Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
National Exchange Carrier Association	)	WC Docket No. 04-259
Petition to Amend Section 69.104 of the	)	RM 10603
Commission's Rules	)	

REPLY COMMENTS OF
QWEST COMMUNICATIONS INTERNATIONAL INC.

Pursuant to the Federal Communications Commission's ("Commission") *Notice*[1] and Section 1.415(f) the Commission's Rules,[2] Qwest Communications International Inc. ("Qwest") files these reply comments in opposition to reducing the number of end user common line charges (commonly referred to as subscriber line charges or "SLCs") that carriers may assess upon customers that buy derived channel T-1 services where the customer provides the terminating channelization equipment. Qwest believes the Commission should retain the status quo.

I. BACKGROUND AND SUMMARY

A. This Proceeding

The Commission is considering whether to reduce the number of end user common line charges (commonly referred to as subscriber line charges or SLCs) that carriers may assess upon customers that buy derived channel T-1 services where the customer provides the terminating channelization equipment.[3] The Commission has already granted a partial waiver to permit rate-of-return carriers to reduce from twenty-four to five the number of SLCs that they may assess on

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[1] In the Matter of National Exchange Carrier Association Petition to Amend Section 69.104 of the Commission's Rules, *Order Granting Petition for Rulemaking, Notice of Proposed Rulemaking, and Order Granting Interim Partial Waiver*, 19 FCC Rcd 13591 (2004) ("*Notice*").

[2] 47 C.F.R. § 1.415.

[3] *Notice*, 19 FCC Rcd at 13592 ¶ 1.

customers of derived channel T-1 service where the customer provides the terminating channelization equipment without foregoing recovery of the associated SLC revenues from the interstate common line support universal service fund ("ICLS").

Four parties have commented on this item: National Exchange Carrier Association ("NECA"), SBC, Verizon and AT&T. NECA commented in favor of reducing the number of SLCs that rate-of-return carriers charge for derived channel T-1 services from twenty-four to five.

The other three commenters argued in favor of retaining the status quo, at least for existing services. SBC argued that the Commission should retain the status quo and examine the issue as part of the pending *Intercarrier Compensation* proceeding. SBC further argued that if the Commission were to reduce the number of SLCs that price cap local exchange carriers ("LECs") can assess for derived channel T-1 services, then it must contemporaneously ensure that price cap LECs can fully recover the revenues that would be lost if interstate common line charges recovered from derived channel T-1 loops are reduced as suggested. While Verizon commented in favor of reducing the number of SLCs charged for any new derived channel services, Verizon, like SBC, prefers to maintain the status quo for existing T-1 derived services. Verizon recognized that an increase in the "CMT revenue per line" would be needed to make up the shortfall in interstate common-line related charges. AT&T also argued for maintaining the status quo, out of a concern that costs would be shifted to the Universal Service Fund ("USF") or to charges such as the primary interexchange carrier charge ("PICC") and the carrier common line ("CCL") charge, which are assessed on interexchange carriers ("IXCs"). AT&T recognized that reducing the SLC assessments for derived channel T-1 services could cause LECs to incur revenue shortfalls, and suggested that if the Commission changed the rules regarding SLC

assessment, then the Commission should adopt increases to the multi-line business SLCs, rather than the SLCs charged to residential or single-line business customers.

B. SLCs and Recovery of Common Line Revenue

As all of the parties filing comments have acknowledged, reducing the number of SLCs that price cap LECs can assess when a customer has purchased loops derived from a T-1 facility will reduce their revenue in the Common Line basket. The Common Line basket includes common line (loop), marketing, and certain residual interconnection charge interstate access elements (also referred to as "CMT").[4] "Loop costs are non-traffic sensitive: that is, they do not vary in proportion to how much or how the facility is used. The separations rules allocate 25% of most LECs' subscriber loop costs to the interstate jurisdiction, and 75% to the intrastate jurisdiction."[5] Accordingly, the SLC is a rate element that LECs use to recover from end users the LECs' non-traffic sensitive ("NTS") costs incurred in providing interstate access services. The revenue assigned to the Common Line basket under price caps has been based on calculations that include assessment of SLC on every channel within a derived channel T-1 facility. Assessing a SLC on each channel derived from T-1 facilities raises the cost to end users of such services and results in a concomitant reduction in the SLC assigned to all loops. Since 1983, the Commission's long range goal has been for LECs to recover a large share of their NTS common line costs from end users instead of from other carriers.[6]

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[4] 47 C.F.R. § 61.42(d).

[5] In the Matter of Petition of SoundNet Emergency Communications for a Declaratory Ruling Interpreting Section 69.104 of the Commission's Rules, *Order*, 11 FCC Rcd 20410, 20410-11 ¶ 2 (1996).

[6] 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, 12986 ¶ 64 (2000), *aff'd and rev'd in part, and remanded, Tex. Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), *cert. denied*, 535 U.S. 986 (2002).

II. THE COMMISSION SHOULD MAINTAIN THE STATUS QUO, OR IN THE ALTERNATIVE IT SHOULD ALLOW PRICE CAP LECS TO RECOVER THE CMT REVENUE THAT A CHANGE WOULD CAUSE THEM TO LOSE

A. Price Cap Carriers

Qwest, like SBC, Verizon and AT&T, believes that the Commission should maintain the status quo for these services. Reducing the number of SLCs would cause a shortfall in recovery of interstate-allocated common line costs. While the Commission can avoid this impact through proper treatment of this revenue loss as an exogenous change under the Commission's rules, the better course is not to make a rule change at this time. Qwest, like SBC and Verizon, would incur huge costs in making necessary changes to its billing and other systems. Moreover, as SBC noted, the Commission has a pending proceeding to reform intercarrier compensation. While Qwest does not endorse the Intercarrier Compensation Forum plan that SBC describes, Qwest acknowledges that rule changes resulting from the *Intercarrier Compensation* proceeding may involve a SLC increase. Qwest agrees with SBC that it will save significant time and resources to make all SLC changes at once, rather than changing SLC rates, and adjusting the number of SLCs charged per line in a piecemeal fashion.

If the Commission, nonetheless, decides to reduce the number of SLCs that price cap LECs can charge for derived channel T-1 services, then the Commission must declare the cost change to be exogenous pursuant to Section 61.3(d),[7] thereby allowing the LECs to increase their SLC rates, and if necessary their PICC and CCL charge, so that they can fully recover their Common Line revenues. The D.C. Circuit has explained that the

> concept of "exogenous costs" is an outgrowth (at least for regulatory purposes) of the Commission's decision to shift from conventional rate-of-return methods to the use of price caps for some of the firms subject to its rate regulation. Among the hopes for price caps is that they will improve incentives for innovation on the part of the regulated firms . . . . . With price caps, the initial base rates (here, the rates prevailing on July 1, 1990) are for the most part adjusted solely for reasons

[7] 47 C.F.R. §§ 61.3(d) and 61.45(d)(1)(vi).

> independent of the regulated firm's actual behavior, notably (1) an annual adjustment for general price inflation, measured by the Gross National Product Price Index ("GNP-PI"), …, and (2) an automatic annual downward adjustment for expected improvements in firm productivity, …. The Commission also provided, however, for adjusting the price caps on the basis of "exogenous costs", which it described as "in general those costs that are triggered by administrative, legislative or judicial action beyond the control of the carriers." …. Because of the carriers' lack of control, adjustments for such changes presumably do not undermine the price caps' incentive structure.[8]

Exogenous treatment for a reduction in the number of SLCs charged for derived channel T-1 services is consistent with the Commission's actions in the *Access Charge Reform* docket when it reduced the number of SLCs that a price cap LEC could charge for PRI ISDN service. There, the Commission contemporaneously increased the multi-line business SLC cap for price cap incumbent LECs.[9] Failure to increase the SLC, or otherwise allow LECs to recover lost CMT revenues, would be contrary to past practice and would be inconsistent with the criteria set forth in the *Price Cap Order*.[10]

B. Rate-of-Return Carriers

Turning to the narrow subject matter of NECA's original petition, the Commission should also maintain the status quo in connection with rate-of-return carriers' derived channel T-1 services. Even without the Commission's waiver, those companies have always been free to reduce the number of SLCs they charge on derived channel T-1 service. The only difference is that if the rule is modified, rate-of-return carriers who are at the SLC cap will be able to recover the difference between their old SLC revenues and the reduced SLC revenues from the USF. Therefore, the real impact of the proposed rule change is to allow those carriers to get more

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[8] *Southwestern Bell Tel. Co. v. FCC*, 28 F.3d 165, 167 (D.C. Cir. 1994) (citations omitted).

[9] In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, *First Report and Order*, 12 FCC Rcd 15982, 16000 ¶ 39 (1997), *aff'd, Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998).

money from the USF. As AT&T pointed out, the USF is paid for by surcharges on the bills of all customers of interstate telecommunications services. Accordingly, allowing the rate-of-return carriers to dip into the USF would shift costs from the cost causers, the carriers' customers, to other carriers.[11] This proposal would increase the USF, and would mark a departure from the goal of recovering NTS costs from end users, rather than from other carriers.

III. CONCLUSION

In sum, the Commission should maintain the status quo. In the alternative, if the Commission reduces the number of SLCs price cap LECs can charge for derived channel T-1 services, it must simultaneously ensure that price cap LECs have an opportunity to fully recover their interstate-allocated common line costs from their customers. The Commission should not allow rate-of-return carriers to take money from the USF to cover shortfalls caused by reducing the number of SLCs they charge their multi-line business customers for derived channel T-1 services.

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[10] *See* In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, *Second Report and Order*, 5 FCC Rcd 6786, 6807 ¶ 166 (1990) ("*Price Cap Order*").

[11] Of course, the other carriers will end up recovering these costs from their customers.

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 the FCC's duplicating contractor Best Copy and Printing, Inc. at fcc@bcpiweb.com, 3) served, via e-mail, on Ms. Tamara Preiss, Chief, Pricing Policy Division, Wireline Competition Bureau at tamara.preiss@fcc.gov., and 4) served via first-class U.S. Mail, postage prepaid, on the parties on the attached service list.

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