

**PUBLIC VERSION**

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

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

**JOINT REPLY OF THE AMERITECH OPERATING COMPANIES,  
PACIFIC BELL TELEPHONE COMPANY, AND  
SOUTHWESTERN BELL TELEPHONE COMPANY**

**INTRODUCTION**

The Ameritech Operating Companies,<sup>1</sup> Pacific Bell Telephone Company, and Southwestern Bell Telephone Company (SBC), pursuant to § 1.774(d) of the Commission's rules (47 C.F.R. § 1.774(d)), hereby file this joint reply in the above-referenced proceeding. Two parties, AT&T Corp. (AT&T) and WorldCom, Inc. (WorldCom), oppose SBC's pricing flexibility petitions. The primary argument raised by these parties—that the *Pricing Flexibility Order*<sup>2</sup> is flawed—is entirely inapposite to this

---

<sup>1</sup> The Ameritech Operating Companies consist of Illinois Bell Telephone Company, Indiana Bell Telephone Company, Michigan Bell Telephone Company, Ohio Bell Telephone Company, and Wisconsin Bell, Inc.

<sup>2</sup> *In the Matter of 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 in the Phoenix, Arizona MSA, and Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange*

## PUBLIC VERSION

proceeding and should be dismissed out of hand. The remaining arguments advanced by AT&T and WorldCom are equally devoid of substance and do nothing to warrant denial of SBC's petitions.

### **1. The Commission Should Ignore Arguments Attacking the *Pricing Flexibility Order*.**

In an astonishing denial of the nature of this proceeding, AT&T and WorldCom continue to complain—in apocalyptic terms—that the *Pricing Flexibility Order* is flawed and must be altered.<sup>3</sup> These arguments are misplaced in this proceeding.

Challenges to the *Pricing Flexibility Order* were raised by both AT&T and WorldCom during the Commission's pricing flexibility proceedings. The Commission soundly rejected those challenges. AT&T and WorldCom appealed the *Pricing Flexibility Order* to the D.C. Court of Appeals, where their case was briefed and argued.<sup>4</sup> On September 8, 2000, AT&T and WorldCom filed a motion with the Commission for a "moratorium" on all pricing flexibility petitions pending judicial review—the third different proceeding in which they argued a "compelling need" to strike down the

---

*Carriers*, CC Docket Nos. 96-262, 94-1 and 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 or Order*).

<sup>3</sup> According to AT&T, the *Pricing Flexibility Order* is "woefully inadequate," is "irrational" and "no way probative of the existence of competition," and gives rise to the "imminent threat of harm." See AT&T Opposition to Petitions for Pricing Flexibility for Special Access and Dedicated Transport of Verizon, Southwestern Bell Telephone Co., Pacific Bell, and Ameritech (AT&T Opposition) at 5, 6 and 8. According to WorldCom, the results produced by the *Pricing Flexibility Order* are "flawed" and "particularly distorted." See WorldCom Opposition at 4-5.

<sup>4</sup> See *MCI WorldCom, Inc., AT&T Corp., and Time Warner Telecom Inc. v. FCC*, Nos. 99-1935, 99-1404, and 99-1472 (D.C. Cir.). Oral argument in the case was conducted on November 30, 2000. A decision is pending in that case.

**PUBLIC VERSION**

"unprecedented" *Order*.<sup>5</sup> Yet undaunted, on November 21, 2000, AT&T once again mounted an attack on the *Pricing Flexibility Order* in a stay motion filed with the Commission which, including affidavits, totals 66 pages.<sup>6</sup>

In this proceeding AT&T and WorldCom seek yet another—to wit, a fifth—bite at the apple. They are not entitled to it. As this Commission has held in numerous proceedings, to the extent a petition filed with the Commission *directly* challenges earlier Commission decisions, the petition is "untimely" and should be "dismissed as defective."<sup>7</sup> To the extent the petition *indirectly* challenges earlier Commission decisions, the petition is "procedurally flawed because it effectively is an impermissible collateral attack."<sup>8</sup>

This proceeding is confined to whether the petitions filed by SBC comply with the pricing flexibility rules adopted and put into effect by the Commission. It is not a referendum on the *Pricing Flexibility Order*. Because the attacks of AT&T and WorldCom are irrelevant to this proceeding, they should be summarily rejected.<sup>9</sup>

---

<sup>5</sup> See Motion of AT&T Corp. and WorldCom, Inc. for a Moratorium on Pricing Flexibility Petitions Pending Judicial Review at 5.

<sup>6</sup> See Motion of AT&T Corp. for Stay of Pricing Flexibility Order Pending Judicial Review. According to the filing, WorldCom joined in and supported the stay motion. *Id.* at 1 n.2. SBC Communications Inc., the parent company of the Ameritech Operating Companies, Pacific Bell Telephone Company, and Southwestern Bell Telephone Company, joined three other parties in opposing the stay motion. See Opposition of BellSouth, Qwest, SBC, and Verizon to Motion of AT&T for a Stay of the Pricing Flexibility Order Pending Judicial Review (filed November 28, 2000).

<sup>7</sup> See, e.g., *In the Matter of Association of Public Safety Communications Officials, International, Inc., Emergency Petition for Clarification, et al.*, 14 FCC Rcd 4339 (1999), at para. 10.

<sup>8</sup> *Id.*

<sup>9</sup> Moreover, as a substantive matter, AT&T's and WorldCom's claims are absurd that the special access market will be deregulated "nationwide" if the Commission approves the pricing flexibility petitions filed by SBC as well as BellSouth and Verizon. See AT&T Opposition at 2. See also *id.* at 2-9; WorldCom Opposition at 3, 6. AT&T in particular incorrectly reaches its conclusion by claiming that the pricing flexibility available

**PUBLIC VERSION**

**2. The Collocation Information Provided by SBC Is Correct.**

AT&T claims that SBC erroneously included AT&T as a collocator with non-LEC transport in selected wire centers.<sup>10</sup> Despite this claim, SBC has confirmed that its original data is correct and attests to that fact herein.<sup>11</sup>

AT&T then raises the specter that "similar errors" involving other entities will bring SBC out of reach of the requisite triggers.<sup>12</sup> AT&T ignores the safeguards that the Commission implemented to protect against this occurrence. By rule, a petitioner must provide all entities relied upon in its petitions with the information used therein.<sup>13</sup> SBC has complied with this requirement.<sup>14</sup> To date—almost a month after the petitions were

---

through the Commission's *Pricing Flexibility Order* is the same as that which is available to non-dominant carriers. AT&T Opposition at 2. The Commission should recognize this allegation as baseless rhetoric. The *Pricing Flexibility Order* undeniably provides ILECs with additional pricing flexibility, but there are numerous reasons why the flexibility available to non-dominant carriers is significantly different. ILECs do not receive additional flexibility until competitive thresholds are met for dedicated transport services provided to specific categories of access customers located in limited geographic areas. While contract pricing becomes available once the Phase 1 competitive criteria is met, contracts cannot replace generally available service offerings, nor can a contract be offered to an affiliate until it is taken by a non-affiliate. *Pricing Flexibility Order* at paras. 122 *et seq.* While volume discounts also become available in Phase 1, growth discounts remain unavailable. *Id.* at para. 134. Once an increased level of competition has been demonstrated, additional flexibility becomes available, but again, only for dedicated transport services provided to specific categories of customers in limited geographic areas. Services that qualify for Phase 2 are removed from price cap regulation but other services are not. *Id.* at paras. 153 *et seq.* Regardless, the Phase 2 services must continue to be offered on a tariffed basis. *Id.* These restrictions simply do not exist for non-dominant carriers.

<sup>10</sup> See AT&T Opposition at 9.

<sup>11</sup> See Exhibit 1, Affidavit of Hakim S. Williams.

<sup>12</sup> See AT&T Opposition at 9.

<sup>13</sup> See 47 C.F.R. §1.774(e)(ii).

<sup>14</sup> See, *respectively*, Petitions for Pricing Flexibility for Special Access and Dedicated Transport of the Ameritech Operating Companies, Pacific Bell Telephone Company, and Southwestern Bell Telephone Company (SBC Petitions) at Appendix E.

**PUBLIC VERSION**

filed and the entities were notified—none of them has informed SBC that any such information is incorrect.

By falsely identifying a deficiency in SBC's petitions and then suggesting that the deficiency is widespread, AT&T essentially argues: where there is smoke there is fire. As shown herein, there is neither. Accordingly, AT&T's argument warrants no consideration.

**3. SBC Has Satisfied the Revenue Triggers for Pricing Flexibility.**

AT&T and WorldCom would somehow have this Commission believe that SBC has thwarted the *Pricing Flexibility Order* by withholding data regarding revenue generated on a wire-center basis.<sup>15</sup> Contrary to this assertion, SBC has provided all information required under the Commission's rules to receive the relief requested.

To receive either Phase I or Phase II relief (as the case may be) under a revenue-based trigger, a petitioner must show on an MSA basis that unaffiliated competitors have collocated in wire centers accounting for a certain percentage (ranging from 30 to 85) of the petitioner's revenue for the particular service at issue, and that at least one such collocator in each such wire center is using non-LEC transport facilities.<sup>16</sup> Mirroring that requirement, SBC's petitions list for each service at issue (i) all of the wire centers in each relevant MSA, (ii) the wire centers in each MSA in which unaffiliated competitors have collocated, (iii) the names of non-LEC transport facility providers for each such wire center (confidential version), (iv) the revenue attributable to all competitive wire centers in the MSA (confidential version), and (v) the percentage of revenue that the competitive

---

<sup>15</sup> See AT&T Opposition at 10; WorldCom Opposition at 2-3.

<sup>16</sup> 47 C.F.R. §§ 69.709(b)(2) and (c)(2), §§ 69.711(b)(2) and (c)(2).

## PUBLIC VERSION

wire centers represent throughout the MSA.<sup>17</sup> SBC's petitions supply each and every piece of information required by the Commission's rules. Accordingly, there is no basis upon which AT&T and WorldCom may now argue that SBC has not met its burden of proof.

Moreover, SBC's petitions explain the precise methodology used to ensure the accuracy of the data reported including, without limitation, that the data is extracted from the same source used to provide demand data for the Commission in annual price cap filings.<sup>18</sup> Because SBC has provided its required data as well as information supporting the accuracy of that data, the revenue triggers should be deemed satisfied.

Faced with the irrefutable fact that SBC has satisfied the revenue triggers for the pricing flexibility it seeks, AT&T and WorldCom then proceed to suggest that those showings are still deficient because SBC "could not meet" in all cases "the alternative percentage of wire centers test."<sup>19</sup> An applicant for pricing flexibility is entitled to relief upon meeting *either* the "percentage of wire centers test" *or* the "percentage of revenue test."<sup>20</sup> To the extent that AT&T and WorldCom argue that the percentage of revenue test is deficient, they again engage in collateral attacks on the *Pricing Flexibility Order* that are, as stated above, impermissible.

---

<sup>17</sup> See SBC Petitions at Appendix C.

<sup>18</sup> See *id.* at Appendix D.

<sup>19</sup> AT&T Opposition at 10.

<sup>20</sup> See 47 C.F.R. §§ 69.709(b)(2) and (c)(2), §§ 69.711(b)(2) and (c)(2). SBC has, in fact, relied upon the percentage of wire centers test in a number of cases. See SBC Petitions at App. C (Appleton-Oshkosh-Neenah, WI; Champaign-Urbana, IL; Decatur, IL; Flint, MI; Green Bay, WI; Los Angeles-Long Beach, CA; Lubbock, TX; Madison, WI; San Jose, CA; South Bend, IN).

## **PUBLIC VERSION**

As WorldCom erroneously claims, "It is no answer to suggest that the central offices with collocations represent a disproportionate share of the demand in the MSAs where SBC...[is] seeking Phase II relief." Actually, under the *Order*, it is:

[A] few wire centers may account for a disproportionate share of revenues for a particular service.... We find that collocation in wire centers representing a significant percentage of incumbent LEC revenues from a particular service also indicates meaningful investment by competitors.<sup>21</sup>

As is painfully clear, the arguments of AT&T and WorldCom are wanting. They should be seen for what they are—devoid of relevance and substance.

## **CONCLUSION**

The assertion by AT&T that SBC has "failed to meet those tests"<sup>22</sup> required by the *Pricing Flexibility Order* is, as demonstrated herein, simply wrong. The oppositions filed by AT&T or WorldCom offer no evidence that SBC's petitions are deficient. Rather—saddled with the reality that the petitions on their face warrant pricing flexibility relief—AT&T and WorldCom take issue with the *Order* itself. As discussed above, those attacks cannot justify denial of SBC's petitions.

The Commission established specific rules under which pricing flexibility should be granted. SBC has satisfied those rules. Because SBC has met its burden of proof, the Commission should grant SBC the pricing flexibility requested.

---

<sup>21</sup> *Pricing Flexibility Order* at para. 97.

<sup>22</sup> AT&T Opposition at 3.

**PUBLIC VERSION**

Respectfully submitted,

AMERITECH OPERATING COMPANIES,  
PACIFIC BELL TELEPHONE COMPANY,  
SOUTHWESTERN BELL TELEPHONE  
COMPANY

By: Paul E. Dorin

Paul E. Dorin  
Roger K. Toppins  
Paul Mancini  
1401 I Street, NW, Suite 1100  
Washington, D.C. 20005  
(202) 326-8898  
FAX (202) 408-8763

Their Attorneys

December 14, 2000

**PUBLIC VERSION**

EXHIBIT 1

TO JOINT REPLY OF THE AMERITECH OPERATING COMPANIES,  
PACIFIC BELL TELEPHONE COMPANY, AND  
SOUTHWESTERN BELL TELEPHONE COMPANY

**AFFIDAVIT OF HAKIM S. WILLIAMS**

***PRIVILEGED AND CONFIDENTIAL***  
***--REDACTED***

**PUBLIC VERSION**

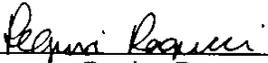
**CERTIFICATE OF SERVICE**

I, Regina Ragucci, do hereby certify that on this 14<sup>th</sup> day of December, 2000, a copy of the foregoing Public Version of the "Joint Reply of the Ameritech Operating Companies, Pacific Bell Telephone Company, and Southwestern Bell Telephone Company" was served via facsimile and U.S. first class mail, postage prepaid, on the parties named below:

James W. Grudus  
Peter H. Jacoby  
AT&T CORP.  
Room 1126M1  
295 North Maple Avenue  
Basking Ridge, New Jersey 07920  
FAX: 908-630-2883

Alan Buzacott  
WORLDCOM  
1801 Pennsylvania Ave., NW  
Washington, D.C. 20006  
FAX: 202-887-2204

Lawrence E. Sarjeant  
Linda L. Kent  
Keith Townsend  
John W. Hunter  
Julie E. Rones  
UNITED STATES TELECOM ASSOCIATION  
1401 H. Street, NW  
Washington, D.C. 20005  
FAX: 202-326-7248

  
\_\_\_\_\_  
Regina Ragucci