Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of:

Ameritech Operating Companies Petition for Pricing Flexibility for Special Access and Dedicated Transport	CCB/CPD File No. 00-26
Pacific Bell Telephone Company Petition for Pricing Flexibility for Special Access and Dedicated Transport	CCB/CPD File No. 00-23
Southwestern Bell Telephone Company Petition for Pricing Flexibility for Special Access and Dedicated Transport	CCB/CPD File No. 00-25
Verizon Petition for Pricing Flexibility for Special Access and Dedicated Transport	CCB/CPD File No. 00-24

REPLY COMMENTS OF ONFIBER COMMUNICATIONS, INC.

OnFiber Communications, Inc. ("OnFiber"), hereby submits its response in opposition to the Verizon Petition for Pricing Flexibility for Special Access and Dedicated Transport, the Ameritech Operating Companies Petition for Pricing Flexibility for Special Access and Dedicated Transport, the Pacific Bell Telephone Company Petition for Pricing Flexibility for Special Access and Dedicated Transport and the Southwestern Bell Telephone Company Petition for Pricing Flexibility for Special Access and Dedicated Transport.

INTRODUCTION

On November 17, 2000, Ameritech Operating Companies, Pacific Bell Telephone Company, and Southwestern Bell Telephone Company (collectively "SBC") petitioned the

Federal Communications Commission (the "Commission") for pricing flexibility in the provision of special access and dedicated transport services. On the same day, Verizon Communications Inc. ("Verizon") filed a similar petition requesting pricing flexibility with regard to its special access and dedicated transport services. SBC and Verizon both claimed to have met the standards established in the *Pricing Flexibility Order* for obtaining relief from the price caps placed on their special access services.[1]

Pursuant to the November 20, 2000 Public Notice issued by the Commission, AT&T Corp. ("AT&T") and WorldCom, Inc. ("WorldCom") submitted comments opposing the petitions inasmuch as SBC and Verizon failed to demonstrate that pricing flexibility is appropriate in the designated special access markets. OnFiber generally supports AT&T and WorldCom's contentions that the FCC's pricing flexibility standards are inadequate.[2] Indeed, the data provided in the SBC and Verizon petitions actually demonstrates the continued need for pricing regulation in the special access market.

OnFiber, however, focuses on the fact that the requested pricing flexibility is inconsistent with the public interest standard established in the Communications Act,[3] contradicts the pro-competitive policies underlying the *Pricing Flexibility Order*,[4] and thus generally fails to justify "nationwide deregulation of special access."[5] Given their significant market power and ubiquitous serving coverage, SBC and Verizon have the ability to undercut the pricing of even

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[1] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Petition of US West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier 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. 98-93, Fifth Report and Order, 14 FCC Rcd 14222 (Aug. 27, 1999)("*Pricing Flexibility Order*").

[2] AT&T Comments at 2; WorldCom Comments at 2, citing *MCI WorldCom v. Federal Communications Commission,* Case Nos. 99-1395/1414/1472 (D.C. Cir.).

[3] AT&T Comments at 2.

[4] WorldCom Comments at 3.

[5] AT&T Comments at 2.

the most efficient competitor in markets where competition exists, while maintaining supra-competitive special access prices for consumers in markets not yet benefitting from competition.

As a new entrant creating a competitive nationwide network, OnFiber has a direct and immediate concern about the stability of the special access marketplace if the ILECs obtain pricing flexibility. OnFiber will soon be offering high-bandwith, optical special access service, primarily to telecommunications carriers and internet service providers. OnFiber plans to offer its services in 26 metropolitan areas across the country, including several markets where SBC and Verizon have requested the unfettered ability to adjust their pricing for special access services.

DISCUSSION

Allowing SBC and Verizon to change their prices for special access services selectively amongst the numerous markets they serve will permit them to preempt the development of special access competition in certain markets, while at the same time forcing consumers to endure inflated prices for special access service in the remaining markets. The record evidence is clear that the markets for special access services in the metropolitan serving areas ("MSAs") in which the ILECs have requested pricing flexibility are not effectively competitive. The Attachment to WorldCom's Comments clearly establishes the absence of effective competition in those markets, and demonstrates that SBC and Verizon continue to have significant monopoly power in each of these MSAs. As WorldCom emphasizes in its comments, "All real-world evidence shows that competition sufficient to constrain SBC['s] and Verizon's pricing does *not* exist in the cities covered by their petitions."[6] Thus, a careful analysis of the documentation that SBC and Verizon submitted with their petitions illustrates that "competitive entry into the special

[6] WorldCom Comments at 6.

access market is extremely limited, and the nascent competition that does exist is not remotely adequate to place competitive pressure on the incumbents' access charges."[7]

If the Commission were to grant SBC and Verizon unfettered flexiblity in pricing their special access services, the ILECs would be able to act on natural incentives inherent in their remaining monopoly power to undertake discriminatory pricing that would harm special access consumers and impede competitive entry. That is, the ILECs could simply undercut a new entrant's special access prices in only those few markets where such an entrant could provide initial service, and recoup the revenue lost from such price-cutting by over-pricing special access in the many remaining markets in which the ILECs face little or no special access competition.

Based on the ILECs' historic pricing practices in the face of nascent competition, granting pricing flexibility to SBC and Verizon for special access services that are not subject to competition across the ILECs' geographic regions could close many markets in these regions to competitive entry. Consistent with this view, WorldCom notes that "[r]emoval of the price cap constraint at this time, where there are no real competitive alternatives on the vast majority of routes, would allow SBC and Verizon to increase rates to unreasonable levels",[8] as well as to "engage in unreasonable discrimination."[9] OnFiber is not requesting protection against competitive pricing; rather, OnFiber urges the Commission to adhere to its most fundamental pro-competitive policies by not permitting the ILECs to leverage their remaining monopoly power to disadvantage either the ILECs' captive customers or, more pertinent to OnFiber, the competition that new entrants can bring to those markets.

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7 AT&T Comments at 2.

8 WorldCom Comments at 6

9 WorldCom Comments at 7.

In its *Pricing Flexibility Order*, the Commission intended to limit the markets for which an ILEC could exercise pricing flexibility to those markets where the ILEC faces significant competition across the board. By insisting that effective competition be present in all the geographic areas in which an ILEC offers a service for which it seeks flexible pricing authority , the Commission sought to ensure that the ILEC faces the same pricing constraints encountered by any competitive carrier. Competition in the special access market is in the public interest because it results in lower prices for the retail services that use special access in their provision.

Competitors lower their prices, as a means of winning consumers, by lowering their costs or increasing their efficiency in providing service. If a carrier in a competitive market lowers its price to enter a competitive market without lowering its costs or increasing its efficiency, the carrier will risk losing profits. By contrast, if an ILEC lowers prices in the few markets where it faces any competition, but is free to raise prices to supra-competitive levels in the majority of markets where it faces no competition — as would happen under today's facts — the ILEC faces no risk of losing profits, even in the short term. Though smaller, more lithe competitors may be more efficient than the ILECs, even the leanest CLEC cannot compete against a monopolist's geographically cross-subsidized prices.

Because of the minimal competition present in only a few markets and the absence of competition in many other markets, unfettered pricing flexibility would allow the ILECs to raise their special access prices without facing the risk of losing profits. WorldCom explains:

> If competition were as widespread as is suggested by these companies' broad request for Phase II pricing flexibility, one would expect to see at least some competitive pressure reflected in their pricing of special access and transport services. But both SBC and Verizon continue to price at the maximum permitted by the price cap rules in both the transport and special access baskets. The price

> cap mechanism—not competition—is the only constraint on the special access and transport prices charged by SBC and Verizon.[10]

Thus, even in the markets where competitive carriers have initiated service, their mere presence has in no way curbed SBC's or Verizon's ability to maintain monopoly prices in the special access marketplace. Unlike SBC and Verizon, new CLECs providing special access services do not have the luxury of geographically cross-subsidizing their services, *i.e.*, maintaining lower prices in some areas by raising their prices in others to sustain their overall profit margin.

Facing competition in a few markets does not effectively restrain SBC and Verizon from engaging in strategic pricing behavior that undermines special access competition throughout their service territories. WorldCom illustrated this point by citing to this Commission's declaration that SBC and Verizon have the incentive and the ability to "engage in strategic pricing by offering reductions in rates for special access and high-capacity dedicated transport services where they face competition and higher rates for these services where they face little competition."[11] Therefore, the ILECs' unfettered authority to set special access prices would slow the pace of competitive entry by artificially decreasing the margins that new entrants can achieve, while exposing consumers in non-competitive markets to higher prices, so the ILECs can insulate themselves from having to lower their costs, become more efficient or incur losses.

The purpose of the *Pricing Flexibility Order* was to "ensure that ILECs would obtain pricing flexibility only when competition was sufficient 'to discourage incumbents from either excluding new entrants or raising rates to unreasonable levels.'"[12] Though agreeing that the *Pricing Flexibility Order* is a "mechanism to invigorate competition,"[13] USTA erroneously

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10 WorldCom Comments at 6.

11 WorldCom Comments at 7 *citing Forbearance Order* at ¶ 34; *see also* AT&T Comments at 6.

12 WorldCom Comments at 1 *quoting Pricing Flexibility Order* at ¶ 68.

13 USTA Comments at 3.

contends that "allowing incumbent LECs to adjust prices to meet market conditions"[14] will in some way foster competition. Indeed, the exact opposite is true. As the CLECs have clearly demonstrated, removing the price cap on SBC's and Verizon's special access services would eliminate nascent competition in the special access market, eliminating a choice of wholesale suppliers for carriers selling service that requires special access for its provision, while subjecting carriers in markets without competition to supra-competitive pricing. And, of course, those retail carriers would have to pass on to end-users the supra-competitive special access prices that would result. Accordingly, the Commission should deny SBC's and Verizon's petitions for pricing flexibility for their special access services.

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14 USTA Comments at 3.

CONCLUSION

For the foregoing reasons, OnFiber urges the Commission to deny the ILECs' petitions for pricing flexibility for special access services.

Respectfully submitted,

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