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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Applications for Review –	)	CC Docket No. 01-22
BellSouth Petition for Pricing Flexibility	)	
for Special Access and Dedicated	)	
Transport Services	)	

OPPOSITION

BellSouth Telecommunications Inc. ("BellSouth") hereby submits its Opposition to the Applications for Review by AT&T Corp. ("AT&T") and WorldCom, Inc. ("WorldCom") of the Common Carrier Bureau's ("Bureau") December 15, 2000 *Order*[1] granting BellSouth's petition for pricing flexibility in certain BellSouth MSAs.

On December 15, 2000, the Bureau issued its *Order* granting BellSouth's request for pricing flexibility for special access and dedicated transport for certain MSAs.[2] The Bureau found that BellSouth had satisfied the relevant triggers set forth in the Commission's rules[3] in the MSAs for which BellSouth sought relief.

AT&T and WorldCom, relentless in their opposition to the Commission's pricing flexibility rules, seek review of the Bureau's *Order*. Their applications are but one more

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1 *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,* DA 00-2793, released December 15, 2000 ("*Order*").

2 BellSouth petitioned for Phase I pricing flexibility in 39 MSAs for special access and dedicated transport services and 37 MSAs for special access end user channel terminations. BellSouth petitioned for Phase II pricing flexibility in 38 MSAs for special access and dedicated transport and 26 MSAs for special access end user channel terminations.

3 *See* 47 C.F.R. §§ 69.701-731.

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occasion to attack the Commission's pricing flexibility rules and to repeat the same specious arguments that they have previously made against BellSouth's petition. These arguments were without substance in the past and, unlike wine, have not improved with age.

Once again, in its application, AT&T attempts to use BellSouth's pricing flexibility petition as a vehicle to collaterally attack the Commission's pricing flexibility rules. Simply put, the validity of the pricing flexibility rules are not at issue here. AT&T challenged the pricing flexibility standards in its appeal of the Commission's pricing flexibility decision.[4] In response to AT&T's recitation of virtually the identical arguments it has lodged in its appeal, the Bureau properly concluded "that the court proceeding is the appropriate forum in which to litigate the merits of the underlying pricing flexibility rules promulgated by the Commission."[5] On February 2, 2001, the Court of Appeals for the District of Columbia resoundingly rejected AT&T's challenge to the Commission's pricing flexibility order.[6] AT&T's collateral attack on the Commission's pricing flexibility decision is procedurally improper and substantively incorrect and, therefore, is entitled to no consideration by the Commission.

Apart from the irrelevance of AT&T's attack, it is premised on claims that are substantively incorrect. Typical of AT&T's grousing is its repeated claim that pricing flexibility results in the deregulation of and confers "effective" non-dominant status on BellSouth. The Commission's decision to grant LEC's pricing flexibility was a permissible exercise of its broad authority to ensure that rates are just and reasonable. The Commission most assuredly did not

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4 *See MCI WorldCom Inc. v. FCC,* Nos. 99-1395, *et al.* (D.C. Cir.)

5 *Order* ¶ 23.

6 *WorldCom, Inc., et al. v. FCC,* Nos. 99-1395 *et al.*, 2001 WL 85685 (D.C. Cir. Feb. 2001) (*"WorldCom v. FCC"*).

"deregulate" LECs. LECs are still required to file tariffs that must be generally available regardless of whether the LEC satisfies the triggers set forth in the in the Commission's rules. As the Court noted, "[t]his [the requirement to file tariffs] is not insignificant; tariff filing is the 'centerpiece of .. common carrier regulation.'"[7]

Likewise, the triggers adopted by the Commission were based on substantial evidence. As the Court of Appeals found, the Commission permissibly relied on collocation as an administratively workable indicator of irreversible investment in competitive facilities. The Commission triggers "consider the extent to which competitors have invested in competitive facilities and established collocation arrangements within an MSA."[8] The Court agreed with the Commission's view that "collocation can reasonably serve as a measure of competition in a given market and predictor of competitive constraints upon future LEC behavior."[9]

The Court found the Commission's pricing flexibility decision and the resulting rules to reflect the sound and reasonable exercise of the Commission's expert judgment. They were based on a reasoned consideration of all relevant factors and were amply supported by the record. None of AT&T's carping alters this conclusion.[10]

Equally unavailing are AT&T's and WorldCom's complaint that the data accompanying BellSouth's petition was insufficient. Both AT&T and WorldCom assert that the absence of

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7 *WorldCom v. FCC*, No. 99-1395, 2001 WL 85685, at *10 (D.C. Cir. Feb. 2, 2001).

8 Brief for Federal Communications Commission, *MCI WorldCom Inc. v. FCC*, Nos. 99-1395 *et. al.*, at 17 (D.C. Cir. filed Sept.8, 2000).

9 *Worldcom v. FCC*, No. 99-135, 2001 WL 85685, at *9 (D. C. Cir. Feb. 2, 2001).

10 Equally improper is AT&T's complaint regarding the revenue allocation rule adopted by the Commission. *AT&T Application for Review* at 15. It is nothing more than another collateral (Footnote Continued)

revenue data at the wire center level make it impossible to verify that BellSouth has satisfied the pricing flexibility triggers. AT&T and WorldCom are wrong. In the first instance, nothing in the Commission's pricing flexibility rules confers any substantive rights upon participating parties such as AT&T and WorldCom other than for such parties to receive their specific data upon which a petitioning carrier relies. BellSouth met that requirement. It is neither required nor necessary for BellSouth to satisfy the data desires of AT&T and WorldCom. All that is relevant here is whether the Bureau had sufficient information to evaluate BellSouth's petition.

BellSouth demonstrated that the data that it provided with its pricing flexibility petition fully complied with the requirements of the Commission's rules. The public version of BellSouth's petition identified by name each wire center within the MSA upon which BellSouth relied for its revenue demonstration. This same version of the petition further provided the percentage of MSA service revenues (end user channel terminations and other special access/dedicated transport) represented by the wire centers so identified. Parties that accessed the confidential version of BellSouth's filing pursuant to the Bureau's protective order, which included AT&T and WorldCom, received the quantification of revenue at the MSA level, which is further divided into end user channel terminations and other special access/dedicated transport revenue. Thus, reviewing parties could calculate the revenue by service type collectively attributable to the wire centers on which BellSouth relies for its showing in each MSA.

The Bureau made a reasoned determination supported by an adequate record that BellSouth's petition satisfied the requirements of the Commission's pricing flexibility rules.

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attack on the Commission's pricing flexibility rules and has absolutely nothing to do with whether BellSouth's petition satisfied the triggers set forth in the rules.

Nothing in AT&T's or WorldCom's applications show that the Bureau erred. All that AT&T has to offer here is that the wire center data are necessary to check BellSouth's mathematical calculations. AT&T's argument is makeweight. The revenue calculations in BellSouth's petition do not involve higher order mathematics, mathematical modeling or complex statistical formulas that might otherwise lend themselves to error.

No more compelling is WorldCom's argument that the absence of wire center data shifts the burden to participating parties to create revenue data from their own records on a wire center basis.[11] BellSouth's petition provided sufficient information to demonstrate compliance with the pricing flexibility rules. WorldCom was certainly free to use information in its possession to challenge BellSouth's petition, but the burden was on BellSouth to demonstrate to the Bureau's satisfaction that it met the triggers in the pricing flexibility rules. The fact that WorldCom was unsatisfied with BellSouth's data submission has no bearing on the adequacy of BellSouth's petition nor on the reasonableness of the Bureau's decision.

Finally, WorldCom argues that BellSouth incorrectly included a variety of packet-based data services in its petition. WorldCom claims that only price cap services are eligible for pricing flexibility and that packet switching is not a price cap service. WorldCom, thus, argues

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[11] Both WorldCom and AT&T attempt to suggest that there must be something wrong with either the pricing flexibility rules or BellSouth's petition because of the number of wire centers that qualified for regulatory relief. The pricing flexibility rules do not limit the absolute number of MSAs that a LEC can apply for pricing flexibility. Instead, the LEC can apply for pricing flexibility for any and all the MSAs in which it can demonstrate that the triggers have been satisfied. The only expectation the Commission could reasonably have regarding its rules is that LECs would file petitions for all MSAs that qualified for relief under its rules. Moreover, despite the innuendo of AT&T's and WorldCom's applications, there is nothing startling about the number of MSA's in BellSouth's petition, particularly when it is considered that the petition was filed nearly a year following the Commission's pricing flexibility order.

that BellSouth's Connectionless Data Service, Asynchronous Transfer Mode Service and Frame Relay Service are not eligible for pricing flexibility. WorldCom is wrong.

All of the services included in BellSouth's pricing flexibility petition were subject to the Commission's price cap rules and included in BellSouth's price cap indices. Indeed, the services identified by WorldCom have been included in the price cap baskets since the July 1996 annual access filing.

WorldCom is mistaken in its belief that all packet switching services are excluded from price cap regulation. When the Commission adopted price cap regulation for LECs, it excluded the existing packet switched access service from price cap regulation because such service had not been subject to Commission scrutiny when initially filed.[12] The price cap rules, however, require that every new service "must be included in the affected basket at the first annual price cap tariff filing following completion of the base period in which they are introduced"[13] unless the Commission designates by order that a service be excluded from price cap regulation.[14] All of the data services questioned by WorldCom were subject to the scrutiny of the Commission at the time they were filed and brought within the Trunking Basket price cap index in accordance with Section 61.42(g) of the Commission's rules. In no instance did the Commission issue an order excluding such services from price cap regulation.[15] Indeed, for BellSouth to have

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12 *In the Matter of Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, *Second Report and Order*, 5 FCC Rcd 6786, at 6810, ¶ 195 (1990) (*"LEC Price Cap Order"*).

13 47 C.F.R. § 61.42 (g).

14 47 C.F.R. § 61.42 (f).

15 Even if these data services had been excluded from price cap regulation, removing them from the list of qualified services would not alter the number of MSAs in which BellSouth would (Footnote Continued)

excluded the data services from the trunking basket, in the absence of such an order, would have been a violation of the price cap rules.

Accordingly, the Commission should deny the Applications For Review filed by AT&T and WorldCom.

Respectfully submitted,

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have satisfied the pricing flexibility triggers. In total, these services only account for approximately $8 million in revenues in all of the MSAs. Removal of these revenues would not have the impact WorldCom surmises.

CERTIFICATE OF SERVICE

I do hereby certify that I have this 13th day of February 2001 served the following parties to this action with a copy of the foregoing **OPPOSITION** hand delivery or placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.

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* **VIA HAND DELIVERY**