

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
BellSouth Telecommunications, Inc.	)	CCB/CPD File No. 00-21
Petition for <i>Phase I</i> Pricing Flexibility	)	
For Switched Services	)	

REPLY

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Summary

BellSouth's Petition clearly demonstrates its entitlement to *Phase I* pricing flexibility relief for switched access services offered in the ten (10) MSAs identified. Unable to refute BellSouth's evidence on the merits, opponents have attempted to subvert this inquiry by misrepresenting both the applicable rule standard and the extent of pricing flexibility relief afforded under *Phase I*. In addition, they have raised issues which are appropriately consigned to other proceedings and issues which the Commission should forbear from addressing at all.

BellSouth has furnished data showing that competitive providers have made substantial, irreversible investment in facilities capable of serving the MSAs identified. In addition, BellSouth has provided advertising material, drawn from various sources, that in the aggregate offers a compelling demonstration of CLEC market activity. Significantly, not one party--including those who have filed in opposition to pricing flexibility relief--has come forward with a specific denial that it offers service in any of the geographic areas and/or to any of the customer groups reflected in BellSouth's data.

Given these circumstances, the Commission should reject opponents' efforts to forestall the enhanced level of competition envisioned by the *Pricing Flexibility Order* and grant BellSouth the relief to which it is clearly entitled. In doing so, the Commission will move the industry and telecommunications customers one step closer to the creation of a fully competitive marketplace.

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For Switched Services )

**REPLY**

BellSouth Telecommunications, Inc. ("BellSouth") herewith replies to the filings of AT&T Corp. ("AT&T") and WorldCom, Inc. ("WorldCom"), which oppose BellSouth's petition seeking *Phase I* pricing flexibility for switched access services in ten (10) Metropolitan Statistical Areas ("MSAs") within the BellSouth region.<sup>1</sup>

**Introduction**

The AT&T and WorldCom pleadings<sup>2</sup> are miracles of obfuscation, having as their aim to divert the Commission's attention from the only question relevant to this proceeding: whether BellSouth meets the requirements as set forth in the Commission's rules and is therefore entitled to *Phase I* relief under the rules of the *Pricing Flexibility Order*.<sup>3</sup> In pursuit of this goal, the

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<sup>1</sup> *In the Matter of Access Charge Reform*, CC Docket No. 96-262, *Petition for Phase I Pricing Flexibility for Switched Services* (hereinafter "BellSouth Petition"). The BellSouth Petition was originally filed on August 28, 2000, and subsequently amended on September 1, 2000.

<sup>2</sup> *In the Matter of BellSouth Telecommunications, Inc.'s Petition for Pricing Flexibility for Switched Access Services*, CCB/CPD File No. 00-21, *AT&T Opposition to BellSouth Petition for Phase I Pricing Flexibility for Switched Access Services*, September 18, 2000; *In the Matter of BellSouth Telecommunications, Inc. Petition for Phase I Pricing Flexibility for Switched Services*, CCB/CPD File No. 00-21, *WorldCom Opposition*, September 18, 2000. Comments in support of BellSouth's Petition were filed by the United States Telecom Association ("USTA"). *In the Matter of BellSouth Petition for Phase I Pricing Flexibility for Switched Services*, CCB/CPD File No. 00-21, *Comments of the United States Telecom Association*, September 18, 2000.

<sup>3</sup> *In the Matter of Access Charge Reform*, CC Docket No. 96-262, *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, *Interexchange Carrier*

opposing parties misrepresent both the applicable rule standard and the scope of relief available. In addition, they raise issues which are appropriately consigned to other proceedings and issues which the Commission should forbear from addressing at all. It is incumbent on the Commission to reject these tactics and place the focus of this inquiry where it rightly belongs--on the evidence of competitive activity presented by BellSouth.

### Discussion

**1. BellSouth's demonstration of competitive presence meets the standard for *Phase I* pricing flexibility relief.**

**Transport.** In order to establish its entitlement to *Phase I* pricing flexibility relief for switched access services, "...a price cap LEC must provide convincing evidence that, in the relevant area as described in § 69.707 its unaffiliated competitors, in aggregate, offer service to at least 15 percent of the price cap LEC's customer locations."<sup>4</sup> Competitive service may be provided through collocation in wire centers of the incumbent local exchange carrier ("LEC") or through bypass of the incumbent's facilities. The rule does, however, eliminate from consideration service provided exclusively through resale or the use of unbundled network elements ("UNEs"), with the exception of unbundled loops.<sup>5</sup>

Notably absent from this standard is any requirement that collocators rely exclusively on their own transport facilities for service provisioning. The rule standard for switched access services is thus distinguishable from provisions governing pricing flexibility relief applicable to special access/dedicated transport, where a requirement of non-LEC transport is expressly

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*Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, CCB/CPD File No. 98-63, Petition of U S West Communications, Inc. For Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, CC Docket No. 98-157, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221 (1999) ("Pricing Flexibility Order").*

<sup>4</sup> 47 C.F.R. § 69.713(b)(1).

<sup>5</sup> 47 C.F.R. § 69.713(b)(2).

imposed.<sup>6</sup> Clearly, if the Commission had intended to incorporate such a provision in the standard applicable to switched access pricing flexibility relief, it would have known how to do so. Similarly, if the Commission had intended to exclude all collocation arrangements employing LEC-provided transport, it would have added such a term to the express exclusions for resold and UNE-provisioned services under Section 69.713(b)(2).<sup>7</sup>

Notwithstanding the unambiguous language of the rule, opponents of pricing flexibility strenuously argue that only collocators employing their own switching *and* transport may be used to make the competitive showing necessary to obtain *Phase I* relief for switched services.<sup>8</sup> Their reliance for this assertion upon certain language in the *Pricing Flexibility Order* is, however, misplaced.<sup>9</sup> An examination of this portion of the *Order* readily reveals that the Commission was simply identifying the kind of irreversible investment in facilities (*e.g.*, switching and transport facilities) which must be made by a competitive local exchange carrier ("CLEC") in order for that provider to be considered in the competitive demonstration of the price cap LEC. Such investment was contrasted with resold and UNE-provisioned services, both of which are expressly barred from consideration under the rule ultimately adopted. It is a gross distortion of this language to claim--as opponents do--that the Commission intended to limit its

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<sup>6</sup> 47 C.F.R. § 69.709(b)(1), (b)(2) and (c)(1), (c)(2) (special access/dedicated transport other than end user channel terminations); 47 C.F.R. § 69.711(b)(1), (b)(2) and (c)(1), (c)(2) (end user channel terminations).

<sup>7</sup> Given the absence of such language, the Commission must reject AT&T's urging to add retroactively a requirement of CLEC-owned transport to the provisions of Section 69.713. "We do not suggest that the Commission could not amend its rules to render 'premises' a term of art encompassing telephone equipment or land owned and controlled by a third party on which telephone equipment is located. But to do so, it must use the notice and comment procedure of the Administrative Procedure Act. It may not bypass this procedure by rewriting its rules under the rubric of 'interpretation.'" *C.F. Communications Corp. v. FCC*, 128 F.3d 735, 739 (D.C. Cir. 1997).

<sup>8</sup> AT&T, p. 5; WorldCom, pp. 2, 4.

<sup>9</sup> See, *e.g.*, *Pricing Flexibility Order*, ¶¶ 112-113.

consideration of collocated arrangements to those employing *both* competitive switching *and* competitive transport. "Rather than looking solely at collocation, therefore, we adopt a Phase I trigger for switched services that measures the extent to which competitors offer these services either exclusively *or largely* over their own facilities."<sup>10</sup>

**Switching.** AT&T complains that any switch serving part of an MSA is counted by BellSouth as serving all wire centers within the MSA. AT&T asserts that such assumptions are unwarranted.<sup>11</sup> BellSouth agrees that no such inference is possible and further states that none was made with respect to supporting data in the BellSouth Petition. The particular illustration cited by AT&T does not prove otherwise. As stated in the Petition, a CLEC identified through switch data as serving Atlanta, Georgia, was deemed to serve all wire centers in the city of Atlanta--not all wire centers within the Atlanta MSA. To the extent AT&T was confused by this example, a second hypothetical--that of a CLEC serving Roswell, Georgia--provides ample clarification of BellSouth's methodology. Significantly, AT&T's opposing comments make no allusion to this posited case.<sup>12</sup>

AT&T's suggestion that some of the CLEC switches identified in the BellSouth Petition might be used to provide wireless service is likewise frivolous.<sup>13</sup> BellSouth's data, extracted from the Local Exchange Routing Guide ("LERG") and National Exchange Carrier Association

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<sup>10</sup> *Pricing Flexibility Order*, ¶ 113 (emphasis added).

<sup>11</sup> AT&T, p. 6.

<sup>12</sup> Roswell is an incorporated municipality located on the northern perimeter of the Atlanta metropolitan area. Indeed, the mapping of switch coverage was even more conservative than these examples suggest. To illustrate, one CLEC which reported in LERG that it served numerous communities in the Atlanta MSA (*e.g.*, Atlanta, Alpharetta, Chamblee, Duluth, Marietta) was used only for the competitive demonstration in the Courtland Street wire center, located in downtown Atlanta.

<sup>13</sup> AT&T, pp. 6-7.

("NECA") databases is confined solely to wireline offerings. Neither AT&T nor any other party has offered a scintilla of evidence to the contrary.<sup>14</sup>

AT&T and WorldCom both assert that BellSouth incorrectly identifies certain CLECs as competitors while offering no evidence of switch deployment within the relevant MSA.<sup>15</sup> In this connection, AT&T points to a supposed discrepancy between the competitive switch information found at Exhibit D of each MSA-specific attachment and marketing information on CLEC providers contained at Exhibit E.<sup>16</sup>

There is no discrepancy. Exhibit D identifies only CLECs offering service through bypass of LEC facilities. Exhibit E, by contrast, includes both these providers and CLECs competing through the use of collocation arrangements. Moreover, a competitive switch need not be sited within the geographic boundaries of an MSA to offer service at customer locations of that MSA, given the practice of backhauling traffic commonly employed by some CLECs.<sup>17</sup>

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<sup>14</sup> AT&T further argues that "[t]he geographic reach of a switch must be distinguished from the total number of customer locations that a switch can actually serve." AT&T, p. 6 at n. 8. This is effectively a distinction without a difference. Replacement or upgrading of a switch will readily enable AT&T or any other CLEC to accommodate growth in its customer base and is a normal feature of network planning. *See* discussion of capacity at p. 6, *infra*.

<sup>15</sup> AT&T, p. 7 at n. 9; WorldCom, pp. 9-10.

<sup>16</sup> AT&T, p. 7 at n. 9.

<sup>17</sup> Backhauling in this context is a term applied to competitors' use of regional switches for the provision of service. This requires the use of interoffice facilities and long local loops to allow switches remote to a particular MSA, LATA or state to provide service to customers in that MSA, LATA or state. In various state proceedings, CLEC representatives have described the capabilities of this network architecture. "...WorldCom's local network employs state-of-the-art equipment and design principles based on the technology available today, particularly optical fiber rings utilizing SONET transmission. In general, using this transmission based architecture, it is possible for WorldCom to access a much larger geographic area from a single switch than does the ILEC switch in the traditional copper based architecture. This is why, in any given service territory, WorldCom has deployed fewer switches than the ILEC. Any CLEC will begin serving a metropolitan area with a single switch and grow to multiple switches as its customer base grows." Before the Georgia Public Service Commission, Docket No. 11901-U, *Prefiled Direct Testimony of Ron Martinez on Behalf of WorldCom, Inc.*, July 20, 2000, pp. 35-36.



**Collocation.** AT&T argues that "[t]he mere coexistence in an MSA of a CLEC switch and collocation does not suffice to prove that the CLEC is offering switched access services through that collocation."<sup>18</sup> While this statement may be true in the abstract, it is not descriptive of the evidentiary showing required of BellSouth for *Phase I* pricing flexibility relief. Rather, the rules require BellSouth to demonstrate the presence of competitors who have made substantial irreversible investment in facilities capable of serving the relevant MSA *and* who are actively marketing to at least 15% of BellSouth customer locations within the MSA. The data submitted by BellSouth is more than sufficient for this demonstration.<sup>19</sup>

It is likewise without significance that CLEC facilities may lack present capacity to serve all customer locations or all members of a customer group within the MSA.<sup>20</sup> As a new entrant, a CLEC would be unlikely to install facilities sufficient to serve an entire market. It is more probable that the new service provider would make an initial investment, with later increases in capacity to coincide with increases in market share.<sup>21</sup> Capacity can be increased fairly rapidly and through various means. Hence, there is no anomaly in marketing to an entire customer group while lacking capacity to serve the entire group, unless the CLEC anticipates a rapid acquisition of 100% of market share. Finally, while AT&T asserts that it lacks present capacity to serve all business customers in the wire centers identified by BellSouth, there is no claim that AT&T does not offer service to all such customers. It is a telling omission.

**Loops.** AT&T complains that there is insufficient information to calculate the number of

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<sup>18</sup> AT&T, p. 7.

<sup>19</sup> In fact, BellSouth has no independent means of determining what services and/or customer locations are actually provisioned through a specific collocation arrangement nor can it be supposed that CLECs, AT&T included, would readily disclose this information.

<sup>20</sup> See AT&T, p. 7.

<sup>21</sup> See *Testimony of Ron Martinez*, n. 17, *supra*.

UNE loops purchased by CLECs or to ascertain the specific use(s) to which these loops are dedicated.<sup>22</sup> This supplementary data was provided for the Commission's use as it deems appropriate. BellSouth does not rely upon UNE loop counts in making its competitive showing under pricing flexibility rules and such information is unnecessary to an evaluation of the merits of BellSouth's filing. AT&T is therefore not prejudiced by any lack of detail needed for a more intensive analysis.<sup>23</sup>

**Total Bypass.** AT&T's arguments respecting total bypass are merely a restatement of its discredited claim that competitive services must be provided over non-LEC transport to satisfy the trigger for *Phase I* relief.<sup>24</sup> As discussed elsewhere in this Reply, AT&T's contention is refuted by the express language of the rule. Moreover, the result would be the same had AT&T obtained the additional information it requested from BellSouth. Two of these items--UNE loops purchased by AT&T and aggregate number of collocators in each wire center--are immaterial to the competitive showing required of BellSouth under pricing flexibility rules and thus could not assist in any analysis of the Petition. The third item--customer segments alleged to be targeted by AT&T in each wire center--is readily deducible from marketing information enclosed at Exhibit E to each MSA attachment and is patently obvious in those wire centers where AT&T appears as the only collocator. Like many other elements of AT&T's opposition, the complaint of withheld data is merely an attempt to obscure the focus of this inquiry by diverting attention

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<sup>22</sup> AT&T, p. 8.

<sup>23</sup> The numbers shown in BellSouth's filing represent only those loops which do not have a BellSouth port, indicating that switching functions are performed by a carrier other than BellSouth. The count includes xDSL loops but not interoffice transport loops.

<sup>24</sup> See, e.g., AT&T, p. 8 (While BellSouth implies that AT&T Digital Link is a facilities based service, BellSouth transport is frequently employed to connect AT&T switches to customer locations).

from the *Pricing Flexibility* standard and the merits of BellSouth's showing pursuant to that standard.<sup>25</sup>

**2. BellSouth's Petition furnishes ample evidence of CLEC market activity.**

To obtain evidence of CLEC market activity, BellSouth consulted numerous sources including unaffiliated research firms, Internet web sites and assorted printed publications. This material, found at Exhibit E to each MSA-specific attachment, offers unimpeachable evidence of the marketing efforts of specific competitors, the geographic areas where market entry has occurred and the customer base targeted.

In attacking this demonstration, AT&T relies largely upon a reprisal of arguments made in earlier portions of its filing. Thus it claims that a CLEC does not offer service to an entire customer base if it lacks capacity to serve the entire base<sup>26</sup> and repeats its contention that only CLECs employing competitive switching *and* transport may be used to meet the *Phase I* standard.<sup>27</sup> These arguments are fully refuted elsewhere in BellSouth's Reply.

The remainder of AT&T's criticism can only be characterized as bizarre. In this category must be placed AT&T's complaint that BellSouth failed to "verify" its marketing research with competitors<sup>28</sup> and that BellSouth neglected to provide comparative studies addressing price,

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<sup>25</sup> BellSouth's denial was not based upon any inherent unwillingness to disclose the data but rather upon the fact that the information sought had not been compiled and was not preserved in a format responsive to AT&T's request. This fact was made known to AT&T's counsel.

<sup>26</sup> AT&T, p. 10. AT&T further suggests that CLECs offering only digital service would lack the capacity to serve analog lines, which represent the majority of switched access loops. AT&T, pp. 10-11. Digital service is provisioned through capabilities in the switch and delivery platforms not through the transmission media. Hence, the prevalence of analog lines does not itself impose a limitation on delivery of CLEC digital services.

<sup>27</sup> AT&T, pp. 11, 14.

<sup>28</sup> AT&T, p. 13.

quality, and reliability of BellSouth service and CLEC service.<sup>29</sup> With respect to the first complaint, CLECs would have little incentive to assist BellSouth in such verification and it cannot be imagined that AT&T is so naïve as to believe otherwise. As to the second issue, a comparison of BellSouth and CLEC service is not only immaterial to the *Pricing Flexibility* standard but inappropriate for consideration by the Commission. Customers--not regulators--should assess the relative merits of competitive services and it is their judgment which is the proper determinant of marketplace success.<sup>30</sup>

AT&T's demeaning assessment notwithstanding,<sup>31</sup> the fact is BellSouth's Petition offers precisely the kind of evidentiary showing contemplated by the *Pricing Flexibility Order*.<sup>32</sup> This material, drawn from a variety of sources, provides a compelling demonstration of CLEC marketing activity in the relevant MSAs. Finally, not one party--AT&T included<sup>33</sup> has come forward with a specific denial that it offers service in any of the geographic areas and/or to any of the customer groups reflected in BellSouth's data.<sup>34</sup>

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<sup>29</sup> AT&T, p. 15.

<sup>30</sup> AT&T also complains that few of the CLEC web sites referenced by BellSouth claim to offer service to residential customers. AT&T, p. 11. Not surprisingly, the majority of new market entrants have elected to target the most lucrative (*i.e.*, business) accounts and BellSouth's data mirrors this reality.

<sup>31</sup> AT&T, p. 12.

<sup>32</sup> "We do not establish rules pertaining to how an incumbent LEC might demonstrate that competitors 'offer service' over their own facilities. As we note above, competitors are likely to market switched services broadly, thus we expect that competitors will advertise their services in a variety of media. These advertisements may well be probative of the extent of competitive offerings." *Pricing Flexibility Order*, ¶ 121.

<sup>33</sup> The closest AT&T comes to any disclaimer is a statement that "AT&T has been unable to confirm through its internal data the presence of any AT&T collocated facilities" in wire centers of several MSAs named in BellSouth's Petition. *See* Declaration of Charles E. Stock, ¶ 2. Given AT&T's confusion on this point, BellSouth is pleased to confirm existence of the AT&T facilities in question. *See* Affidavit of James P. Clark, attached hereto as Exhibit 1.

<sup>34</sup> Pursuant to rule requirements, 47 C.F.R. § 1.774, BellSouth served each competitor cited in the Petition with a copy of its CLEC-specific data. A certification to this effect is included at Attachment 14 to the Petition.

**3. The Commission must reject opponents' improper collateral attack on the *Pricing Flexibility* rules.**

Because they cannot successfully attack BellSouth's competitive demonstration on the merits, opponents attempt to subvert this inquiry by attacking the *Pricing Flexibility* rules themselves.<sup>35</sup> The same strategy was employed against BellSouth's petition for *Pricing Flexibility* relief for special access and dedicated transport services.<sup>36</sup> In both cases, the tactic constitutes an improper collateral attack on rules promulgated by the Commission pursuant to its authority and should be rejected summarily.

"As opponents observe, an appeal of the *Pricing Flexibility Order* is now pending in the Court of Appeals for the D.C. Circuit. That court is the proper forum in which to litigate the merits of pricing flexibility rules promulgated by the Commission. The current proceeding is concerned only with whether BellSouth's filing comports with those rules as adopted by the Commission and now in effect."<sup>37</sup>

In fact, opponents of BellSouth's petitions (who are fully deregulated) are desperate to protect their entrenched advantage from even the modest inroads of *Pricing Flexibility* relief. This is nowhere more evident than in the curious pleading, styled *Motion of AT&T Corp. and WorldCom, Inc. for a Moratorium on Pricing Flexibility Petitions Pending Judicial Review*, filed with the Commission on September 8, 2000.<sup>38</sup> This filing, which is tantamount to a motion for

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<sup>35</sup> See, e.g., AT&T, pp. 17-21.

<sup>36</sup> *BellSouth Telecommunications, Inc.'s Petition for Pricing Flexibility for Special Access and Dedicated Transport*, CCB/CPD File No. 00-20, *AT&T Opposition to BellSouth Petition for Pricing Flexibility for Special Access and Dedicated Transport*, September 8, 2000, pp. 2-7.

<sup>37</sup> BellSouth Telecommunications, Inc., *Petition for Pricing Flexibility for Special Access and Dedicated Transport*, CCB/CPD File No. 00-20, *Reply*, September 18, 2000, p. 3 (citations omitted).

<sup>38</sup> *In the Matter of Access Charge Reform*, CC Docket No. 96-262, *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, *Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers*,

stay by another name, asks the Commission to suspend operation of its *Pricing Flexibility* rules and consideration of any petitions filed thereunder until the completion of judicial review. As BellSouth and other intervenors have pointed out in their response,<sup>39</sup> the motion is patently deficient in that it fails to satisfy any element of the legal standard required under well established precedent for such relief.<sup>40</sup>

Even if procedural deficiencies could be overlooked, AT&T's assault on *Pricing Flexibility* rules is substantively lacking. Many of the arguments raised by AT&T have already been considered and rejected in the context of the earlier rulemaking proceeding.<sup>41</sup> To the extent any new claims are introduced by the opposition, they largely concern issues which are not material to the *Pricing Flexibility* standard and which are not properly before the Commission in this proceeding. AT&T's attack on CLEC rate levels is merely one illustration of its ongoing effort to obscure the focus of this inquiry through the introduction of extraneous material. The Commission should reject these tactics without hesitation.

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CCB/CPD File No. 98-63, *BellSouth Telecommunications, Inc.'s Petition for Pricing Flexibility for Special Access and Dedicated Transport*, CCB/CPD File No. 00-20, *BellSouth Telecommunications, Inc.'s Petition for Pricing Flexibility for Switched Access*, CCB/CPD File No. 00-21, *Motion of AT&T Corp. and WorldCom, Inc. for a Moratorium on Pricing Flexibility Petitions Pending Judicial Review*, September 8, 2000.

<sup>39</sup> *Opposition of BellSouth, Qwest, SBC, and Verizon to Motion of AT&T and WorldCom for a Moratorium on Pricing Flexibility Petitions Pending Judicial Review*, September 15, 2000.

<sup>40</sup> The four-prong test of *Virginia Petroleum Jobbers Association* requires the Commission to make the following determinations: "(1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay." *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958). The AT&T/WorldCom motion does not attempt to meet the evidentiary showing required to satisfy even one of these criteria.

<sup>41</sup> See, e.g., *Pricing Flexibility Order* at 14273, ¶ 92 (refuting AT&T's claim that the ability of a price cap LEC to set rates at or near cap denotes a lack of competition in the market).

Finally, opponents of the BellSouth Petition exaggerate the scope of relief provided by *Phase I* pricing flexibility.<sup>42</sup> Approval of BellSouth's request will confer the right to make services available under contract tariffs and through volume and term discount pricing. All other regulatory mechanisms remain in place. Thus, BellSouth must continue to offer its services under tariffs of general availability and such offerings will be fully subject to price cap rules, CALLS proposal commitments and Part 69 rate structure requirements.<sup>43</sup> Clearly, these conditions are far from the unbridled pricing freedom which to date is exercised only by the competitors of BellSouth.

### **Conclusion**

BellSouth has met the standard for *Phase I* pricing flexibility relief as prescribed by Commission rules. Opponents have attempted to obscure this fact through an unwarranted and procedurally improper collateral attack on the *Pricing Flexibility Order*. The Commission should reject such tactics and grant BellSouth the relief to which it is clearly entitled. In doing

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<sup>42</sup> "[I]f BellSouth's Petition is granted, BellSouth will be free to engage in discriminatory and exclusionary conduct with respect to the enormous number of customer locations which, by its own admission, lack competitive alternatives." AT&T, p. 19.

<sup>43</sup> *Pricing Flexibility Order*, ¶ 122. Even contract tariffs must be published and made available to any customer similarly situated who desires service on those terms.

**PUBLIC VERSION**

so, the Commission will move the industry and telecommunications customers one step closer to the creation of a fully competitive marketplace.

Respectfully submitted,

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# **EXHIBIT 1**

**Affidavit of  
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**\*\*PRIVILEGED & CONFIDENTIAL \*\***

**CERTIFICATE OF SERVICE**

I do hereby certify that I have this 28<sup>th</sup> 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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