

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

BELLSOUTH TELECOMMUNICATIONS, INC.)
)
Petition for Pricing Flexibility for) CCB/CPD File No. 00-20
Special Access and Dedicated Transport)

REPLY

BellSouth Telecommunications, Inc. ("BellSouth") herewith replies to those parties who oppose the grant of pricing flexibility requested by BellSouth in the above-captioned proceeding.¹ With this reply, BellSouth shows that opposing parties have made no substantial argument which would justify denial of the increased competitive flexibility sought by BellSouth. Accordingly, those oppositions to the BellSouth filing should be denied and the Commission should promptly grant the desired relief as provided by the terms of the *Pricing Flexibility Order*.²

Introduction

On August 24, 2000, BellSouth filed its petition for pricing flexibility, seeking relaxed regulation of certain special access and dedicated transport services offered in metropolitan

¹ Three parties--AT&T Corp. ("AT&T"), WorldCom, Inc. ("WorldCom") and the Association for Local Telecommunications Services ("ALTS")--have opposed the grant of pricing flexibility to BellSouth. The United States Telecom Association ("USTA"), on behalf of its membership, filed comments in support of BellSouth's petition.

² *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Petition of U S West Communications, Inc. For Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, and Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers*, CC Docket Nos. 96-262, 94-1, 98-157 and CCB/CPD File No. 98-63, *Fifth Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 14221 (1999) ("*Pricing Flexibility Order*").

statistical areas ("MSAs") which satisfy the competitive standard prescribed by the *Pricing Flexibility Order*.³ Of the seventy-one (71) MSAs within BellSouth's service area, the BellSouth Petition identified a total of thirty-nine (39) MSAs meeting threshold requirements for *Phase I* or *Phase I/Phase II* relief with respect to some or all of the enumerated services.⁴

Oppositions to pricing flexibility relief were filed on September 8, 2000, by AT&T, WorldCom and ALTS. These parties raise a host of objections to the BellSouth Petition, most of which are not germane to the only issue before the Commission, *i.e.*, whether or not the showing made by BellSouth satisfies requirements for *Phase I* or *Phase II* pricing flexibility relief. To the extent opponents have attempted to address the merits of BellSouth's filing, their arguments are readily shown to be insubstantial. An analysis of these oppositions follows.

Discussion

1. The efficacy of pricing flexibility rules is not at issue in this proceeding.

To a considerable extent, opposing petitions are devoted to complaints regarding the supposed inadequacy of the Commission's pricing flexibility rules to foster and protect incipient

³ *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, CC Docket Nos. 96-262, 94-1, 98-157, CCB/CPD File No. 98-63, Petition for Pricing Flexibility for Special Access and Dedicated Transport Services, August 24, 2000 (hereinafter "BellSouth Petition").* References are to the public version of the filing unless otherwise noted.

⁴ To obtain *Phase I* relief for qualifying services (excluding channel terminations between an end office and end user customer premises) the applicant must demonstrate for each MSA that unaffiliated competitors have collocated in fifteen percent of wire centers and that at least one such collocater is using transport facilities not provided by the incumbent local exchange carrier ("ILEC"); *or* that unaffiliated competitors have collocated in wire centers accounting for 30 percent of applicant revenues and that at least one such collocater in each wire center is using non-ILEC transport facilities. Similar tests are employed to determine *Phase II* eligibility and eligibility for channel termination pricing relief, with operative percentages being 50 percent collocation and 65 percent revenues (*Phase II* non-channel termination services); 50 percent collocation and 65 percent revenues (*Phase I* channel termination services); and 65 percent collocation and 85 percent revenues (*Phase II* channel termination services).

competition.⁵ As opponents observe, an appeal of the *Pricing Flexibility Order* is now pending in the Court of Appeals for the D.C. Circuit.⁶ That court is the proper forum in which to litigate the merits of pricing flexibility rules promulgated by the Commission.⁷ The current proceeding is concerned only with whether BellSouth's filing comports with those rules as adopted by the Commission and now in effect. Opponents' collateral attack on Commission decisionmaking as represented by the *Pricing Flexibility Order* is procedurally improper and entitled to no consideration in the context of BellSouth's request for pricing flexibility relief.⁸

⁵ See AT&T, pp. 2-7. "Given the limited state of competition, pleas for the far-reaching regulatory relief that BellSouth seeks can only be made because of the woefully inadequate triggers that the Commission adopted to allow for lifting the regulatory constraints on LEC access pricing." *Id.* at p. 3. See also WorldCom, pp. 5-8.

⁶ MCI WorldCom, Inc. *et al.* v. FCC, Nos. 99-1935, 99-1404 and 99-1472 (D.C. Cir. oral argument set for November 30, 2000).

⁷ On September 8, 2000, AT&T and WorldCom filed a joint motion, asking the Commission to prohibit new pricing flexibility petitions and hold pending petitions in abeyance until the conclusion of judicial appellate review of the *Pricing Flexibility Order*. BellSouth will join with other interested parties in opposing this motion. In the context of this proceeding, it is enough to note that the AT&T/WorldCom motion is nothing more than a dilatory motion to stay bearing a different name and lacking the legal showing traditionally required for such extraordinary relief.

⁸ Moreover, opponents of pricing flexibility relief continue to raise arguments which have been fully considered in the earlier proceeding. One such is the claim that LEC pricing at or near the maximum permitted by price cap rules denotes a lack of competition in the relevant market. AT&T (Stock Affidavit, ¶ 4); WorldCom, p. 7. The Commission has soundly rejected this argument and provided its rationale for doing so in the *Pricing Flexibility Order*.

First, the existing rules clearly limit price cap LECs' ability to respond to competition. Price cap LECs are subject to both our Part 61 rules regarding rate levels and the mandatory rate structure rules set forth in Part 69 of our rules. Our rules precluding LECs from offering contract tariffs and limiting volume and term discount offerings may create a price umbrella for competitors. Second, as mentioned above, delaying regulatory relief imposes costs on carriers and the public, the latter of which is deprived of the benefits of more vigorous competition. We see no public benefit in any further delay in regulatory relief, once an incumbent LEC has satisfied the triggers we adopt below. Finally, price cap LECs were required to eliminate at least some of the headroom in the trunking basket as a result of the X-Factor increase adopted in *Price Cap Fourth Report and Order*. Observing that there is no headroom in the trunking basket does not necessarily mean, therefore, that price cap LECs face no competition, because we cannot know the extent to which the X-Factor puts downward pressure on rates that the price cap LECs otherwise might have lowered in response to competition.

The Commission must reject efforts to transform this proceeding into a referendum on the pricing flexibility rules. The Commission must further reject opposing parties' distorted claims regarding the effects of pricing flexibility relief.⁹ For example, WorldCom complains that 63% of BellSouth wire centers are without collocators and asserts on the basis of this fact that *Phase I/Phase II* relief will confer too much pricing freedom.¹⁰ The wire centers identified by WorldCom, however, represent only about 12-1/2 % of BellSouth transport revenue within the 39 MSAs which are the subject of this petition; thus confirming the Commission's earlier recognition that a substantial portion of revenue may be concentrated in a few wire centers.¹¹ In a similar vein, AT&T warns of predatory behavior which will be unrestrained in the aftermath of *Phase II* relief. AT&T does not acknowledge that the elimination of Part 69 rules under *Phase II* will have no effect on the provisioning of special access services, which have never been subject to a prescribed rate structure, and only minimal effects on dedicated transport. Similarly, in its implementation of the CALLS proposal,¹² BellSouth's average traffic sensitive rate satisfied the CALLS target rate, with the result that the price cap productivity offset no longer applies to dedicated switched transport irrespective of *Phase II* relief. Thus, removing such services from price cap regulation pursuant to *Phase II* relief can have no effect on service pricing. Finally--and most fundamental--all BellSouth services remain fully subject to tariff requirements in the aftermath of pricing flexibility relief. Thus all service offerings, including those under contract

Pricing Flexibility Order at 14273, ¶ 92 (italics in original). Furthermore, since the Commission released its *Pricing Flexibility Order*, BellSouth has made substantial price reductions for transport services in its 2000 Annual Access filing. See n. 12, *infra*.

⁹ See, e.g., AT&T, pp. 3-5.

¹⁰ WorldCom, p. 6.

¹¹ Transport revenue in wire centers having no collocation arrangements is \$ 106.5 Million, compared to total transport revenue of \$ 842.8 Million.

¹² See 2000 Annual Access Charge Tariff Filing, Trans. No. 550, *Description and Justification*, ¶ 2.2, filed June 16, 2000; amended in Trans. No. 558, App. B, filed July 27, 2000.

tariffs, remain fully subject to public scrutiny; and the Commission's formal complaint process remains available to address any claim of abusive or predatory pricing behavior. Unlike AT&T and other nondominant carriers, BellSouth is not free to limit an arrangement to a single customer. Every arrangement that BellSouth offers pursuant to tariff is required to be generally available to anyone who wants the service. This hardly represents the "outright deregulation" decried by AT&T.¹³

2. **BellSouth's provision of collocation arrangements is not at issue in this proceeding.**

Part of the ALTS filing is devoted to an enumeration of the claimed grievances of its membership in obtaining collocation arrangements from BellSouth.¹⁴ These matters are irrelevant to a determination of whether BellSouth has met the collocation test established by the pricing flexibility rules, *i.e.*, the identification in each wire center upon which reliance is placed of at least one collocator using non-BellSouth transport facilities. In fact, no ALTS member has come forward to dispute BellSouth's data respecting its collocation arrangements and ALTS itself offers no empirical evidence to suggest that the BellSouth Petition does not meet the prescribed standard.

To the extent ALTS is unhappy with the procedures for obtaining collocation from BellSouth, state and federal regulatory and judicial bodies offer an appropriate forum in which to

¹³ AT&T, p. 3. AT&T further complains that the collocation arrangements cited by BellSouth are used exclusively in the provision of "entrance facilities," linking a collocation site to an interexchange carrier serving wire center. As such, AT&T contends that they do not offer persuasive evidence of competition in other service markets. AT&T, p. 5. This criticism is apparently based upon a misapprehension of the term "entrance facilities" used in Attachment 3 of the BellSouth Petition. BellSouth has used "entrance facilities" in a generic sense to mean any transport facility linking a collocation arrangement to a point outside the collocation space. As such, the facility may be routed to an IXC point-of-presence, an end user's premise, a network ring, etc. With respect to competitive transport facilities, BellSouth cannot know the specific use to which the facility is applied nor is it required to obtain this information under the Commission's rules.

¹⁴ ALTS, pp. 1-2.

address these issues. Moreover, the collocation practices of all ILECs have been and remain under the close scrutiny of this Commission.¹⁵

3. **BellSouth's Petition meets the collocation standard of the *Pricing Flexibility Order*.**

All three opponents of pricing flexibility complain that BellSouth has failed to meet the rule standard of "operational" collocation, in that the filing does not affirmatively state that each collocation arrangement serves at least one customer.¹⁶ This objection is baseless. Once collocation space is turned over to a competitive provider BellSouth does not know and cannot reasonably ascertain what use is made of the space and what customers--if any--are served through the arrangement. Nor can it be supposed that competitive local exchange carriers ("CLECs") would be forthcoming in providing this information to BellSouth. Thus, in identifying collocation arrangements which satisfy rule requirements, BellSouth availed itself of that information it could obtain from internal records and site examination. With respect to each collocation arrangement identified, it was determined that the requisite space had been ordered and relevant charges had been paid by the CLEC,¹⁷ that all necessary construction had been completed and that the space had been turned over to the CLEC for immediate occupancy and use. This showing is more than adequate to satisfy the standard for pricing flexibility relief.

¹⁵ See, e.g., *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*, CC Docket Nos. 98-147 and 96-98, *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*, FCC 00-297, released August 10, 2000.

¹⁶ AT&T, pp. 7-8; ALTS, pp. 3-4; WorldCom, pp. 3-4.

¹⁷ The Commission has determined that pricing flexibility is appropriate upon a showing that CLECs have made "irreversible" or "sunk" investment in competitive facilities. *Pricing Flexibility Order*, ¶ 79.

Moreover, while it may reasonably be supposed that no CLEC would incur the expenses associated with collocation absent a customer or customers to serve, the Commission need not rely on this assumption in its review of BellSouth's filing. As it was required to do, BellSouth has provided copies of pertinent data to each CLEC upon which it relies to make the showing necessary to obtain *Phase I* or *Phase II* relief.¹⁸ As of the date of this reply, no party has come forward to assert that any collocation arrangement identified in the considerable data provided by BellSouth should be eliminated on grounds that it is non-operational.¹⁹

4. **BellSouth has provided appropriate support for its revenue analysis.**

Opponents of the BellSouth Petition have also attacked the analysis of service revenues used to demonstrate compliance with one trigger of the pricing flexibility test. WorldCom contends that channel termination revenue identified by BellSouth is limited to that revenue attributable to circuits sold to end users, thus invalidating the allocation between end office/end user circuits and other special access circuits.²⁰ WorldCom is incorrect. BellSouth performed an analysis of all transport circuits, without regard to whether the circuit was sold to a carrier or an end user. The purpose of the analysis was to identify those local channels that terminated at an end user location. The analysis of circuit end points performed by BellSouth is fully described in the Petition.²¹ While a slight understatement of end user revenues may have resulted through the classification method employed for one circuit type, this anomaly is unlikely to have impacted

¹⁸ BellSouth's certification to this effect is contained at Attachment 4 of the Petition.

¹⁹ Indeed, the only claim of inaccuracy made to date is by AT&T, which asserts that in two designated wire centers it is using BellSouth-provided facilities, contrary to the representation of the pricing flexibility petition. AT&T, p. 8 and Stock Affidavit, ¶ 2. BellSouth's investigation confirms the accuracy of its original data. See Affidavit of James P. Clark, appended hereto as Exhibit 1. In any event, BellSouth's filing identifies five other collocators in one wire center and two other collocators in the second wire center, any one of whom satisfies the rule standard.

²⁰ WorldCom, p. 3.

²¹ BellSouth Petition, pp. 8-10.

results for any MSA.²² In no case was BellSouth's circuit classification dependent upon the identity of the purchasing party.

A second criticism concerns the level of revenue detail, with AT&T and WorldCom complaining that BellSouth has failed to provide service revenues at the wire center level.²³ This omission is without significance in the analysis of BellSouth's Petition. The public version of the filing identifies by name each wire center within the MSA upon which BellSouth relies for its competitive demonstration. This version further provides the percentage of MSA service revenues (end user channel termination and other special access/dedicated transport) represented by the wire centers so identified.²⁴ Parties accessing confidential data under the Commission's *Protective Order*²⁵ also receive the quantification of revenue at MSA level, which is further divided into end user channel termination revenue and other special access/dedicated transport revenue. A simple calculation will provide reviewing parties with the revenue by service type collectively attributable to the wire centers on which BellSouth relies for its competitive showing in each MSA. Given these facts which are already available, there is no apparent reason (and opposing parties offer none) to suggest that a disclosure of revenues attributable to individual wire centers would greatly enhance the quality of analysis.

Revenue data was derived from BellSouth billing records, which are fully identified in the Petition.²⁶ This is the same source used by BellSouth to prepare price cap filings, all of

²² *Id.* at p. 9, n. 13.

²³ AT&T, p. 9; WorldCom, pp. 4-5.

²⁴ BellSouth Petition, Attachment 3.

²⁵ *In the Matter of BellSouth Telecommunications, Inc.'s Petition for Pricing Flexibility for Special Access and Dedicated Transport Services* and *BellSouth Telecommunications, Inc.'s Petition for Pricing Flexibility for Switched Access Services*, CCB/CPD File Nos. 00-20 and 00-21, DA 00-2006, released August 31, 2000.

²⁶ BellSouth Petition, pp. 4-5.

which routinely employ revenue data aggregated to a level considerably above the originating records. These billing databases are highly reliable and are subject to the continuing oversight of state and Federal regulators. It is therefore absurd to suggest--as opponents do--that the Commission should not give credence to the revenue data compiled by BellSouth in support of this Petition.

Conclusion

Opposing parties have offered no arguments to undermine the competitive showing presented by BellSouth. To a considerable extent, these opponents of pricing flexibility do not even address the merits of BellSouth's filing but choose instead to engage in an improper collateral attack on rules lawfully adopted by the Commission and currently in effect. When BellSouth's filing is reviewed in the light of those rules, the Commission will conclude--as it must--that the competitive demonstration has been met and that BellSouth is entitled to pricing flexibility relief for special access and dedicated transport services in the MSAs specified.

Respectfully submitted,

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Date: September 18, 2000

EXHIBIT 1

**Affidavit of
James P. Clark**

****PRIVILEGED & CONFIDENTIAL****

CERTIFICATE OF SERVICE

I do hereby certify that I have this 18th day of September 2000 served the following parties to this action with a copy of the foregoing **REPLY** by electronic filing, facsimile, hand delivery and/or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below.

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