

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Petitions for Pricing Flexibility for Special Access)	
and Dedicated Transport Services for)	
Ameritech Operating Companies,)	CCB/CPD File No. 01-32
Pacific Bell Telephone Company,)	CCB/CPD File No. 01-33
Southern New England Telephone Company, and)	CCB/CPD File No. 01-34
Southwestern Bell Telephone Company)	CCB/CPD File No. 01-35

**JOINT REPLY OF THE AMERITECH OPERTING COMPANIES, PACIFIC
BELL TELEPHONE COMPANY, SOUTHERN NEW ENGLAND TELEPHONE
COMPANY AND SOUTHWESTERN BELL TELEPHONE COMPANY**

Introduction

The Ameritech Operating Companies, Pacific Bell Telephone Company, Southern New England Telephone Company, and Southwestern Bell Telephone Company (“SBC”) hereby file this joint reply in the above-captioned proceeding. Three parties, Focal Communications Corporation, Pac-West Telecomm, and AT&T, oppose SBC’s pricing flexibility petitions.¹ Focal Communications and Pac-West challenge the efficacy of the Commission’s collocation triggers as a meaningful assessment of competition, and SBC’s satisfaction of the collocation standards required for pricing flexibility. Further, they argue that price increases by Bell Operating Companies (BOCs) in areas where pricing flexibility has been granted warrant reexamination of the pricing flexibility rules. The Commission should reject these claims outright. Their challenge of the collocation triggers and request for reexamination of the pricing flexibility rules due to price increases are inapposite to this proceeding. They represent collateral attacks on the adequacy of the pricing flexibility rules, which were affirmed in their entirety by the

¹ AT&T Opposition to Ameritech and Pacific Bell Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services, CCB/CPD File Nos. 01-32, 01-33, 01-34, 01-35 (filed Jan. 3, 2002); Joint Comments of Focal Communications Corporation and Pac-West Telecomm, Inc., CCB/CPD File Nos. 01-32, 01-33, 01-34, 01-35 (filed Jan. 3, 2002).

Court of Appeals for the District of Columbia Circuit. Further, SBC has fully satisfied the operational component of the collocation standard for pricing flexibility and proven so in its petitions.

AT&T challenges SBC's collocation data regarding alternative transport in 13 wire centers, two in Ameritech and 11 in Pacific Bell, and requests Commission validation of all of Ameritech and Pacific Bell's collocation data provided in their petitions. Currently, SBC is in the process of re-examining each of the challenged collocation arrangements to confirm that alternative transport is being used. To the extent any wire center does not qualify for flexibility, SBC will remove the wire center from the relevant petition. This process perfectly exemplifies the Commission's safeguards at work, thereby nullifying any need to examine other, non-contested SBC collocation data.

1. **Focal and Pac-West's Challenge to the Efficacy of the Collocation Triggers is a Collateral Attack on the Pricing Flexibility Order and Should Be Rejected.**

Focal and Pac-West have jumped on the bandwagon with all the other parties that have unsuccessfully tried to use this type of proceeding to challenge the meritocracy of the collocation triggers and ultimately the pricing flexibility rules adopted by the Commission in the *Pricing Flexibility Order*.² Their challenge is particularly incredulous, if not mind-boggling, because not only has the Commission repeatedly rejected this argument and similar challenges to its pricing flexibility rules, but the Court of Appeals for the DC Circuit upheld the Commission's pricing flexibility rules in their entirety less than a year ago.³

Focal and Pac-West fashion their argument as a novel one. Specifically, they argue that collocation triggers are no longer adequate to measure competition because of unfavorable market conditions which have forced CLECs to exit the market entirely or

² *In the Matter of Access Charge Reform*, CC Docket No. 96-261, *Fifth Report and Order*, 14 FCC Rcd. 14221 (1999) (*Pricing Flexibility Order*).

³ *WorldCom, Inc., v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

certain market locations. These changing market conditions, they argue, warrant a reexamination of the collocation triggers as a means of measuring competition.⁴ Further, they argue that the Bell Operating Companies are raising prices in areas where pricing flexibility has been granted, warranting a re-examination of the pricing flexibility rules.⁵

These arguments fail for three reasons. First, they represent merely another collateral attack on the *Pricing Flexibility Order* and thus are inapposite to this proceeding. The Commission in numerous proceedings has held that petitions challenging prior Commission decisions are impermissible collateral attacks.⁶ No matter how you couch it, Focal and Pac-West's arguments challenge the efficacy of the Commission's pricing flexibility rules and consequently must be rejected. It is baffling that they would challenge the adequacy of the collocation triggers in this type of proceeding given that ten months ago the Commission rejected a similar argument raised by AT&T in connection with SBC's first pricing flexibility petition.⁷ Therein, the Commission made it clear that the *only* issue appropriate for resolution in these types of proceedings is whether the petitioner has satisfied the requirements for pricing flexibility

⁴ Joint Comments of Focal and PacWest at 3-5.

⁵ Joint Comments of Focal and Pac-West at 9-10.

⁶ See *In the Matter of Petition of Ameritech Illinois, Ameritech Indiana, Ameritech Michigan, Ameritech Ohio, and Ameritech Wisconsin for Pricing Flexibility, Petition of Pacific Bell Telephone Company to Pricing Flexibility, and Petition of Southwestern Bell Telephone Company for Pricing Flexibility*, CCB/CPD Nos. 00-26, 00-23, 00-25, *Memorandum Opinion and Order* (2001); *In the Matter of BellSouth Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD no. 00-20, *Memorandum Opinion and Order* (2000) (*BellSouth Pricing Flexibility Proceeding*); *In the Matter of Association of Public Safety Communications Officials International, Inc., Emergency Petition for Clarification, et al.*, 14 FCC Rcd 4339, ¶ 10 (1999) (stating that to the extent a petition challenges earlier Commission decisions, the petition is "procedurally flawed because it effectively is an impermissible collateral attack.").

⁷ *SBC Pricing Flexibility Relief Order*, ¶ 13 n.38.

adopted by the Commission, nothing else.⁸ Focal and Pac-West's collateral challenge, therefore, should be summarily rejected.

Second, the impact of unfavorable market conditions on CLECs does not undermine the efficacy of the collocation triggers in measuring competition. In the *Pricing Flexibility Order*, the Commission correctly reasoned that collocation arrangements indicate "irreversible entry by competitive providers."⁹ This conclusion is not belied by individual CLEC departures from the marketplace. Whether market conditions are good, fair or poor, petitioners must satisfy the collocation triggers set forth in the Commission's rules. Satisfaction of these requirements is an indication of "sunk" investments, warranting pricing flexibility relief.¹⁰ Further, petitioners must provide entities relied upon in their petition with the information used therein, which, in effect, operates as a check on the validity of a petitioner's data. If any collocation data is incorrect or if any collocation arrangement is non-operational, the CLEC can challenge it, as AT&T has done here. LECs seeking pricing flexibility, therefore, by necessity have to factor CLEC market departures into their processes for seeking pricing flexibility.¹¹ Putting procedural issues aside, flimsy arguments that market conditions nullify the adequacy of the Commission's collocation triggers warrant no consideration.

Third, amorphous arguments regarding the impact of price increases do not justify reconsideration of the pricing flexibility rules. There is no evidence that the price increases referenced by Focal and Pac-West are unreasonable or contrary to the public interest. Further, these opponents have told only half the story by neglecting to address

⁸ *Id.*, ¶ 13 ("The only issue before the Bureau in these proceedings, however, is whether the petitions satisfy the requirements for pricing flexibility for special access and dedicated transport services set forth in the Commission's rules.")

⁹ *Pricing Flexibility Order*, ¶¶ 79, 94, and 104.

¹⁰ *Id.* ¶ 94 ("we conclude that it is appropriate to give incumbent LECs pricing flexibility when competitors have made irreversible, sunk investment in facilities.").

¹¹ For SBC, this has entailed a review of internal records and databases for CLEC disconnection notices, CLEC notifications of bankruptcy proceedings, and CLEC notifications of market or industry departures. Collocators falling into any of these camps were not considered by SBC in satisfying the collocation triggers.

whether there have been any price decreases in areas where flexibility has been granted, or whether any price decreases have offset any price increases. Most importantly, assuming *arguendo* that this is an appropriate proceeding to re-examine the pricing flexibility rules — which it most certainly is not — the Commission has already concluded that price increases in areas where pricing flexibility has been granted may be warranted.¹² Opponents' untimely request for reconsideration, therefore, must be rejected.

2. **SBC's Petitions Fully Demonstrate that the Collocation Arrangements Relied Upon Are Operational.**

Focal and Pac-West argue that SBC has failed to demonstrate if the collocation arrangements identified in its petitions are actually serving one customer.¹³ This argument is meritless, and further has already been considered and rejected by the Commission in analogous proceedings. In the BellSouth pricing flexibility proceeding, ALTS, WorldCom and AT&T raised the identical argument. The Commission rejected the argument, finding that BellSouth's use of internal records, particularly collocation applications, site examinations, and CLEC notifications was sufficient to demonstrate that BellSouth had determined that the collocation arrangements identified in its petitions were operational.¹⁴ The Commission did not deem it necessary for BellSouth to determine if any customers were actually served via the arrangement.¹⁵ Likewise, SBC is

¹² *Pricing Flexibility Order*, ¶ 155 ("We conclude that this relief nonetheless is warranted upon a Phase II showing for two reasons. First, some access rate increases may be warranted, because our rules may have required incumbent LECs to price access services below cost in certain areas. Second, we find that a Phase II showing is sufficient evidence that competitor's market presences have become significant, and that the public interest is better served by permitting market forces to govern the rates for the access services at this point.").

¹³ Joint Comments of Focal and Pac-West at 7-9.

¹⁴ *BellSouth Pricing Flexibility Proceeding*, ¶ 17 ("Based on their internal records, site examination, and notifications to affected CLECs, we find that BellSouth has ascertained to the best of its ability that the collocations listed in support of its petition are in fact operational.").

¹⁵ *Id.*

not in a position to determine what, if any, customers are served through a collocation arrangement with alternative transport. CLECs are not obligated to provide SBC this information and likely would not be forthcoming in providing such information to SBC.

To satisfy the collocation requirements, SBC used its internal records and resources to identify to the best of its ability operational collocation arrangements. Specifically, SBC used its collocation database¹⁶ to identify specific collocators by wire center and determine whether alternative transport was being provided. SBC also conducted site examinations of wire centers included in its petitions to verify that selected competitors had transport facilities owned by a non-SBC provider. Further, SBC provided pertinent data to each collocator upon which SBC relies to satisfy the collocation requirements. SBC determined for each collocation arrangement identified in its petitions that all the necessary construction of the collocation arrangement was completed, alternative transport was present, and the collocator was in possession of the arrangement. As the Commission correctly concluded in the *Pricing Flexibility Order*, pricing flexibility is warranted where CLECs have made irreversible or sunk investment in facilities used to provide competitive services.¹⁷ The collocators identified in SBC's petitions have made such investments. SBC therefore has made a sufficient showing to satisfy the collocation standards for pricing flexibility relief.

3. Commission validation of SBC's collocation data is not justified.

AT&T claims that 13 collocation arrangements, 2 for Ameritech and 11 for Pacific Bell, were counted inappropriately in satisfying the Commission's requirement that at least one collocator in each wire center included in a pricing flexibility petition use alternative transport. These errors, AT&T claims, demonstrates the deficiency of SBC's

¹⁶ As described in the Methodology section of each SBC petition, the Collocation database includes the name of the collocator, applications for collocation, wire center, implementation dates and alternative transport, where applicable.

¹⁷ *Pricing Flexibility Order*, ¶ 94.

methodology, thus warranting a Commission validation of all of Ameritech and Pacific Bell's collocation data provided in their petitions.¹⁸

SBC is in the process of investigating the 13 collocation arrangements challenged by AT&T to confirm that AT&T is using alternative transport. If SBC determines that AT&T is not using alternative transport at any of these wire centers, SBC will remove any non-qualifying wire center from the relevant petition.¹⁹

AT&T's request that the Commission validate all of Ameritech and Pacific Bell's collocation data provided in their petitions should be rejected. Such action would nullify the safeguards adopted by the Commission to ensure the accuracy of collocation data relied upon by petitioners. By rule, a petitioner must provide all entities relied upon in its petitions with the information used therein.²⁰ SBC has fully complied with this requirement. The challenged AT&T collocation data represents a miniscule percentage of the total collocation arrangements identified in SBC's petitions. While SBC is committed to ensuring the complete accuracy of all collocation data relied upon in its petitions, it is conceivable that errors could occur. AT&T's challenge is a perfect illustration of the Commission's safeguards at work. The Commission clearly envisioned that errors could occur and thus adopted this safeguard to ensure that its collocation triggers are satisfied. To suggest that potential errors specific to AT&T demonstrate a widespread deficiency in SBC's methodology is meritless, given that more than 90 percent of the AT&T collocation data relied upon by SBC has not been challenged. Accordingly, AT&T's argument warrants no consideration.

Conclusion

¹⁸ AT&T Opposition at 3-4.

¹⁹ SBC received a letter from Level 3 Communications on January 8, 2002 disputing 9 wire centers — 4 in Pacific Bell's region and 5 in Ameritech's region — where Level 3 was identified as having alternative transport. SBC is in the process of investigating these wire centers and will supply its results to the Commission and Level 3. To the extent Level 3 is correct and there are no other collocators at the questionable wire centers with alternative transport, SBC will remove the wire centers from its relevant petitions.

²⁰ 47 C.F.R. §1.774(e)(ii).

Opposing parties have offered no legitimate justification for denial of SBC's pricing flexibility petitions. Instead they raise collateral attacks on the pricing flexibility rules which are inapposite to this proceeding and therefore must be rejected. Further, contrary to the opposing parties' claims, SBC's petitions fully satisfy the operational component of the Commission's collocation standards.

With respect to the challenged collocation arrangements, SBC is re-examining these collocation sites and if necessary will remove any non-qualifying wire center(s) from its petitions. These "potential errors," however, do not warrant a Commission validation of all of Ameritech or Pacific Bell's collocation data provided in their petitions, but rather are a part of the pricing flexibility relief process envisioned by the Commission to ensure the accuracy of any pricing flexibility petition.

Respectfully Submitted,

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January 14, 2002

CERTIFICATE OF SERVICE

I, Regina Ragucci, do hereby certify that on this 14th day of January 2002, Reply Comments of SBC Communications Inc. in CCB/CPD File No. 01-32, -33, -34 and -35 was served via facsimile and first-class, postage pre-paid to the parties listed below:

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