

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

In the Matter of)
)
Petition of Pacific Bell Telephone Company)
for Pricing Flexibility As Specified in)
Sections 69.727 of the Commission's Rules) CCB/CPD File No. 02-03
for the Los Angeles/Long Beach, CA MSA)

REPLY OF THE PACIFIC BELL TELEPHONE COMPANY

I. Introduction

The Pacific Bell Telephone Company ("Pacific Bell") hereby files this reply in the above-captioned proceeding. Pac-West Telecomm ("Pac-West") is the sole opponent to Pacific Bell's pricing flexibility petition.¹ Pac-West challenges the efficacy of the Commission's collocation triggers as a meaningful assessment of competition, and Pacific Bell's satisfaction of the collocation standards required for pricing flexibility. Further, Pac-West argues that price increases by Bell Operating Companies ("BOCs") in areas where pricing flexibility has been granted warrant re-examination of the pricing flexibility rules. The Commission should reject these claims outright. Pac-West's challenge of the collocation triggers and request for re-examination 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 Court of Appeals for the District of Columbia Circuit. Further, Pacific Bell's employed methodology is sufficient to comply with the Commission's collocation requirements and Pacific Bell has fully satisfied the operational component of the collocation standard for pricing flexibility, as proven in its petition.

¹ Comments of Pac-West Telecomm, Inc., CCB/CPD File No. 02-03 (filed Feb. 11, 2002).

II. Pac-West's Challenge to the Efficacy of the Collocation Triggers is a Collateral Attack on the Pricing Flexibility Order and should be Rejected.

Pac-West again challenges the meritocracy of the collocation triggers and ultimately the pricing flexibility rules adopted by the Commission in the *Pricing Flexibility Order*.² Its challenge is particularly incredulous 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 only a year ago.³

Specifically, Pac-West argues 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 certain market locations, or to decommission collocation facilities. These changing market conditions, Pac-West argues, warrant a re-examination of the collocation triggers as a means of measuring competition.⁴ Pac-West also argues that new regulatory requirements adopted by the Commission have negatively impacted CLECs' ability to invest in new markets or use installed collocation facilities. Further, Pac-West argues that BOCs 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

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).

⁴ Comments of PacWest at 3-5.

⁵ Comments of Pac-West at 9-10.

Commission in numerous proceedings has held that petitions challenging prior Commission decisions are impermissible collateral attacks.⁶ No matter how you couch it, 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 the Commission rejected the exact same 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 adopted by the Commission, nothing else.⁸ Pac-West's collateral challenge, therefore, should be summarily rejected.

Second, the impact of unfavorable market conditions or regulatory requirements 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

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.

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.").

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 decommissioned, the CLEC can challenge it, and importantly no CLEC has done so 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, or denial of Pacific Bell’s petition. There is no evidence that the price increases referenced by Pac-West are unreasonable or contrary to the public interest. Further, Pac-West has told only half the story by neglecting to address 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

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 Pacific Bell, 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 Pacific Bell in satisfying the collocation triggers.

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 justifiable.¹² Pac-West’s untimely request for reconsideration, therefore, must be rejected.

III. Pacific Bell’s Petitions Fully Demonstrate that the Collocation Arrangements Relied Upon Are Operational.

Pac-West argues that Pacific Bell has failed to demonstrate if the collocation arrangements identified in its petitions are or were ever operational.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, Pacific Bell is 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 Pacific Bell this information and likely would not be forthcoming in providing such information to Pacific Bell.

¹² *Pricing Flexibility Order*, ¶155.

¹³ Comments of 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.*

To satisfy the collocation requirements, Pacific Bell used its internal records and resources to identify to the best of its ability operational collocation arrangements. Specifically, Pacific Bell used its collocation database¹⁶ to identify specific collocators by wire center and determine whether alternative transport was being provided. Pacific Bell also conducted site examinations of wire centers included in its petition to verify that selected competitors had transport facilities owned by a non-Pacific Bell provider. Further, Pacific Bell provided pertinent data to each collocator upon which Pacific Bell relies to satisfy the collocation requirements. Pacific Bell determined for each collocation arrangement identified in its petition 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 Pacific Bell's petition have made such investments. Pacific Bell therefore has made a sufficient showing to satisfy the collocation standards for pricing flexibility relief.

Pac-West erroneously states that Pacific Bell was forced to withdraw the Los Angeles/Long Beach, CA MSA from its December 19, 2001 pricing flexibility petition because of flawed verification methodologies. This is simply untrue. Pacific Bell determined that certain AT&T collocation data relied upon in its December 19, 2001 petition were inaccurate due to a training error with a particular Pacific Bell site examiner that verified AT&T's, as well as other

¹⁶ As described in the Methodology section, 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.

CLECs,' collocation facilities for the Los Angeles/Long Beach CA MSA. This training error does not reflect a flawed methodology. The procedures employed by Pacific Bell are adequate to identify operational collocation arrangements, as evidenced by the fact that no CLEC in this proceeding has disputed any specific collocation data provided in Pacific Bell's petition. Pacific Bell could have simply corrected the Los Angeles/Long Beach CA MSA collocation data provided in its December 19, 2001 petition. However, out of an abundance of caution, Pacific Bell chose to withdraw the entire Los Angeles/Long Beach CA MSA and re-examine each wire center that it reported as having one or more collocation arrangements to ensure that there were no other training errors or mistaken site evaluations. Pacific Bell has done so and is confident in the collocation data provided in its pricing flexibility petition.

IV. Conclusion

Pac-West has offered no legitimate justification for denial of Pacific Bell's pricing flexibility petition. Instead the opponent raises collateral attacks on the pricing flexibility rules which are inapposite to this proceeding and therefore must be rejected. Further, contrary to the Pac-West's claims, Pacific Bell's petition fully satisfies the operational component of the Commission's collocation standards.

Respectfully Submitted,

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