

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

In the Matter of)
)
BellSouth Telecommunications Inc.) WCB/Pricing 02-24
)
Petition For Pricing Flexibility for Special)
Access and Dedicated Transport)

REPLY

BellSouth Telecommunications Inc. (“BellSouth”) hereby replies to the joint comments of Focal Communications Corporation, Pac-West Telecomm, Inc. and U.S. LEC Corp. (collectively “Joint Commenters”) on the Petition for Pricing Flexibility filed by BellSouth on August 2, 2002.

I. INTRODUCTION

1. In accordance with the Commission’s pricing flexibility rules, on August 2, 2002, BellSouth filed for Phase I and Phase II pricing flexibility for selected MSAs. Only the Joint Commenters filed comments opposing BellSouth’s filing. They make two generic arguments. The first argument is a general complaint with the Commission’s pricing flexibility rules and triggers. The second contention reflects the Joint Commenters’ unsupported disapproval of BellSouth’s data source.

2. In this Reply, BellSouth shows that the Joint Commenters have made no substantial argument that would justify denial of the increased flexibility sought by BellSouth. The Joint Commenters’ complaints regarding the pricing flexibility rules are not germane to the issue before the Commission, *i.e.*, whether or not the showing made by BellSouth satisfies requirements for Phase I or Phase II pricing flexibility relief. To the limited extent the Joint

Commenters have attempted to address the merits of BellSouth's filing, BellSouth shows that the arguments are without merit.

II. DISCUSSION

3. Since the first petition for pricing flexibility was filed by BellSouth two years ago, invariably some party lodges a complaint against the pricing flexibility rules. Time after time, it is argued that the pricing flexibility rules and triggers do not identify markets subject to competition. The instant petition is no exception.

4. The Joint Commenters, like others before them, argue that there is insufficient competition to warrant regulatory relief in the form of pricing flexibility. They also argue that pricing flexibility has not produced the kinds of benefits anticipated by the Commission. In short, the Commission, as the Joint Commenters contend, "should decline to process further applications for pricing flexibility . . . until it has recrafted standards for pricing flexibility."¹

5. The Commission has consistently rejected collateral attacks on the pricing flexibility rules such as that lodged by the Joint Commenters. In granting BellSouth's first pricing flexibility petition the Commission stated that the only issue before it was whether the filing meets the Commission's requirements for pricing flexibility. Indeed, more recently, the Commission rejected a similar attack on the pricing flexibility rules made by the Joint Commenters with regard to a Verizon petition for pricing flexibility:

Focal Communications Corporation/Pac-West Telecomm, Inc./US LEC Corp (the "Joint Commenters") make several arguments that are no more than collateral attacks on the adequacy of the pricing flexibility rules adopted by the Commission in the *Pricing Flexibility Order*. 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. AT&T and WorldCom sought review of the *Pricing*

¹ Joint Comments at 5.

Flexibility Order in the Court of Appeals for the District of Columbia Circuit. That proceeding was the appropriate forum in which to litigate the merits of the pricing flexibility rules, and the court affirmed those rules in their entirety. Thus, to the extent that the Joint Commenters merely attack the pricing flexibility rules, we reject these arguments.² (footnotes omitted)

6. Undeterred by the Commission's rejection of the Joint Commenters' attacks on the pricing flexibility rules in the Verizon proceeding, Focal and Pac-West used the same tactic in SBC's petition for pricing flexibility, arguing that price increase where price flexibility has been granted proves that the pricing flexibility rules are not working and that the triggers are inadequate measures of competition. Again, the Commission rejected these arguments as nothing more than collateral attacks on the *Pricing Flexibility Order* and confirmed that such attacks were irrelevant to the issues in a pricing flexibility proceeding.³

7. The Joint Commenters flout the Commission's prior determinations and again raise the same attacks on the pricing flexibility rules. Such arguments have not been relevant in the past, nor are they relevant now to BellSouth's compliance with the pricing flexibility rules. Accordingly, the Commission should for a third time reject the Joint Commenters' arguments.⁴

² *In the Matter of Petition of Verizon for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD File No. 01-27, *Memorandum Opinion and Order*, 17 FCC Rcd 5359, 5363, ¶ 10 (2002).

³ *In the Matter of Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services for Ameritech Operating Companies, Pacific Bell Telephone Company, Southern New England Telephone Company, and Southwestern Bell Telephone Company*, CCB/CPD No. 01-32 *et al.*, *Memorandum Opinion and Order*, 17 FCC Rcd 6462, 6466-67, ¶¶ 11-12 (2002).

⁴ While the Joint Commenters arguments are not pertinent to the Commission's review of BellSouth's petition, even if they were they are without merit. The competitiveness of special access and dedicated transport has been repeatedly demonstrated to the Commission not only in the pricing flexibility docket but in other proceedings as well, such as the *UNE Remand*. Moreover, to the extent BellSouth has raised prices for services that are subject to pricing flexibility, such increases have been limited to month-to-month rates, which were too low. Indeed, in the *Pricing Flexibility Order*, the Commission recognized that some rates might increase. 14 FCC Rcd at 14301. Further, a principal benefit anticipated in the *Pricing Flexibility Order* would be contract tariffs that would enable the ILEC to negotiate discounted rates.
Footnote Continued

8. Equally without merit are the Joint Commenters complaints regarding BellSouth's compliance with the rules. First, the Joint Commenters complain that BellSouth does not rely on billing records to extract collocation information. They mischaracterize BellSouth's filing as relying only upon information provided at the time of an initial application for collocation. To the contrary, BellSouth relies on its collocation records, which are maintained by the Network Infrastructure Planning Group. A record for collocation is established when a carrier applies for collocation. This group manages the provisioning of the initial collocation request as well as subsequent requests for additions, modifications and removals. Thus, these collocation records provide accurate and current information regarding operational collocation arrangements.⁵ Use of this data meets the required demonstration under the Commission's rules.⁶ Indeed, given the existence of this data, it is illogical to attempt to extract similar information from billing records as the Joint Commenters suggest.

9. Furthermore, as required by the Commission's rules, every collocator was sent a copy of its information that BellSouth relied on in its petition. Not one of these collocators has filed comments in this proceeding let alone contradicted any of BellSouth's data. The Joint Commenters' objections to the collocation data are makeweight and should be rejected.

BellSouth has 7 contract tariffs for special access and dedicated transport services in effect, all of which offer volume based discounts.

⁵ As explained above, the Network Infrastructure Planning Group is responsible for tracking collocation additions, changes and removals. Because this group's function is to manage the processes necessary to implement collocation arrangements in BellSouth's network, this data must possess a high indicia of reliability. BellSouth relies on it for essential network planning and other business purposes, not just for a regulatory purpose such as this pricing flexibility petition.

⁶ BellSouth also used collocation records to support its initial petition for pricing flexibility, which was approved by the Commission nearly two years ago.

Notwithstanding the sufficiency of the collocation data that BellSouth relies upon, BellSouth's billing records also confirm that it is indeed billing each of the collocating entities identified in its Petition.

10. Finally, the Joint Commenters argue that there is no indication that BellSouth served each collocator with a copy of the petition and its information. BellSouth complied with the Commission's requirement. Attachment 1 to this Reply is an affidavit of the individual responsible for serving each party attesting to fulfillment of this requirement.

11. Accordingly, for the reasons stated above, the Commission should reject the comments of the Joint Commenters and grant BellSouth the pricing flexibility it requested.

Respectfully submitted,

BellSouth Telecommunications, Inc.

By: /s/ Richard M. Sbaratta
Richard M. Sbaratta

Its Attorney

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Date: August 29, 2002

Attachment 1

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

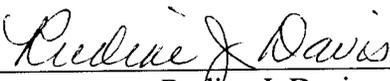
In the Matter of)
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BellSouth Telecommunications Inc.) WCB/Pricing 02-24
)
Petition For Pricing Flexibility for Special)
Access and Dedicated Transport)

Affidavit of Rudine J. Davis

My name is Rudine J. Davis. I am employed as a paralegal in the BellSouth Legal Department. I assisted with the preparation and filing of BellSouth's Petition for Pricing Flexibility, filed on August 2, 2002.

I supervised the preparation and mailing of packages to each of the collocators in the BellSouth wire centers for which relief was sought in BellSouth's Petition. Each collocating entity was sent the following: (1) a copy of BellSouth's letter requesting confidential treatment of certain information; (2) a copy of the public version of BellSouth's Petition; and (3) an excerpt from Attachment 3 indicating the wire center(s) in which that entity was collocated.

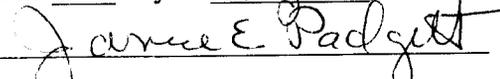
The above described documents, along with a transmittal letter, were served on each collocator by United States Mail on August 2, 2002, as certified in Attachment 4 to BellSouth's Petition.



Rudine J. Davis

Sworn to and subscribed before me

this 29 day of August, 2002.



Notary Public

My Commission Expires:

Notary Public, Gwinnett County, Georgia
My Commission Expires Feb. 19, 2004

BellSouth Reply
WCB/Pricing 02-24
August 29, 2002

CERTIFICATE OF SERVICE

I do hereby certify that I have this 29th day of August 2002 served the following parties to this action with a copy of the foregoing **REPLY** via electronic filing, facsimile and/or by placing a copy of the same in the United States Mail, addressed to the parties listed below.

+Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Room 5-B540
Washington, D. C. 20554

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/s/ Juanita H. Lee
Juanita H. Lee

+ VIA ELECTRONIC FILING
* VIA FACSIMILE AND U.S. MAIL