

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

SEP 18 2000  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers	)	CCB/CPD File No. 98-63
	)	
BellSouth Telecommunications, Inc. Petition For Pricing Flexibility for Special Access And Dedicated Transport	)	CCB/CPD File No. 00-20
	)	
BellSouth Telecommunications, Inc. Petition For Pricing Flexibility for Switched Access	)	CCB/CPD File No. 00-21
	)	

**OPPOSITION OF THE UNITED STATES TELECOM ASSOCIATION TO MOTION OF AT&T AND WORLDCOM FOR A MORATORIUM ON PRICING FLEXIBILITY PETITIONS PENDING JUDICIAL REVIEW**

The United States Telecom Association (USTA) respectfully submits its opposition to a motion of AT&T and WorldCom for a moratorium on pricing flexibility petitions pending judicial review filed in the above-referenced dockets. USTA is the nation's oldest trade association for the local exchange carrier (LEC) industry. USTA represents more than 1,200 telecommunications companies worldwide that provide a full array of voice, data and video services over wireline and wireless networks. USTA's membership includes those price cap carriers eligible to seek pricing flexibility pursuant to the Commission's August 27, 1999 Pricing Flexibility Order.<sup>1</sup> The AT&T/WorldCom motion is fatally flawed, both procedurally and substantively, and should be summarily rejected by the Commission.

<sup>1</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

In a motion filed September 8, 2000, AT&T and WorldCom are requesting that the Commission stay the effectiveness of the Pricing Flexibility Order until sixty days after the D.C. Circuit rules on their pending petitions for judicial review of the Order. This would preclude price cap carriers from filing pricing flexibility petitions pursuant to the Order. It is well established that the Commission must apply the four-prong test of *Virginia Jobbers Association v. FPC*, 259 F. 2d 921 (D.C. Cir. 1958) in considering whether a stay is appropriate.<sup>2</sup> AT&T and WorldCom have failed to show that their request meets any prong of the test.

AT&T and WorldCom make no assertion that they are likely to succeed on the merits. AT&T and WorldCom rely on the same arguments they have made at every stage of this proceeding, which the Commission has considered and rejected. AT&T and WorldCom have failed to show that they will suffer any irreparable harm absent a stay. While they mention that there may be added administrative proceedings in the event that a pricing flexibility petition becomes effective and the Court ultimately vacates the Pricing Flexibility Order, such inconveniences hardly amount to the irreparable harm that must be shown to support a request for a stay. Likewise, AT&T and WorldCom fail to show that others will be harmed absent a stay. As will be explained below, it is more likely that consumers will be harmed if a stay is granted and the benefits of the competitive market are denied them. Finally, contrary to the claims of AT&T and WorldCom, granting a stay would be contrary to the public interest. Implementation of the Pricing Flexibility Order will allow all providers, not just newer entrants, the opportunity to address specific customer needs and to provide new choices for consumers.

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MSA and Interexchange Carrier Purchase of Switched Access Services Offered by Competitive Local Exchange Carriers. CC Docket Nos. 96-262, 94-1, 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].

<sup>2</sup> In considering whether a stay pending appeal is appropriate, the Commission must consider the following four factors: 1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; 2) The likelihood that the moving party will irreparably be harmed absent a stay; 3) the prospect that others will be harmed absent a stay;

Such opportunities are already long overdue. The Commission should not add to this delay by entertaining the motion filed by AT&T and WorldCom.

Lacking the necessary procedural arguments, AT&T and WorldCom attempt to compensate with hyperbole and drama regarding the alleged dire consequences which could result if a pricing flexibility petition were to be implemented. Even a cursory reading of the Order demonstrates that the “extraordinary and unprecedented breadth of relief” and the removal of “all rate regulation” alleged by AT&T and WorldCom are simply not true. The Pricing Flexibility Order continues a process the Commission began in the early 1990’s when it moved to a price cap regulatory system designed to replicate competitive market forces by encouraging incentive-improvement benefits. In 1997, the Commission adopted a market-based approach to the regulation of interstate access charges to accelerate the development of competition and to ensure that its regulations did not unduly interfere with the operation of markets as competition develops. The Commission envisioned that as competitive forces replace regulatory forces in controlling prices, price cap regulation would transition away. It also recognized that pricing flexibility is an integral part of the market-based approach. “Economic logic holds that giving incumbent [LECs] increased pricing flexibility will permit them to respond to competitive entry, which will allow prices to move in a way that they would not have moved were the pricing restrictions maintained.”<sup>3</sup>

The Pricing Flexibility Order permits limited pricing flexibility only *after* specific competitive showings are met. This conservative approach permits the Commission to begin the transition from regulation to market forces in areas where competition is proved. The showings

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and, 4) the public interest in granting a stay. USTA maintains that the legal requirements for granting the stay must be met regardless whether it is called a stay or a moratorium.

are rigorous. To obtain Phase I relief for special access services, the price cap carrier must show that competitors have made irreversible investments in the facilities needed to provide the services for which relief is sought. To obtain Phase II relief for special access services, the price cap carrier must show that competitors have established a significant market presence in the provision of the services for which relief is sought. If the showings are made, consumers will be the beneficiaries of increased competitive choices. Under Phase I, a price cap carrier is allowed to offer contract tariffs and volume and term discounts, just as its competitors already offer. Under Phase II, the price cap LEC is permitted to raise and lower prices to better respond to the prices offered by competitors. The Commission has only completed the framework for Phase I for switched access services. Under Phase I for switched access services, the price cap carrier must show that competitors, in aggregate, offer service over their own facilities to at least fifteen percent of incumbent LEC customer locations in a particular MSA. If the showing is made, a price cap carrier is allowed to file, on one day's notice, tariffs offering volume and term discounts as well as contract tariffs. The contract tariffs must be removed from price cap regulation. Thus, where competition is demonstrated, ultimately there will be more choices and lower prices as price cap LECs are provided the opportunity to compete on a more equal footing with their currently unregulated competitors. Even under Phase II, the price cap carrier remains under statutory obligations to charge just, reasonable and nondiscriminatory rates and the Commission retains its authority to enforce those statutory obligations.

The Commission has rejected similar attempts to stay its access charge proceedings, acknowledging that it is not in the public interest to deny the benefits to ratepayers that it sought

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<sup>3</sup> Access Charge Reform. Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, *First Report and Order*, FCC 97-158 (rel. May 16, 1997) at ¶ 270.

to provide in its Order.<sup>4</sup> The Pricing Flexibility Order was adopted to reduce inequities caused by unnecessary regulation in areas where competition can be demonstrated based on specific and verifiable triggers. It is past time to permit pricing flexibility petitions to become effective and to allow customers to begin reaping the benefits of competition. The AT&T and WorldCom motion must be denied.

Respectfully submitted,

**UNITED STATES TELECOM ASSOCIATION**

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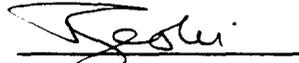
September 18, 2000

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<sup>4</sup> Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, *Order*, FCC 97-216 (rel. June 18, 1997) at ¶ 36.

**CERTIFICATE OF SERVICE**

I, Meena Joshi, do certify that on September 18, 2000, Reply Comments Of The United States Telecom Association was either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the the attached service list

  
Meena Joshi