

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications, Inc. (“SBC”), on behalf of its local exchange telephone company affiliates, hereby submits reply comments to AT&T’s supplemental comments¹ filed in the aforementioned dockets in response to the Commission’s Public Notice to refresh the record.²

SBC agrees with AT&T that the Commission should act expeditiously to adopt the ICF plan. The proposed ICF plan represents a balanced approach to resolving the intercarrier compensation, network interconnection and universal service regulatory issues, which to date have impeded the ability of the carriers to work cooperatively, to the ultimate detriment of consumers. Adoption of the ICF plan for all price cap LECs would obviate any need to revisit the issues raised in AT&T’s PFR³ or the *Remand NPRM*.⁴

SBC, however, does not agree with AT&T that, should the Commission fail to adopt the ICF plan by June 30, 2005, the Commission should revise its price cap system, and in particular re-establish a productivity X-Factor. Such action is unwarranted and unnecessary. The

¹ AT&T Supplemental Comments (Sept. 16, 2004).

² Public Notice, “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,” CC Docket Nos.94-1 and 96-262 (Wireline Comp. Bur., August 5, 2004).

³ Petition of AT&T Corp. for Partial Reconsideration of the Commission’s X-Factor Order, Price Cap Performance Review for Local Exchange Carriers: Access Charge Reform, CC Docket Nos.94-1 and 96-262 (July 11, 1997).

⁴ *Price Cap Performance Review for Local Exchange Carriers: Access Charge Reform*, Further Notice of Proposed Rulemaking, CC Docket Nos.94-1 and 96-262, 14 FCC Rcd 19717 (1999) (“Remand NPRM”).

Commission should focus all of its available resources squarely on the ICF plan and resolution of all the intercarrier compensation, network interconnection and universal service issues raised therein. To ask the Commission to expend resources to tackle the numerous and complex issues raised in the price cap proceedings — the same resources charged with review of the ICF plan — when clear and final Commission resolution of the issues raised in the ICF plan would render such proceedings unnecessary, is nonsensical and ultimately would only undermine and certainly delay Commission consideration of the ICF plan.

AT&T's assertion that the Coalition for Affordable Local and Long Distance Service ("CALLS") plan ("CALLS Plan")⁵ expires on June 30, 2005 is without merit. While SBC strongly urges the Commission to adopt the ICF plan as soon as possible, the Commission's failure to do so by June 30, 2005 will not result in the unfounded and speculative harms alleged by AT&T.

As a threshold matter, the rules adopted in the *CALLS Order* do not expire or sunset on June 30, 2005, as AT&T implies, but remain in effect until the Commission affirmatively acts to revise its rules. In determining that retention of a productivity X-factor was unnecessary under the CALLS Plan, the Commission concluded, "after the five-year term we can re-examine the issue [*i.e.*, appropriate level of LEC access rates] to determine whether competition has emerged to constrain rates effectively."⁶ The Commission thus expressly contemplated that it *could* and *would* wait until *after* the 5-year CALLS Plan to assess whether the marketplace is sufficient to constrain rates.

Further, the rules adopted in the *CALLS Order* do not include a sunset date, thereby demonstrating that the Commission envisioned that such rules would continue after June 30, 2005. Section 61.45, for example, provides, "Starting in the 2004 annual filing, X shall be equal

⁵ *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, 15 FCC Rcd 12962 (2000) ("CALLS Order").

⁶ *Id.*

to GDP-PI for the special access basket.”⁷ There was no mention in that rule or the other Part 61 rules adopted in the *CALLS Order*, that different regulatory requirements would commence after June 30, 2005. Consequently, until the Commission affirmatively acts, all rules adopted in the *CALLS Order* will remain in place.

Moreover, AT&T’s assertion that the LECs will assess unjust and unreasonable access rates if the Commission does not act prior to June 30, 2005 is completely baseless. AT&T ignores the fact that the Commission’s price cap regime will continue to remain in effect, requiring LECs to reduce their PCI levels based on the GDP-PI inflation rate annually. Not to mention, AT&T not surprisingly does not even mention the increasing level of competition in the access market, which has operated to drive down LEC access rates. SBC, for example, has lowered its access rates, even below its applicable price caps in many instances, in direct response to increasing competition, both modal and intermodal. The existing regulatory regime, coupled with marketplace forces, is therefore more than sufficient to guard against any speculative anticompetitive pricing behavior by the LECs.

To the extent the Commission concludes otherwise, the Commission must refresh the record in the *Remand NPRM*. The landscape has changed since 2000, particularly the competitive state of the marketplace, and such changes must be incorporated into the record. Given the increased level of facilities-based competition, particularly intermodal competition, a productivity X-factor would no longer be necessary under price caps. Further, parties that commented in that proceeding need the opportunity to reassess their comments, particularly their X-factor methodologies proposed therein, to determine if they are still appropriate today. As a consequence, it would be neither appropriate nor defensible for the Commission to merely pick up with the *Remand NPRM* and issue an order premised only on the record produced in that proceeding.

⁷ 47 C.F.R. §61.45(b)(1)(iv).

CONCLUSION

For the foregoing reasons, the Commission should act expeditiously to focus its resources to consider adoption of the ICF plan to resolve the myriad of intercarrier compensation, network interconnection and universal service issues plaguing the industry today. Until resolution of those issues, the Commission should table the issues raised in AT&T's PFR or the *Remand NPRM*. To the extent the Commission concludes otherwise, the Commission must refresh the record in the *Remand NPRM*.

Respectfully Submitted,

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October 1, 2004