

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition For Waiver of Section 61.45(d),)	WC Docket No 05-175
or in the alternative a Declaratory Ruling)	

REPLY OF JOINT PETITIONERS

INTRODUCTION AND SUMMARY

In their Petition, the Joint Petitioners¹ have shown why it is appropriate that the Commission issue a waiver of Section 61.45(d) or a declaratory ruling to allow them to treat as exogenous costs the end user common line (“EUCL”) settlement payments made to independent payphone service providers (“PSPs”).

Three parties submitted comments on the Petition. First, a group of some ninety EUCL complainants² do not oppose the Petition, but raise a secondary issue specific to Qwest Corporation. Second, AT&T Corporation³ raises questions, but chiefly asks the Commission -- for “pro-competitive” reasons -- to shield interexchange carriers (“IXCs”) from any of the costs. Last, the New Jersey Division of the Ratepayer Advocate

¹ The Joint Petitioners include BellSouth Corporation, Cincinnati Bell Telephone Company, SBC Services Inc., and Qwest Services Corporation on behalf of themselves and their subsidiaries; Sprint Incumbent Local Exchange Companies; and certain Verizon telephone companies. Petition at 1 & n.1. In this reply, responses to individual arguments against Qwest, SBC, and Verizon are made on behalf of the individual carriers, rather than all the Joint Petitioners.

² Comments of Communications Vending Corp. of Ariz., *et al.* (filed May 16, 2005).

³ Comments of AT&T Corp. (filed May 16, 2005).

(“NJDRA”)⁴ argues that any recovery should be denied, because in following Commission guidance and orders, the Joint Petitioners were somehow responsible for their own “mistake of interpretation.” Yet none of the commenters question the legitimacy of the EUCL settlements, and none dispute that when EUCL charges were imposed on PSPs, the Commission itself instructed LECs and PSPs that those charges were required by its rules. In settling EUCL claims, after the Commission’s interpretation was reversed, the Joint Petitioners incurred extraordinary costs properly recoverable under the Price Cap rules.

Taken together, the comments do not rebut the Petition’s showing that a waiver or declaratory ruling should be granted.

I. THE EUCL COMPLAINANTS DO NOT OPPOSE EXOGENOUS COST TREATMENT.

The EUCL Complainants “do not oppose exogenous cost treatment for EUCL settlement payments made by any of the Petitioners” as to any complaints that have been already settled.⁵ They do not dispute that the costs of those settlements already made qualify as exogenous costs under the Commission’s Price Cap rules, nor that the Petition warrants either waiver of Section 61.45(d) or a declaratory ruling.

The EUCL Complainants suggest only that Qwest should not be allowed to recover litigation costs incurred after September 9, 2005, if that carrier fails to offer a

⁴ Comments of the New Jersey Division of the Ratepayer Advocate (filed May 16, 2005).

⁵ EUCL Complainants at 1, 3 n.9. The EUCL Complainants explain that they have concluded settlements with each of the Joint Petitioners except Qwest, including a “global settlement with Verizon” for which the documentation is now being completed.

settlement satisfactory to the EUCL Complainants and so “compels” them to convert their informal complaints to formal complaints on that date. The Joint Petitioners need not address the EUCL Complainants’ allegations of Qwest’s “recalcitrance” in its settlement negotiations with those particular PSPs.⁶ The Petition does not seek litigation costs, but only that of “EUCL settlement payments to PSPs.”⁷ The EUCL Complainants’ suggestion that Qwest should be barred from recovering settlements reached after September 9, 2005 is also misplaced.⁸ Qwest and the EUCL Complainants are in fact making progress in negotiations. Qwest remains hopeful that these relatively few remaining claims may be resolved within that timeframe, but it is not alone responsible for the delay in resolving those particular complaints. The EUCL Complainants’ request to impose a deadline on Qwest is improper, and is unsupported by any prior Commission or judicial precedent. Moreover, as a policy matter, imposing a deadline on Qwest would create improper incentives to settle for more than these particular claims are worth, just to be able to recover the settlement payments from ratepayers.

II. AT&T’S CONCERNS ARE UNJUSTIFIED.

A. EXOGENOUS COST ADJUSTMENTS ARE NOT BARRED BY RETROACTIVE RATEMAKING.

AT&T does not dispute the legitimacy of the Joint Petitioners’ costs. AT&T nevertheless suggests there might be some “substantial questions whether these EUCL

⁶ *Id.* at 5.

⁷ *See, e.g.*, Petition at 1 & n.2, 2-3, and 11.

⁸ *Id.* The Commission set September 9, 2005 as a deadline for PSPs to convert any remaining complaints from informal to formal complaints. *Informal Complaints Filed by Independent Payphone Service Providers Against Various Local Exchange Carriers Seeking Refund of End User Common Line Charges*, Order, 20 FCC Rcd. 5866 (2005).

settlements qualify for exogenous treatment,” because the Commission does not generally allow carriers to recover past undercharges, “absent unusual circumstances,” and because such adjustments “would appear to be prohibited by the rule against retroactive ratemaking.”⁹ Neither of these arguments can be justified.

To begin with, the circumstances that gave rise to these costs are indeed plainly “unusual.” These extraordinary costs represent EUCL costs that the Joint Petitioners are indisputably entitled to recover. The non-traffic sensitive costs recovered through EUCL charges are not already reflected in the initial price cap rates or subsequent adjustments. The EUCL charges to PSPs, and the settlements that eventually followed, arose solely from the Joint Petitioners’ compliance with the Commission’s own interpretation of its rules – set out in Enforcement Bureau letters as early as 1988 and compelled by Commission orders in 1993, 1994, and 1995 that *required* EUCL charges to be applied to independent PSPs.¹⁰ Only later, after the Commission was reversed by the D.C. Circuit, did the Commission determine and advise that its direction to Price Cap ILECs was in error.¹¹ The Joint Petitioners were compelled to incur these costs because of the Commission’s legal error in interpreting its own rules – a circumstance outside their control and decidedly unusual.

The rule against retroactive ratemaking is inapplicable, since the adjustments that would be applied here are assessed prospectively on current customers in a manner wholly consistent with the Commission’s Price Cap rules. If AT&T’s suggestion were

⁹ AT&T at 3.

¹⁰ See Petition at 5-8. See also Section III(A), *infra*.

¹¹ *C.F. Communications v. Century Telephone of Wisc., Inc.*, Memorandum Opinion and Order on Remand, 15 FCC Rcd. 8759 (2000) (“*EUCL Liability Order*”), *aff’d*, *Verizon Telephone Cos. v. FCC*, 269 F.3d 1098 (D.C. Cir. 2001).

legitimate, then no exogenous adjustments -- either up or down -- would ever be permissible under the Price Cap rules. That position is belied by Commission precedent dating to the very adoption of the Price Cap rules, and by its recognition, “consistent with the Constitutional ban on confiscatory rates” and to assure a just result, that “in a truly extraordinary situation, we would approve above-cap rates...”¹² Moreover, there is no question that in a situation like this one, where the recovery relates to carriers’ following Commission orders that were reversed by a court, the Commission has ample authority to correct the impact of its own error.¹³

B. IXCS NEED NOT BE EXEMPTED FROM A SHARE OF THIS EXOGENOUS COST RECOVERY.

AT&T’s essential argument is that IXCs generally should be exempted from the impact of exogenous costs. It argues that if the Joint Petitioners “detrimentally relied on the agency’s interpretation of their right to recover EUCLs from IPPs [independent payphone providers],” those amounts should be “recovered from ratepayers in the most pro-competitive and competitively neutral manner.”¹⁴ AT&T suggests that “competitively neutral” would mean limiting such recovery “through subscriber line charges, and *not* through carrier common line charges or presubscribed interexchange carrier charges.”¹⁵

¹² *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd. 6786, ¶¶ 166, 190 (1990) (“*First Price Cap Order*”).

¹³ *See United Gas Improvement Co. v. Callery Properties, Inc.*, 382 U.S. 223, 229 (1965) (“An agency, like a court, can undo what is wrongfully done by virtue of its order.”).

¹⁴ AT&T at 3.

¹⁵ *Id.* at 3-4.

AT&T does not categorically object to the Joint Petitioners' recovery of these exogenous costs. Rather, if they are to be recovered, it wants the Commission to "require the LECs to recover those costs by increasing subscriber line charges for a time period sufficient to recover those costs."¹⁶ It suggests also that "[t]he Commission could allow a modest increase in the SLC cap for the few companies that may not otherwise be able to recover their payphone settlements costs."¹⁷ In other words, the Joint Petitioners should be able to recover these exogenous costs, and be allowed extra time or waivers from any SLC caps if necessary, so long as IXC's are exempted from any share of those costs.

Ordinarily, under the *CALLS Order*, the costs sought to be recovered by the Petition would be recovered through the common line basket.¹⁸ In the *2002 EUCL Order*, the Commission signaled its expectation that some of the costs might be passed through to IXC's.¹⁹ Although the Commission may have discretion to waive the rules, so

¹⁶ *Id.* at 5.

¹⁷ *Id.* at 4.

¹⁸ 47 C.F.R. § 61.45(d)(3). See *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, *Low-Volume Long Distance Users*, CC Docket No. 99-249, Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962 (2000) ("*CALLS Order*"), *aff'd in part, rev'd in part, and remanded in part, Texas Office of Public Util. Counsel et al. v. FCC*, 265 F.3d 313 (5th Cir. 2001), *cert. denied, National Association of State Utility Consumer Advocates v. FCC*, 535 U.S. 986 (2002); *on remand, Access Charge Reform; Price Cap Performance Review for LECs; Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-262, 94-1, 99-249 and 96-45, Order on Remand, 18 FCC Rcd 14976 (2003).

¹⁹ *Communications Vending Corp. of Ariz., Inc. v. Citizens Communications Co., f.k.a. Citizens Utilities Co. and Citizens Telecommunications Co. d/b/a Citizens Telecom*, Memorandum Opinion and Order, 17 FCC Rcd 24201, ¶ 38 (2002) ("*2002 EUCL Order*") (stating "to the extent that [price cap ILECs] might have recovered their [NTS] costs from IXC's if they had not assessed the EUCLs on IPPs," then those moneys paid to IPPs may "constitute extraordinary cost changes, thus increasing the permitted price caps").

as to limit recovery of the sums in question solely to increased SLCs, such action is not needed to achieve a just result. Realistically, at the time the LECs imposed EUCLs on PSPs, IXCs benefited – as all other ratepayers did – from rates that were lower than they otherwise would have been. Additionally, in settling these claims, the Joint Petitioners, taken together, have actually lowered the overall level of costs for which recovery is sought.

Beyond this, when viewed collectively among the Joint Petitioners, the exogenous costs that would flow through to CCLC and PICC charges likely would be a small percentage of the total. Thus, the competitive concern AT&T raises should be modest in this particular instance. At the same time, under some tariff plans of one of the Joint Petitioners, it is administratively unworkable to limit cost recovery to SLCs, and a requirement to do so would pose a very serious problem for that carrier. For these reasons, the Joint Petitioners submit that – whether or not IXCs should be exempted from exogenous costs in other circumstances – AT&T’s request should be denied here.²⁰

III. THE NJDRA’S OPPOSITION IS UNWARRANTED.

A. THE COSTS WERE NOT THE RESULT OF THE JOINT PETITIONERS’ OWN “MISTAKE OF LAW.”

In assessing EUCL charges on independent payphone lines, the Joint Petitioners were acting consistent with direction from the Enforcement Bureau, and with Commission orders that actually required application of EUCL charges to PSPs. In the

²⁰ SBC, however, has a different view. SBC has made clear its belief that the Commission should comprehensively reform its intercarrier compensation regime and that, as part of such a comprehensive reform, access costs should be recovered, to the maximum extent possible, through end user charges, not carrier access charges. Accordingly, SBC agrees with AT&T that EUCL settlement payments should be recovered through a small increase in the EUCL charge.

NJDRA's view, however, it does not matter if these costs were the result of the Joint Petitioners' adherence to Commission rules. These costs were, it contends, the result of "misinterpretation and misapplication of FCC rules, or mistake of law by petitioners."²¹

The NJDRA notes that the D.C. Circuit, in reversing the Commission on this issue, found that the Enforcement Bureau's 1988 and 1989 letters on EUCL charges were non-binding on the Commission and "could not excuse parties who rely on such advice and rulings from the consequence of their conduct."²² The court, however, was explaining that ILECs' reliance on the Commission's clarification of its rules did not shield the carriers from refund liability. It was not a suggestion, much less a finding, that the Joint Petitioners are precluded from seeking recovery of settlement costs through exogenous cost treatment permitted under the Commission's Price Cap rules. Similarly, the Commission's conclusion on remand, in the *2002 EUCL Order*, that "IPPs were not 'end users,' as defined by 69.2(m)" and therefore "not subject to EUCL charges"²³ does not preclude recovery of settlement costs under the Price Cap rules. The order specifically envisioned a petition for such recovery.²⁴ NJDRA's argument is effectively a very belated petition for reconsideration of the Commission's findings in 2002.

The Commission should hesitate to embrace the NJDRA's argument that it can be a "mistake of law" to follow the Commission's guidance. Carriers cannot be expected to ignore the Commission's interpretations of its rules, simply because on rare occasions it may be wrong. Indeed, had the ILECs ignored the Commission's guidance and directives

²¹ NJDRA at 5.

²² *Id.* at 5-6, citing *Verizon*, 269 F.3d at 1110.

²³ *2002 EUCL Order* at ¶ 2.

²⁴ Petition at 10; *2002 EUCL Order* at ¶ 38.

at the time, their tariffs undoubtedly would have been rejected. The NJDRA also contends the Commission's policy on EUCL charges for payphone lines was not "final" anyway, since it was still subject to "judicial appeal."²⁵ Following that rationale, however, would allow – indeed require – carriers to ignore Commission guidance and potentially wait years for "finality." The NJDRA doubtless would take a different view if this "mistake of interpretation" involved refunds owed to ratepayers.

The NJDRA next argues that these settlement costs do not warrant a waiver, because they were not "triggered by such events or changes over which LECs had no control."²⁶ It claims *Southwestern*²⁷ is inapplicable, because there the Commission "mandated changes in [the LECs'] accounting," but here "the only parties responsible for incurring EUCL settlement payments are Petitioners themselves because they acted under a mistake of law."²⁸ Obviously, the Joint Petitioners were not the "only parties" that were mistaken.

In 1988, 1989, and 1993, the Enforcement Bureau issued two letters and an order confirming that independent payphones were end user lines under the Commission's rules, and thus subject to the EUCL charge.²⁹ In 1995, 1996, and 1997, the full Commission

²⁵ NJDRA at 6.

²⁶ *Id.* at 7.

²⁷ *Southwestern Bell Telephone Co. v. FCC*, 28 F.3d 165 (D.C. Cir. 1994).

²⁸ NJDRA at 8.

²⁹ Letter from Anita J. Thomas, Informal Complaints and Public Inquiries Branch, Enforcement Division, Common Carrier Bureau, FCC, to Lance C. Norris, American Payphones, Inc., IC-88-04679, at 2 (Sept. 14, 1988) (advising that BellSouth's application of EUCL charge to an independent PSP's lines was compliant with FCC rules); Letter from Anita J. Thomas, Informal Complaints and Public Inquiries Branch, Enforcement Division, Common Carrier Bureau, FCC, to LeRoy A. Manke, Coon Valley Farmers Telephone Co., IC-89-03671, at 1 (Apr. 4, 1989) (stating that "end user charges apply to [independent PSP] lines pursuant to [Section] 69.2(m) of the Commission's

confirmed that independent payphone lines were end user lines and must be assessed end user common line charges.³⁰ Only later, as the NJDRA notes, it was “the Commission’s determinations on the matter” that were “rejected” by the D.C. Circuit.³¹ Not until the *EUCL Liability Order* in 2000 did the Commission itself rule that EUCL charges should not have been applied to independent payphone lines after all.

The Joint Petitioners relied on the Commission’s determinations, just as one would expect. It would have been improper, even unlawful, had they failed to apply those charges to payphone lines. Where Price Cap LECs have relied upon the Commission orders to their detriment, in recovering exogenous costs “the proper [action] is one that puts the parties in the position they would have been in had the error not been made.”³²

rules”); *C.F. Communications Corp. v. Century Tel. of Wisc., Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 7334, ¶ 13 (1993) (Bureau order “that CFC’s pay telephone service is properly subject to EUCL charges”).

³⁰ *C.F. Communications Corp. v. Century Telephone of Wisc., Inc.*, 10 FCC Rcd 9775, ¶ 23 (1995) (full Commission affirming the Bureau order in all respects and “conclud[ing] that CFC is subject to end user common line charges on its payphone lines”); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 20541, ¶ 187 (1996) (“the multi-line business SLC *must* apply to subscriber lines that terminate at both LEC and competitive payphones”) (emphasis added). *See also C.F. Communications Corp. v. Michigan Bell Telephone Co., Section 208 Complaints Alleging Unlawful Application of User Common Line Charges to Independent Payphone Providers*, 12 FCC Rcd 2134 (1997) (denying all other formal complaints regarding payment of EUCLs by independent payphone providers, for the reasons given in prior Commission orders).

³¹ NJDRA at 3, citing *C.F. Communications*, 128 F.3d at 740.

³² *1993 Annual Access Tariff Filings Phase I, 1994 Annual Access Tariff Filings*, CC Docket Nos. 93-193, 94-65, 93-193 and 94-157, Order Terminating Investigation, ¶56 ns.182-183 (rel Mar. 30, 2005) (“*OPEB Investigation*”).

B. IN A PRICE CAP REGIME, IT IS UNNECESSARY TO SHOW THE SPECIFIC IMPACT OF THE EUCL SETTLEMENT PAYMENTS ON PRICE CAP BASKETS.

The NJDRA also argues that, even if one assumes EUCL payments qualify as exogenous cost changes, the Petition does not demonstrate the “impact” that the EUCL settlements had on price cap baskets, and thus do not prove that Price Caps were “affected in a manner to justify the need for exogenous cost adjustment and waiver” of the rules.³³ The Joint Petitioners, however, would not be expected to make such a showing. It is neither necessary nor appropriate “to provide data regarding revenue allocation and performance under price caps,” as the NJDRA contends.³⁴ The whole purpose of price cap regulation is to dispense with that complexity.

Instead, Price Cap carriers’ rates are regulated in a simplified manner that is intended to mimic investment incentives and costs that would occur in an unregulated market. The Commission recognized that, to ensure that prices fairly compensate carriers, its rules would need to allow carriers to adjust price caps to recover “exogenous” costs, such as those “that are triggered by administrative, legislative or judicial action beyond the control of the carrier.”³⁵ Without such a mechanism to adjust the cap, “the price cap formula [could] lead to unreasonably high or unreasonably low rates.”³⁶ The NJDRA’s allusions to the Joint Petitioners’ rates of return are also irrelevant. Price Cap regulation was an intentional step away from the “inefficiencies” of rate of return regulation. Instead, Price Cap regulation would improve productivity and benefit

³³ NJDRA at 9.

³⁴ *Id.*

³⁵ *First Price Cap Order* at ¶ 166.

³⁶ *Id.*

ratepayers by allowing carriers some pricing freedom regardless of return levels, provided their prices remain within price cap limits.³⁷

The NJDRA also claims that the Joint Petition is in part “disingenuous,” because it seeks exogenous treatment and price cap adjustments for EUCL charges applied during periods for which PSP claims were barred by the statute of limitations.³⁸ In fact, in entering these settlements, the Joint Petitioners did not waive the applicability of the two-year statute of limitations and did not make any payments specifically tied to earlier periods. The settlements were negotiated resolutions of the Joint Petitioners’ total liability on the disputed charges, and the statute of limitations was among the issues raised with EUCL claimants in negotiating about these disputes. Overall, ratepayers will have benefited by the Joint Petitioners’ settlements, because negotiating resolution of the EUCL disputes almost certainly resulted in lower costs than would have been incurred otherwise. Moreover, the time periods covered by the EUCL settlements do not, as the NJDRA implies, reach back to a time before the Price Cap rules were in effect.

C. THE NJDRA’S SPECIFIC OBJECTIONS TO VERIZON AND SOUTHWESTERN BELL ARE UNJUSTIFIED.

The NJDRA suggests that the Petition should be denied as to Verizon, even if it is granted as to the other petitioners, because the Commission granted Verizon a waiver to allow certain advanced services to be excluded from price cap regulation pending a final determination of regulatory status for broadband services.³⁹ NJDRA argues that because

³⁷ See *First Price Cap Order* at ¶ 166.

³⁸ *Id.* at 10.

³⁹ NJDRA at 10, discussing *Petition for Waiver of the Commission’s Price Cap Rules for Services Transferred from VADI to the Verizon Telephone Companies*, Order, DA 05-1335 (rel. May 11, 2005) (“*Verizon 2005 Waiver Order*”).

the waiver was premised in part on the potential “headroom” that such services might create to raise prices of other price cap-regulated service, the Commission should presume that all costs were already recovered.⁴⁰ This argument is actually irrelevant. The potential that price decreases for highly competitive broadband services could create headroom for price cap-regulated services is unrelated to the question of whether price cap rates are themselves sufficient. Regardless, even if these services were placed back into price caps, they would be in the special access basket, not the common line basket where, under Commission rules, exogenous costs associated with a EUCL under-recovery would be recovered.⁴¹ As a result, the inclusion or exclusion of advanced services from price caps has no impact on exogenous recovery here.

The NJDRA also argues that Southwestern Bell Telephone Company should be excluded from any relief for its Oklahoma ILEC operations, because a jury in 2001 found it had violated competition laws in its long-term contract policies with payphone site owners.⁴² EUCL charges were not an issue in that litigation, and Southwestern Bell’s earlier application of EUCL charges to payphone lines certainly was not found to be an anticompetitive practice. On the contrary, on the EUCL issue, Southwestern Bell was acting consistent with the FCC’s own instructions about what its rules then required.

D. THE JOINT PETITION MEETS THE STANDARDS FOR WAIVER.

Finally, the NJDRA also claims the Petition does not meet the requirements for a waiver of the Commission’s rules. First, it argues again that these are not “extraordinary

⁴⁰ NJDRA at 11.

⁴¹ See 47 C.F.R. § 61.45(d)(3).

⁴² NJDRA at 11, citing *Telecor Comms. v. Southwestern Bell*, 305 F.3d 1124 (10th Cir. 2002), *cert. denied*, 538 U.S. 1031 (2003).

circumstances,”⁴³ when they plainly are. It is not every day, after all, that the Commission’s own interpretation of its rules— an interpretation directed to carriers and relied upon by them – is reversed, much less on an issue that consequently requires resolving hundreds of complaints. Second, the NJDRA claims that the Petition does not show “sufficient good cause” for waiver,⁴⁴ when the Petitioners first relied on the Commission’s own interpretation of its rules, then acted responsibly to settle claims as cost-effectively as possible when that interpretation was reversed. Third, the NJDRA claims that a waiver of Section 61.45(d) or a declaratory ruling would not be in the public interest, because it may lead to slightly higher costs for ratepayers during the recovery period. Yet the NJDRA does not dispute that these settlement costs were legitimately incurred, and it ignores that the Joint Petitioners effectively undercharged ratepayers by failing to assign the PSPs’ share of underlying EUCL costs to other ratepayers. Moreover, by settling the PSPs’ claims, the Joint Petitioners unquestionably incurred lower costs than would otherwise have been applied to the non-PSP ratepayers all along.

Granting a waiver would be in the public interest, by allowing the Joint Petitioners to recover costs legitimately and prudently incurred, and in a manner consistent with the Price Cap rules and envisioned by the Commission in the *2002 EUCL Order*. Denying the Petition could ultimately disserve the public interest. The NJDRA’s arguments would suggest that the Joint Petitioners should have disregarded the Commission’s directives about its rules, made their own contrary determinations, and litigated differences of opinion with the Commission and/or third parties – or face the risk of its own “mistake of law.” Such a policy could only discourage parties from relying on Commission guidance

⁴³ NJDRA at 12.

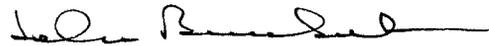
⁴⁴ *Id.*

about its rules, foster an atmosphere of needless controversy and litigation, and inevitably make carriers hesitate to settle disputes in an efficient and responsible manner.

IV. CONCLUSION

The Commission should grant the Joint Petitioners' request for waiver of Section 61.45(d), or in the alternative issue a declaratory ruling, to allow them to make exogenous cost adjustments to their interstate access rates to recover the settlements they have paid to PSPs.

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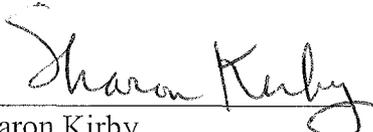
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I hereby certify that, on this 26th day of May 2005, copies of the foregoing Reply of Joint Petitioners in WC Docket No. 05-175 were sent by e-mail or First Class Mail, postage prepaid, to the parties listed below.


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