

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

In the Matter of )  
 )  
BellSouth Telecommunications, LLC ) Transmittal No. 106  
Revisions to Tariff FCC No.1 )

**BELLSOUTH’S OPPOSITION TO SPRINT’S PETITION TO SUSPEND AND  
INVESTIGATE**

Pursuant to Section 1.773(b) of the Commission’s Rules,<sup>1</sup> BellSouth Telecommunication, LLC (“BellSouth”) files this reply in opposition to the Sprint Corporation (“Sprint”) Petition to Suspend and Investigate BellSouth’s September 17, 2015 tariff filing.<sup>2</sup> In the above-referenced tariff transmittal, BellSouth proposes clarifications to its Tariff F.C.C. No. 1 involving its Area Commitment Plan (“ACP”) to elucidate how BellSouth’s billing system applies ACP credits, as well as how ACP credits are calculated when a Service Assurance Warranty (“SAW”) credit applies to the same rate elements. These clarifications are being made to alleviate customer questions and confusion involving the calculation of ACP credits and shortfalls. The primary claim of Sprint’s Petition is that BellSouth “proposes a *new process* for applying service discounts and outage credits that will have the effect of unreasonably reducing the volume/term discounts due to customers of BellSouth’s special access services.”<sup>3</sup> Sprint’s assertions are simply false. BellSouth’s proposed tariff language would simply explain in greater detail a methodology that

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<sup>1</sup> 47 C.F.R. §1.773(b).

<sup>2</sup> Sprint Petition to Suspend and Investigate (filed September 24, 2015) (“Petition”).

<sup>3</sup> Petition at 1 (*Emphasis added*).

has been applied uniformly since the ACP became effective in 1993. In fact, it is Sprint that is proposing a new process. In any case, Sprint's assertions fail to establish grounds for suspension and investigation under Section 1.773 of the Commission's rules.

**Standard of Review:**

BellSouth's tariff is "considered prima facie lawful, and will not be suspended by the Commission unless [Sprint's] petition shows that the support information required in § 61.49(b) was not provided" (Sprint does not dispute that BellSouth provided this information), "or unless [Sprint's] petition . . . shows each of the following:" (1) "That there is a high probability the tariff would be found unlawful after investigation"; (2) "That the suspension would not substantially harm other interested parties"; (3) "That irreparable injury will result if the tariff filing is not suspended"; and (4) "That suspension would not otherwise be contrary to the public interest."<sup>4</sup> Sprint has not even attempted to demonstrate these factors, nor could it. As demonstrated below, BellSouth's revised tariff is clearly lawful; suspension would harm other interested parties; Sprint would not suffer irreparable harm absent suspension; and suspension would clearly not serve the public interest.

To begin with, Sprint has not identified any legitimate basis on which BellSouth's tariff could be found unlawful, let alone a "high probability" that it would be found unlawful.<sup>5</sup> Indeed, the Tariff Transmittal does not establish a new process but merely seeks to clarify the terms of an existing tariffed process. BellSouth's ACP credits have always applied to local channels, mileage and multiplexer rate elements. These credits are applied by state, zone and circuit length

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<sup>4</sup> 47 C.F.R. § 1.773(a)(iv). See also *American Broadcasting Cos. v. FCC*, 662 F.2d 155 (2d Cir. 1981) (parties seeking investigation, suspension or rejection of a tariff filing must show that the proposed tariff revisions raise "substantial questions of lawfulness.").

<sup>5</sup> 47 C.F.R. § 1.773(A)(1)(iv).

on a monthly basis. For instance, if 30% of the local channels reside in Florida, 30% of the credits for local channels will be applied to Florida local channels. These credits thus reflect the buying patterns of the customer. This is not a new process. This is how BellSouth's billing system applies and has applied these credits since BellSouth originally filed the ACP more than two decades ago. The ACP process sets a reasonable practice that ensures that ACP credits are given to customers that make volume and term commitments; SAW credits are issued for service outages. The ACP provides a monthly snapshot of the customer's buying behavior and applies the credits proportionately. In situations in which a SAW credit is due on the same circuit as an ACP credit, the credits are adjusted to ensure that the overall credits do not exceed the monthly rate for the applicable rate elements. This approach is consistent with the SAW tariff, which provides that if a rate element is subject to both a SAW and ACP credit during the same billing period, the total amount of the combined credits shall not exceed the monthly charge for that rate element.<sup>6</sup> The terms associated with ACP and SAW are deemed both lawful and presumed lawful under the Commission's rules. There is no basis to conclude that BellSouth's proposed clarifications render the existing tariffed terms unlawful.

Nor is there any basis to conclude that the balance of harms favors suspension. Sprint fails to demonstrate that "irreparable injury will result if the tariff filing is not suspended."<sup>7</sup> Indeed, since the filing does not change the application of the tariff, no "harm" at all will result from the filing.<sup>8</sup> Sprint expects that in exchange for meeting its volume and term commitment, it

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<sup>6</sup> See Tariff F.C.C. No. 1, § 2.4.4(B)(18).

<sup>7</sup> 47 C.F.R. § 1.773(A)(1)(iv).

<sup>8</sup> Indeed, Sprint's flippant assertion that "[b]ecause of the lack of competition in the special access market, Sprint has little choice than to obtain the bulk of its special access facilities from the dominant Bell Operating Companies (BOC)" (Petition at 2) is completely inapposite to Sprint's own competitive experience where just two years ago Sprint announced that it

will receive the full dollar value of the ACP credits from BellSouth. The ACP is meant to provide credits up to the full value of the monthly rate element. If BellSouth experiences a service problem which generates a SAW credit, it may combine the ACP credit and the SAW credit to equal, at maximum, the monthly charge for the affected rate elements (local channel, multiplexer or channel mileage charges). Sprint will continue receiving that value, just as it has for the 22 years the ACP tariff has been on file. By contrast, applying the ACP, as Sprint requests, would dramatically modify how the tariffed ACP works and place BellSouth in the untenable position of having to pay Sprint in excess of the monthly rate elements – a resultant windfall. There is no basis for this skewed result.

Indeed, Sprint acknowledges BellSouth should not be required to issue credits in excess of the monthly rate for affected rate elements.<sup>9</sup> Yet, despite that acknowledgement, Sprint argues that “where both an ACP discount and a SAW credit are due, any ‘excess’ ACP discounts should be applied to other circuits (*even if BellSouth did not originally identify those SAW-eligible circuits as part of the ACP-eligible bucket of circuits*) on the customer’s account.”<sup>10</sup> Sprint’s request that the ACP credits be applied to other “unidentified” circuits is not how the plan works and can not remotely be construed from the tariff language. In fact, such an interpretation would be unworkable in that applying the ACP to any “unidentified” circuits would be completely

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“expect[ed] 90 percent of its backhaul to be driven by Ethernet over fiber and the remaining over microwave” – alternatives to ILEC legacy TDM-based services. *See* Phil Goldstein, Sprint plans to use 2.5 GHz spectrum to catch up to Verizon, AT&T in LTE, FierceWireless (Aug. 29, 2013), available at [http://fiercewireless.com/story/sprint-plans-use-25-ghz-spectrum-catch-verizon-att-lte/2013-08-29?utm\\_source=rss&utm\\_medium=rss](http://fiercewireless.com/story/sprint-plans-use-25-ghz-spectrum-catch-verizon-att-lte/2013-08-29?utm_source=rss&utm_medium=rss) (*Last checked September 26, 2015*). For the same reason, Sprint’s assertion that the effect of the filing is that “BellSouth would reduce the ACP discount” Sprint receives is also false. As discussed above, the discount would be exactly the same as it would have been without the filing.

<sup>9</sup> Petition at 2.

<sup>10</sup> Petition at 3 (*Emphasis added*).

arbitrary. *Which circuits would be identified? Who would have that obligation to identify the additional circuits? What if another customer did not have other circuits? What would be the calculation in that instance?*<sup>11</sup> These questions demonstrate that what Sprint might prefer here would just cause more confusion and could actually harm other ACP customers. The clarifications contained in the Tariff Transmittal are meant to clarify the process and establish one clear set of rules going forward. Such a result is clearly in the public interest.

Sprint also asserts that ACP credits should be allocated by region, rather than by state. Here, not only is Sprint challenging a process that has been in place since the ACP tariff was filed, that aspect of the process is explicit in the existing tariff language. The tariff provides: “Credit and shortfall amounts will be distributed to billing areas based on each billing area’s portion of a Customer’s regional ACP eligible in-service units. *Each state in the region is considered to be one billing area.*”<sup>12</sup> BellSouth’s filing has not changed that language in any way.

Finally, a suspension must not be “contrary to the public interest” and must not “substantially harm other interested parties.”<sup>13</sup> But Sprint’s Petition fails to satisfy these standards either. Suspension of the tariff, and forestalling the needed clarifications, would harm AT&T and other parties by allowing uncertainty to remain regarding the application of the credits – which would clearly not be in the public interest.

For the foregoing reasons, the Commission should reject Sprint’s Petition.

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<sup>11</sup> Indeed, BellSouth would likely face allegations from other ACP customers - who did not have other unidentified circuits and thus could not qualify for the same credits that Sprint seeks to obtain - that BellSouth is going outside the terms of its ACP tariff by applying the credit to “unidentified” circuits/rate elements.

<sup>12</sup> Tariff F.C.C. No. 1, § 2.4.8(B) (*Emphasis added*).

<sup>13</sup> 47 C.F.R. § 1.773(A)(1)(iv).

Respectfully submitted,

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