

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Price Cap Performance Review for Local)	CC Docket No. 94-1
Exchange Carriers)	
)	
Access Charge Reform)	CC Docket No. 96-262

REPLY COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

Qwest Communications International Inc. (“Qwest”) hereby submits its Reply Comments in response to the Federal Communications Commission’s (“Commission”) Public Notice in this matter,¹ seeking comment on petitions for reconsideration of the Commission’s *1997 Price Cap Review Order*.² As the Commission suggests in the Public Notice, AT&T Corp.’s (“AT&T”) seven-year-old petition for reconsideration has become moot, stale, and irrelevant, given the passage of time and intervening events. As a result, the Commission should dismiss AT&T’s petition, consistent with its treatment of the pending petitions for reconsideration in the *1999 Access Charge Reform* and *1997 Access Charge Reform* dockets.³

To the extent there was any doubt, AT&T’s Supplemental Comments confirm the appropriateness of dismissing its petition. To start with, AT&T’s petition has been made moot

¹ *Parties Asked to Refresh Record Regarding Reconsideration of Price Cap Performance Review for Local Exchange Carriers Fourth Report and Order and Access Charge Reform Second Report and Order*, Public Notice, 19 FCC Rcd 51081 (2004).

² *In the Matter of Price Cap Performance Review for Local Exchange Carriers, Access Charge Reform*, Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, 12 FCC Rcd 16642 (1997) (“*1997 Price Cap Review Order*”), *aff’d in part, rev’d in part sub nom. USTA v. FCC*, 188 F.3d 521 (D.C. Cir. 1999).

³ *Notice of Dismissal of Petitions for Reconsideration and Clarification*, Public Notice, 19 FCC Rcd 4725 (2004); *Notice of Dismissal of Petitions for Reconsideration*, Public Notice, 19 FCC Rcd 4666 (2004).

by the *CALLS Order*. Two of the three issues in the petition relate to the proper computation of a productivity factor, which the Commission no longer even uses.⁴ There is absolutely no basis for AT&T's apparent assumption that the "expiration" of the five-year *CALLS* proposal will lead to the use of a productivity factor once again. The Commission's current rules do not contemplate the use of such a factor, nor should they. The productivity factor is an outmoded concept that is best left to the history books. Reopening long-running arguments regarding the productivity factor would be at best a meaningless exercise, and, at worst, a tremendous waste of resources.⁵ Even AT&T acknowledges that the proper course is for the Commission to undertake comprehensive intercarrier compensation reform. AT&T's petition is completely irrelevant to such reform.

AT&T's petition also has been superseded by the *USTA v. FCC* decision reviewing the *1997 Price Cap Review Order*. Each of the issues in the petition were raised on appeal and rejected by the Court of Appeals for the D.C. Circuit. In that appeal, MCI challenged the Commission's computation of local exchange carrier productivity on a total company basis, retention of a low-end adjustment mechanism, and failure to reinitialize access rates. The court

⁴ The X-Factor in the Commission's rules is not a "productivity factor." *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 13028 ¶ 160 (2000) ("*CALLS Order*"), *aff'd in part, rev'd in part, and remanded in part*, *Texas Office of Public Utility Counsel*, 265 F.3d 313 (5th Cir. 2001). The third issue raised by AT&T – the elimination of the low-end adjustment mechanism – was also considered and rejected by the Commission in the *CALLS Order*. *Id.* at 13037-38 ¶ 181.

⁵ *Id.* at 13028 ¶ 160 ("the prescriptions of prior productivity factors in the price cap formula have been the subject of extensive regulatory proceedings and litigation").

held that the Commission had acted reasonably with regard to each of these issues.⁶ There is no rationale for giving AT&T a third bite of the apple.

Qwest agrees with AT&T that the Commission should focus on comprehensive reform of intercarrier compensation. In the meantime, the “expiration” of the CALLS proposal will not create a crisis. The rules adopted in the *CALLS Order* generally do not contain an expiration date. To the extent the Commission deems it necessary, the Commission could extend those rules until the Commission adopts intercarrier compensation reform.

For these reasons, AT&T’s petition should be dismissed.

Respectfully submitted,

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⁶ *USTA v. FCC*, 188 F.3d at 529 (“On this record . . . we do not find it unreasonable for the agency to have relied on total company productivity despite its theoretical shortcomings.”); *id.* at 528 (finding that the Commission “gave a good reason” for retaining a low-end adjustment); *id.* at 530 (agreeing with the Commission that the reinitialization sought by MCI “would impair the supposed incentive advantages of price caps”).

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **REPLY COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be 1) filed with the FCC via its Electronic Comment Filing System, 2) served via e-mail on Ms. Jennifer McKee of the Pricing Policy Division, Wireline Competition Bureau at jennifer.mckee@fcc.gov, 3) served via e-mail on the FCC's duplicating contractor Best Copy and Printing, Inc. at fcc@bcpiweb.com and, 4) served via First Class United States mail, postage prepaid, on the party listed on the attached service list.

/s/ Richard Grozier
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