costs.[10] AT&T's Petition requested that the rules be clarified to assist state commissions in implementing rules already adopted in the *First Report and Order*. The entire predicate for AT&T's concern is that incumbent LEC non-recurring charges might not follow the Commission's rules, and that state regulators may not be able to enforce those rules. In AT&T's words:

> Since the release of the First Report and Order, however, incumbent LECs have engaged in conduct that confirms that the Commission's pricing guidelines need to be clarified to foreclose anticompetitive outcomes. Although state commissions can be relied upon to reject some of these transparent attacks on the procompetitive purposes of the Act -- e.g., unabashed demands that states simply ignore the Commission's Order and Rules -- Commission action will also help to prevent incumbent LECs from claiming adherence to the strict letter of the Commission's Rules while at the same time attempting to exploit silence or ambiguity in ways that would thwart those guidelines and the Act itself.[11]

Based on AT&T's cursory comments, the Commission has no basis for determining whether AT&T's clarification request has a factual basis. Presumably

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[9] *See* note 7, *supra*.

[10] Petition of AT&T Corp. for Reconsideration and/or Clarification, filed Sep. 30, 1996 at 6 (headnote), and at 6-20, passim ("AT&T 1996 Petition").

[11] *Id.* at 6-7 (emphasis in original).

all of the nonrecurring cost issues that AT&T wanted the Commission to address in its 1996 Petition have by now been addressed by multiple state regulators in a number of arbitration proceedings. AT&T has failed to even summarize how its costing arguments have fared before the state regulators.[12] AT&T fails to provide any basis, much less sufficient support, to adopt rule clarifications addressing problems which AT&T cannot even demonstrate exist.

WorldCom's Comments likewise fail to propose action which would meet the test of reasoned decision-making for reconsideration on this stale record. While WorldCom describes several issues that were addressed in the Petitions for Reconsideration filed by various companies which, since the date of the petitions, have merged to form the current WorldCom.[13] It concedes that these issues are, with very limited exceptions, either addressed in other proceedings or pending Supreme Court review, or both. WorldCom's identified issues include:

- Adoption of "Hatfield Model" for TELRIC pricing.[14] As WorldCom concedes, the Commission's TELRIC rules have been vacated, and are now pending before the Supreme Court. Perhaps more significantly in the context of the instant proceeding, the so-called "Hatfield Model" has mutated many times since

[12] Much of the AT&T Petition is based on AT&T's interpretation of the TELRIC rules. Of course, the TELRIC rules have been vacated, and the Supreme Court is now considering their validity. *Verizon Communications Inc. v. FCC, Case Nos. 00-511, 00-555, 00-587, 00-590 and 00-602 (S. Ct.).*

[13] These companies are WorldCom, Inc., MFS Communications Company, Inc., and MCI Telecommunications Corporation. These Petitions are collectively referred to herein as the "WorldCom Petitions."

[14] WorldCom at 3-4.

September 30, 1996, when the WorldCom Petitions were filed, and states have applied numerous variations to implement the costing provisions of the Act and the Commission's rules. WorldCom does not identify which Hatfield Model it recommends, or how that model has been interpreted and used by state commissions implementing the Act since 1996.

- Action in the loop-transport docket. WorldCom requests that the Commission act in the ongoing loop-transport docket.[15] There is no reason for the Commission to act on the loop-transport docket via reconsideration in this proceeding.
- Adoption of uniform performance standards and measurements, especially for operations support systems ("OSS") performance.[16] OSS standards and measurements have been a major priority at the Commission over the past years, as WorldCom concedes.[17] WorldCom has not sought to bring the Commission's activity in these areas into the record in this proceeding, and has given no reason why these issues should be addressed on the stale record created five years ago. More significantly, WorldCom has given no reason why the ongoing efforts of the Commission to address these efforts are in any way inadequate.

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[15] *Id.* at 3. *And see In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking,* 15 FCC Rcd. 3696 (1999), and *Supplemental Order Clarification*, 15 FCC Rcd. 9587 (2000).

[16] WorldCom at 5-6.

[17] *Id.*

Overall, the matters raised by NECA, AT&T and WorldCom touch on important and difficult matters which may deserve serious consideration. Unfortunately, the record in this docket is now so stale that these issues cannot be addressed in the context of the instant proceeding – and there are other more robust and timely proceedings pending where these issues properly lie. NECA, AT&T and WorldCom have given no reason why the Commission should address any of these issues in the context of the pending Petitions for Reconsideration -- certainly not on the current record.

Accordingly, Qwest suggests that the Commission dismiss all existing Petitions for Reconsideration and, to the extent that the issues dealt with are not addressed elsewhere, allow parties to return with fresh petitions for reconsideration of the *First Report and Order* based on current facts and actual developments occurring after September 30, 1996.

Respectfully submitted,

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September 10, 2001

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **REPLY COMMENTS OF QWEST CORPORATION** to be 1) filed electronically with the FCC by using its Electronic Comment Filing System, 2) hand delivered to the FCC's copy contractor, and 3) served, via first class United States mail, postage prepaid, upon all other persons listed on the attached service list.

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