

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

In the Matter of)
)
BELLSOUTH TELECOMMUNICATIONS, INC.) WC Docket No. 05-148
)
Petition for Phase I Pricing Flexibility for)
Switched Services)

**COMMENTS BY
US LEC CORP.**

US LEC Corp., on behalf of itself and its operating subsidiaries¹ (collectively, “US LEC”), hereby respectfully submits comments to the BellSouth Telecommunications, Inc. (“BellSouth”) Petition for Phase I Pricing Flexibility for Switch Services filed with the Commission on March 17, 2005 (“BellSouth Petition”) pursuant to Public Notice issued on March 21, 2005² in the above-styled proceeding. US LEC is identified as an unaffiliated competitor that, along with other identified unaffiliated competitors, offers, in the aggregate, service to at least 15% of BellSouth’s customers locations in 10³ of the 36 MSAs⁴ for which BellSouth seeks Phase I pricing flexibility. Although US LEC is identified in only 10 of the 36 MSAs as being a competitor to BellSouth, US LEC, in fact, provides service in 27 of these 36 MSAs. The majority of US LEC local exchanges services to its customers are provisioned over special access facilities purchased from BellSouth in the BellSouth territories. The grant

¹ The subsidiaries listed are the ones that operate in the MSAs in which BellSouth has identified US LEC as an unaffiliated competitor: US LEC of Tennessee Inc.; US LEC of North Carolina Inc.; US LEC of Florida Inc.; and, US LEC of Alabama Inc.

² *Public Notice, Pleading Cycle Established for BellSouth Petition for Pricing Flexibility for Switched Access Services*, DA 05-740 (released March 21, 2005).

³ The 10 MSAs in which US LEC was identified are: Biloxi-Gulfport, MS; Charlotte-Gastonia, NC; Daytona Beach, FL; Gainesville, FL; Greensboro-Winston Salem- High Point, NC; Huntsville, AL; Knoxville, TN; Mobile, AL; Raleigh-Durham, NC; and Wilmington, NC.

⁴ BellSouth is asking for Phase I pricing flexibility in 34 MSAs and 2 Non-MSAs. The term “MSA” will encompass both.

of this petition may have an adverse impact on US LEC's ability to continue to be competitive in the BellSouth markets for which pricing flexibility is sought. US LEC, therefore, urges the Commission to deny the Petition.

Phase I pricing flexibility permits BellSouth and other price cap LECs to offer term and volume discounts on special access services. US LEC has found that in the areas in which BellSouth and other price cap LECs have such authority, the month-to-month rates of such services are increased with a small discount available to carriers based on the length of the term – the longer term providing the greatest discount. The affect of such offerings is that a carrier, such as US LEC, to be competitive must subscribe to the longer terms, with significant termination liabilities. By forcing US LEC to lock in these lower rates at much longer than desired terms, it eliminates US LEC's ability to take advantage of technological advances that may provide better or increased service offering to the customer and better pricing to reduce the costs of providing such services. Competition is stifled when US LEC is forced to make elections that result in service offerings that may become less competitive over time – either due to pricing or type of services available to the customer.

As example of the competitive harm that may arise due to these volume and terms discounts, one such volume and term discount tariffed discount plan filed by BellSouth pursuant to pricing flexibility authority was found to be discriminatory and anti-competitive.⁵ The complaining party in that proceeding was AT&T. With the recent announcements of mergers between SBC and AT&T and Verizon (or Qwest) and MCI (AT&T and MCI being two of the largest purchasers of special access services), US LEC

⁵ *Memorandum Opinion and Order, AT&T Corp. v. BellSouth Telecommunications, Inc.*, File No. EB-04-MD-010 (FCC 04-278, Dec. 8, 2004).

is concerned that there will be little, if any, competitive “muscle” to constrain BellSouth pricing flexibility tariff filings that have such anti-competitive effects if additional pricing flexibility is granted to BellSouth.

Another constraint on the special access rates is the availability of access to high capacity loops and dedicated transport as unbundled network elements (“UNE”). These UNE loops and dedicated transport, because they are based on TELRIC-pricing, are generally available at significantly lower rates than the same facilities provisioned as special access services. When the price cap LEC has an obligation to provide such UNE loops and dedicated transport in a wire center, the price cap LEC is more apt to retain special access pricing at more competitive rates to encourage CLECs to purchase special access services rather than UNEs. With the new UNE rules in which access to high capacity loops and dedicated transport will be eliminated, the price cap LECs will have less incentive to provide competitive term and volume discount plans for special access services. US LEC, therefore, is apprehensive that the potential loss of UNEs availability in wire centers within the MSAs identified in the BellSouth Petition in combination with the grant of pricing flexibility sought will result in increased special access rates that will adversely affect US LEC ability to successfully compete against BellSouth in US LEC’s existing markets.

In light of the uncertainty surrounding the telecommunications industry with the recent adoption of the TRRO,⁶ the Commission’s reconsideration of certain of the pricing

⁶ *Order on Remand, Unbundled Access to Network Elements; Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 0-313, CC Docket No. 01-338 (released. Feb. 4, 2005) (“TRRO”).

flexibility rules,⁷ and the possible re-write of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, the Commission should not grant the BellSouth Petition or any additional petitions for pricing flexibility by any price cap LEC. US LEC, therefore, requests that the Commission deny the BellSouth Petition.

Respectfully submitted,

US LEC CORP., on behalf of itself and
its operating subsidiaries

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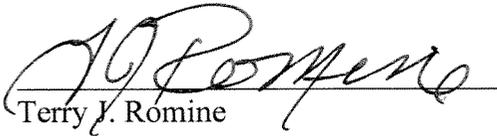
Date: April 1, 2005

⁷ *Order and Notice of Proposed Rulemaking, In the Matter of Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, *AT&T Corp. Petition for Rulemaking Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593 (FCC 05-18, released Jan. 31, 2005).

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on April 1, 2005, she caused the foregoing
Comments by US LEC Corp. to be forwarded via first class, postage prepaid U.S. mail to

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