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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of	)	
	)	
BellSouth Telecommunications, Inc.	)	CC Docket No. 01-22
Petition for Pricing Flexibility for Special Access	)	
And Dedicated Transport Services	)	

UNITED STATES TELECOM ASSOCIATION
OPPOSITION TO APPLICATIONS FOR REVIEW

The United States Telecom Association (USTA) respectfully submits its opposition to Applications for Review filed in the above-referenced proceeding. 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 carriers subject to price cap regulation that are eligible to seek pricing flexibility pursuant to the Commission's August 27, 1999 Pricing Flexibility Order.[1]

On January 16, 2001 AT&T and WorldCom both filed Applications for Review of the Common Carrier Bureau decision granting BellSouth's petition for pricing flexibility.[2] The AT&T and WorldCom applications are virtually identical and repeat the same arguments they have made throughout this proceeding questioning the efficacy of the Commission's pricing flexibility mechanism as being inadequate to demonstrate competition. Hopefully, the U.S. Court of Appeals for the District of Columbia Circuit has put a stop to their relentless self-

[1] 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 MSA and Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, CC Docket No. 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].
[2] BellSouth Petition for Pricing Flexibility for Special Access and Dedicated Transport Services, *Memorandum Opinion and Order,* CCB/CPD No. 00-20 (rel. Dec. 15, 2000).

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serving attacks on the Commission's pricing flexibility rules. In its decision in the case *WorldCom, Inc. v. FCC,* Nos. 99-1395, *slip op.* (D.C. Cir. Feb. 2, 2001), the Court rejected WorldCom's appeal of the Pricing Flexibility Order. "We hold that the FCC's decision to grant additional pricing flexibility to incumbent LECs through a series of collocation based triggers, deregulation of new services, and deaveraging of rates was neither arbitrary and capricious nor contrary to law. The FCC made a reasonable policy determination that collocation was a sufficient proxy for market power in determining whether to grant pricing flexibility to LECs and sufficiently explained the basis for its decision to grant immediate pricing flexibility for some services." *Slip op.* at 2,3. The Court agreed with the Commission's determination that the presence of substantial sunk investment and the resulting potential for entry into the market can limit anticompetitive behavior by LECs. "Therefore, collocation can reasonably serve as a measure of competition in a given market and predictor of competitive constraints upon future LEC behavior." *Slip op.* at 14. The Court also upheld the Commission's decision to offer pricing flexibility on an MSA-wide basis. Given the Court's support for the Commission Order, time and resources could be better spent competing to provide special access services in the marketplace than in responding again to the same exaggerated and unsubstantiated claims of AT&T and WorldCom. The Applications for Review should be dismissed.

One issue in particular bears specific explanation. WorldCom claims that BellSouth incorrectly included packet-based data services in its petition because these type services are not eligible for pricing flexibility. WorldCom's argument is incorrect. When the Commission adopted price cap regulation for LECs, it excluded the existing packet switched access services from price cap regulation because such services had not been subject to Commission scrutiny when initially filed. 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 the base period in which they are introduced unless the Commission designates by order that a service be excluded from price cap regulation.[3] BellSouth complied with the Commission's price cap rules regarding the treatment of packet based services. Accordingly, such services were correctly included in BellSouth's petition.

The Bureau decision granting BellSouth's petition for pricing flexibility was correct. BellSouth's petition met the specific requirements of the Pricing Flexibility Order. The arguments raised by AT&T and WorldCom are self-serving. Because they are competitors of the LECs in the provision of special access services, they fear competitive losses if price cap LECs are able to compete on a more equal basis. Competition is supposed to benefit consumers by providing them with more choices and the prospect of lower prices. Consumers are harmed if they are not able to take advantage of competition because unnecessary regulatory constraints impede the ability of certain competitors to address their needs. Competition is not intended to benefit one set of competitors. The record is clear that the market for special access services is

[3] 47 C.R.R. § 61.42(f) and (g).

competitive. The Bureau and the Commission are to be applauded for implementing a policy that relies on market forces rather than regulation to ensure efficient pricing, production and investment. The applications for review should be denied.

Respectfully submitted

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February 13, 2001

CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on February 13, 2001, United States Telecom Association Opposition To Applications For Review was either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the attached service list.

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