Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	**)**	
	)	
BellSouth Tariff FCC No. 1	**)**	**Transmittal No. 635**
	)	

WORLDCOM PETITION TO REJECT OR,
IN THE ALTERNATIVE, SUSPEND AND INVESTIGATE

I. Introduction and Summary

WorldCom, Inc. (WorldCom), pursuant to Section 1.773 of the Commission's Rules, hereby petitions the Commission to reject or, in the alternative, suspend and investigate the above-captioned transmittal filed by BellSouth Telecommunications, Inc. (BellSouth) on May 13, 2002.[1]

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[1] Rejection of a proposed tariff or proposed changes to an existing tariff is warranted when the proposal is prima facie unlawful in that it can be demonstrated that it conflicts with the Communications Act or a Commission, rule, regulation or order. See, e.g., American Broadcasting Companies, Inc. v. FCC, 633 F.2d 133, 138 (D.C.Cir. 1980); Associated Press v. FCC, 448 F.2d 1095, 1103 (D.C.Cir. 1971); MCI v. AT&T, 94 FCC 2d 332, 340-41 (1983); AT&T, 67 FCC 2d 1134, 1158 (1978), recon. denied, 70 FCC 2d 2031 (1979).

Suspension and investigation of a proposed tariff or tariff modification is warranted when significant questions of unlawfulness arise in connection with the tariff. See AT&T Transmittal No. 148, Memorandum Opinion and Order, FCC 84-421 (released Sept. 19, 1984); ITT, 73 FCC 2d 709, 719 (1979); AT&T, 46 FCC 2d 81,86 (1974); see also Arrow Transportation Company v. Southern Railway Company, 372 U.S. 658 (1963).

In Transmittal No. 635, BellSouth proposes to substantially revise Section 2.4.1(A) of its interstate access tariff. The proposed tariff revisions would increase substantially the number of customers from whom BellSouth could request a security deposit. Whereas the existing tariff language specifies that BellSouth may request a security deposit from a new customer only if that customer does not have established credit, the language proposed in Transmittal No. 635 would also permit BellSouth to request a security deposit from new customers "[b]ased on [BellSouth's] review of the Customer's credit worthiness."[2] And, whereas the existing tariff language permits BellSouth to demand a security deposit only from those existing customers that have a history of late payments, the new tariff language would permit BellSouth to demand a security deposit "[i]f an existing customer's credit worthiness decreases and/or if its gross monthly billing has increased beyond the level used to determine the initial security deposit . . . ."[3]

The Commission should reject or, in the alternative, suspend and investigate BellSouth Transmittal No. 635 because (1) Transmittal No. 635 violates a Commission prescription; (2) the proposed tariff language is unjust and unreasonable in violation of Section 201(b) of the Act; and (3) BellSouth has failed to make the showing required by the Commission's "substantial cause" test.

I. Transmittal No. 635 Violates a Commission Prescription

[2] Transmittal No. 635, 4th revised page 2-21.

[3] Id.

The existing security deposit language in Section 2.4.1(A) of BellSouth's interstate access tariff was prescribed by the Commission in its investigation of the post-divestiture access tariffs in 1984. In the Phase I Order, the Commission rejected the security deposit language proposed by the LECs and concluded that "Section 2.4.1(A) must be amended to allow the telco to require deposits only from an 'IC which has a proven history of late payments to the Telephone Company or does not have established credit except for an IC which is a successor of a company which has established credit and has no history of late payments to the Telephone Company . . . ."[4] Reflecting its prescription by the Commission, that language, with minor textual variations, has been found since 1984 in the interstate access tariff of BellSouth and every other ILEC.[5]

There can be no doubt that BellSouth's current tariff language was prescribed by the Commission in the Phase I Order. The Commission not only provided precise tariff language, but (1) the Commission stated that the relevant section of the LECs' tariffs "must" be amended to reflect that language;[6] and (2) the Commission made no provision for the LECs to propose or try to justify alternate tariff language.

Nor can there be any doubt that the tariff language proposed by BellSouth in Transmittal No. 635 would violate the Commission's prescription. The tariff language

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[4] Investigation of Access and Divestiture-Related Tariffs, Memorandum Opinion and Order, CC Docket No. 83-1145 Phase I, 97 FCC 2d 1082 (1984) (Phase I Order), Appendix D, discussion of Section 2.4.1(A) (emphasis added).

[5] See, e.g., Ameritech Tariff FCC No. 2, 1st revised page 40, Section 2.4.1(A); Verizon Tariff FCC No. 1, Original Page 2-26, Section 2.4.1(A).

[6] Phase I Order, Appendix D, discussion of Section 2.4.1(A).

prescribed by the Commission in the Phase I Order states that LECs may request a deposit "only" from customers that have a history of late payment or do not have established credit.[7] Consequently, the Phase I Order's prescription prohibits BellSouth from requesting deposits from customers other than those with a history of late payment or without established credit. In particular, BellSouth may not request deposits from any of the additional classes of customers named in Transmittal No. 635 -- new customers whose "credit worthiness" is found wanting by BellSouth, existing customers whose "credit worthiness" decreases, or existing customers whose gross monthly billing has increased beyond the level used to determine the initial security deposit.

Given that the tariff language proposed in Transmittal No. 635 would violate a Commission prescription, the Commission cannot permit that language to take effect unless the Commission first waives that prescription or adopts an order modifying, suspending, or setting aside the prescription.[8] Because BellSouth has not even sought such a waiver or order, the Commission should reject Transmittal No. 635 for violating a Commission prescription. It is well-established that the Commission can reject a tariff

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[7] Id.

[8] See, e.g., Pacific Northwest Bell Telephone Company, Revisions To Tariff FCC No. 9, Transmittal No. 159, Memorandum Opinion and Order, released October 11, 1985, at ¶ 7. In that order the Commission indicated that it had the discretion to consider certain elements of a tariff filing as a request for modification of a prescription, but declined to do so in that instance. However, the Commission noted that it had previously found that the issues raised by PNB were best addressed in a proceeding that would afford all interested parties the opportunity to present their views and provide the Commission with an adequate record upon which to base its decision. Similarly, because any change to the prescribed security deposit tariff language would affect all LECs and all customers, potential changes to that language should not be addressed in a tariff proceeding.

transmittal that violates a Commission prescription as patently unlawful, and the Commission has done so on several occasions.[9]

III. The Proposed Revisions of the Security Deposit Provisions are Not Just and Reasonable

Not only does Transmittal No. 635 violate a valid Commission prescription, but the proposed terms and conditions are unjust and unreasonable in violation of Section 201(b) of the Act. Specifically, the proposed terms and conditions do not strike a reasonable balance between protecting BellSouth against nonpayment and placing unnecessary and excessive burdens on BellSouth's customers.

A. The Tariff Language Prescribed by the Commission Already Protects BellSouth

In the Phase I Order, the Commission struck a reasonable balance between protecting LECs against nonpayment and placing excessive burdens on customers. The Commission struck that balance by permitting LECs to request security deposits from two higher-risk categories of customers -- new customers without established credit and existing customers with a history of late payments -- but not from other customers.

BellSouth is further protected against the risk of nonpayment by the Commission's ratemaking process. When the LECs were under rate-of-return regulation, the

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[9] Pacific Northwest Bell Telephone Company Transmittal No. 159, Memorandum Opinion and Order, released June 10, 1985; Beehive Telephone Company, Inc. Transmittal No. 14, Order, 14 FCC Rcd 1984 (1998); Beehive Telephone Company Transmittal No. 11, Order, 13 FCC Rcd 12647 (1998).

Commission permitted the LECs to include an allowance for uncollectibles in the revenue requirement used to develop interstate access rates.[10] Because those rate of return-based rates were used to initialize the price cap regime in 1991, BellSouth's current interstate rates continue to reflect an allowance for uncollectibles.

By dramatically increasing the number of customers that could be assessed security deposits, Transmittal No. 635 would upset the balance the Commission established in the Phase I Order and through its ratemaking policies. Whereas the security deposit tariff language prescribed by the Commission in the Phase I Order allows BellSouth to request deposits only from new customers and customers with a history of late payment, the tariff language proposed in Transmittal No. 635 would allow BellSouth to request a security deposit from any customer whose level of billing increases or whose "credit worthiness" decreases. Because virtually every customer's credit worthiness fluctuates or level of billing increases, the language proposed in Transmittal No. 635 would apparently permit BellSouth to request a security deposit from virtually any customer.

BellSouth suggests in the D&J that the proposed tariff changes are needed because its uncollectibles increased in 2001.[11] But the alleged increase in uncollectibles does not demonstrate that the tariff language prescribed by the Commission in the Phase I Order no longer strikes an appropriate balance. Rather, the alleged increase in uncollectibles between 2000 and 2001 simply reflects the normal effects of the business cycle. Even if

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[10] See, e.g., 1990 Annual Access Tariff Filings, Memorandum Opinion and Order, 5 FCC Rcd 4177, ¶¶ 389-392.

[11] D&J at 2.

BellSouth experienced a higher rate of uncollectibles in a recessionary year such as 2001, it is equally likely that it experienced a lower rate of uncollectibles in "good" years such as 1999 and 2000. Part of the bargain inherent in price cap regulation is that BellSouth is permitted to keep the benefits of lower uncollectibles in good years but assumes the risk of higher uncollectibles in bad years. Certainly, there is no evidence that the higher uncollectibles that BellSouth allegedly experienced in 2001 harmed BellSouth in any material way. BellSouth's interstate earnings declined only slightly in 2001 to a still-excessive 21.22 percent,[12] well above BellSouth's cost of capital and the Commission's most recently-prescribed interstate rate of return of 11.25 percent.

B. The Proposed Terms and Conditions are Not Just and Reasonable

Even if the alleged increase in uncollectibles experienced by BellSouth in 2001 reflected a permanent increase in BellSouth's level of uncollectibles, rather than just normal variations, the terms and conditions proposed in Transmittal No. 635 would not represent a reasonable response to the alleged increase in risk. In particular, Transmittal No. 635 is not narrowly targeted to addressing the specific changes in the level of risk; instead, it shifts the balance between the interests of BellSouth and its customers dramatically in the direction of BellSouth.

First, Transmittal No. 635 is not narrowly targeted only to specific customers that are responsible for the alleged increase in risk. Indeed, the broad language proposed by

[12] BellSouth Telecommunications, Inc., Form 492A, filed April 8, 2002. In 2000, BellSouth earned 22.83 percent.

BellSouth would apparently permit BellSouth to request security deposits even from customers that present a low risk to BellSouth. For example, it is doubtful that customers "whose gross monthly billing has increased beyond the level used to determine the initial security deposit" necessarily present a greater risk than customers whose monthly billing is unchanged or has declined. Similarly, it is not obvious that customers whose "credit worthiness has decreased" present a greater risk than customers whose "credit worthiness" has not changed but was low to begin with. And it is not obvious that a "decrease" in credit worthiness, no matter how slight, increases BellSouth's risk by a material amount.

Second, the size of the required deposit, i.e., two months' billing, in cash, is not commensurate with the level of risk imposed by the groups targeted by Transmittal No. 635. While two months billing may have been an appropriate security deposit for customers without established credit or a history of late billing, it is absurd to suggest that two months' billing, in cash, is commensurate with the level of risk imposed by a customer that does not have a history of late billing, has good credit worthiness, but still falls within the scope of the new tariff language because its credit worthiness has "decreased."

By targeting broad groups of customers, and by authorizing deposits far in excess of the amount necessary to compensate BellSouth for the risk associated with those customers, Transmittal No. 635 would go far beyond simply reestablishing the balance struck by the Access I Order. Rather, Transmittal No. 635 would emphatically shift that balance in the direction of BellSouth's interests by virtually eliminating BellSouth's risk of nonpayment. But the Commission has no obligation to eliminate BellSouth's risk of nonpayment. After all, no non-ILEC has the ability to eliminate its risk of nonpayment completely; carriers operating in a competitive market must balance their desire to reduce uncollectibles against the possibility that overly stringent terms will cause customers to defect to other carriers.

C. The Proposed Terms and Conditions are Potentially Discriminatory

The overbroad tariff language proposed in Transmittal No. 635 is potentially discriminatory because it gives BellSouth virtually unfettered discretion to decide which customers will be assessed the security deposit. Not only is the proposed tariff language vague and ambiguous, as discussed in more detail below, but the proposed tariff language grants BellSouth further discretion by stating that BellSouth "may" assess a security deposit or "reserves the right" to assess a security deposit.[13] Such discretionary language is potentially unreasonably discriminatory in violation of Section 202(a) of the Act. BellSouth could, for example, request deposits only from CLECs and unaffiliated IXCs, but not from its own affiliates or from "retail" special access customers.

Even worse, the unfettered discretion afforded BellSouth under the tariff allows BellSouth to use the security deposit provisions of its tariff in an anticompetitive manner. Virtually all of BellSouth's access customers are also its competitors: not only has BellSouth just received interLATA authority, but many CLECs compete with BellSouth in the local market using special access circuits purchased from BellSouth's interstate access

[13] Transmittal No. 635, 4th revised page 2-21 ("The Company <u>may</u>, in order to safeguard its interests . . . ."; "If an existing Customer's credit worthiness decreases . . . BellSouth <u>reserves the right</u> to request . . . .")

tariff. By allowing BellSouth to request a cash deposit, in the amount of two months billing, from virtually any of BellSouth's competitors, Transmittal No. 635 would permit BellSouth to deprive its competitors of large amounts of capital that they would otherwise use to build out their networks or develop services to compete against BellSouth.

D. The Proposed Tariff Provisions are Vague and Ambiguous

The Commission should reject or, in the alternative, suspend and investigate Transmittal No. 635 because the proposed provisions are vague and ambiguous in violation of Section 61.2 and Section 61.54(j) of the Commission's rules.[14]

First, Transmittal No. 635 is unreasonably vague and ambiguous because it does not state how "creditworthiness" would be measured. As a result, customers are unable to determine whether the tariff's security deposit provisions apply to them. Moreover, because "creditworthiness" is not defined, BellSouth could (1) discriminate unreasonably by applying different creditworthiness standards to similarly-situated customers; or (2) change its standards for measuring creditworthiness without notice.

Second, even if the term "creditworthiness" were clearly defined, the proposed tariff language would still be unreasonably vague and ambiguous. Pursuant to the proposed tariff, BellSouth could request a deposit whenever a customer's credit worthiness "decreases." But the tariff does not define when a "decrease" will be deemed to have occurred. Specifically, BellSouth does not say whether the change in creditworthiness will be measured relative to (1) the previous month's credit worthiness;

[14] 47 C.F.R. §§ 61.2, 61.54(j).

(2) the customer's initial credit worthiness; (3) the highest level of credit worthiness ever achieved by the customer; or (4) some other level of credit worthiness.

Third, the proposed tariff language does not explain whether or when BellSouth will return deposits collected from existing customers whose billing has increased or whose credit worthiness has decreased. Preexisting language in BellSouth's tariff, prescribed by the Commission in the Phase I Order, provides that deposits will be returned in less than a year as long as the customer has established a prompt payment record.[15] But that preexisting language was prescribed by the Commission to apply to deposits collected from new customers without a credit history or existing customers with a history of late payments. It is not clear whether BellSouth intends that language to also apply to deposits collected from existing customers whose billing has increased or whose credit worthiness has decreased, or if BellSouth intends to hold those customers' deposits indefinitely.

IV. Transmittal No. 635 Fails to Meet the "Substantial Cause for Change" Test

The Commission should reject or, in the alternative, suspend and investigate Transmittal No. 635 because BellSouth's proposal to revise the security deposit regulations applicable to existing term plan and contract tariff customers in mid-term fails to meet the Commission's "substantial cause for change" test. As the Commission

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[15] BellSouth Tariff FCC No. 1, Section 2.4.1(A). Transmittal No. 635 would retain this tariff language without change.

recognized in the RCA Americom Decisions,[16] customers have "legitimate expectations . . . for stability in term arrangements."[17]

Contrary to term plan customers' expectation for stability, Transmittal No. 635 would change BellSouth's tariff to allow BellSouth to request security deposits from such customers and to cancel existing term arrangements if those customers did not provide the requested security deposit.[18] The new tariff provisions would clearly represent a revision of material provisions of existing term plans. When existing term plan customers entered into their term arrangements, they relied on BellSouth's existing tariff language that permits BellSouth to discontinue a term plan only in conjunction with a discontinuance of service pursuant to Section 2.1.8 of BellSouth's tariff.

Pursuant to the RCA Americom Decisions, extensive revisions of a dominant carrier's long-term service tariff will be considered reasonable only if the carrier can demonstrate "substantial cause" for the revisions.[19] The Commission found that, in order to "balance[] the carrier's right to adjust its tariff . . . against the legitimate expectations of customers for stability in term arrangements," the reasonableness of a proposal to revise material provisions in the middle of a term "must hinge to a great extent on the carrier's

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[16] RCA American Communications, Inc., Memorandum Opinion and Order, 86 FCC 2d 1197 (1981) (RCA Americom 1981 Order); RCA American Communications, Inc., Memorandum Opinion and Order, 94 FCC 2d 1338 (RCA Americom 1983 Order); RCA American Communications, Inc., Memorandum Opinion and Order, 2 FCC Rcd 2363 (1987) (RCA Americom Final Order).

[17] RCA Americom 1981 Order, 86 FCC 2d at 1201.

[18] Transmittal No. 635, proposed Sections 2.4.1(B)-(C).

[19] RCA Americom 1981 Order, 86 FCC 2d at 1201-1202

explanation of the factors necessitating the desired changes at that particular time."[20] As the D.C. Circuit has explained, the "substantial cause for change" test requires carriers to show both that increased costs justify the increased rates and that customers, who may have relied on the original tariff, would not be unduly burdened by the higher rates.[21]

BellSouth has experienced no change in circumstances that could be used to meet the "substantial cause for change" test. In weighing customers' legitimate expectation of stability against carriers' business needs, the Commission has found carriers to meet the requirements of the substantial cause for change test only when they could demonstrate unforeseeable increases in cost or in traffic volume.[22] Although BellSouth has alleged that its uncollectibles have increased, BellSouth has not shown that it has experienced any material changes in business circumstances, much less experienced changes in circumstances that would "constitute an injury to [BellSouth] that outweigh[s] the existing customers' legitimate expectation of stability."[23] As discussed above, BellSouth's interstate rate of return in 2001 was over 22 percent.

BellSouth apparently believes that its proposal to waive termination liabilities excuses it from the requirements of the substantial cause for change test. BellSouth misunderstands the substantial cause for change test. At most, BellSouth's waiver of

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[20] Id.

[21] Showtime Networks, Inc. et al. v. FCC, 932 F.2d 1, 3 (D.C. Cir. 1991).

[22] RCA Americom Final Order, 2 FCC Rcd at 2367-2368; Hi-Tech Furnace Systems, Inc. and Robert Kornfeld v. Sprint Communications Company, Memorandum Opinion and Order, 14 FCC Rcd 8040, 8046-8047 (1999) (Hi-Tech Order).

[23] 5 FCC Rcd at 6779 ¶ 21.

termination liabilities is potentially relevant to the second prong of the substantial cause for change test -- the position of the relying customer.[24] But BellSouth must meet both prongs of the substantial cause for change test. [25] Even if BellSouth could meet the second prong of the test, BellSouth would still have to meet the first prong of the substantial cause test, which requires the Commission to "examine the carrier's explanation of the factors necessitating the desired changes at that particular time."[26] Because BellSouth has not demonstrated that application of the security deposit provisions to existing term plan customers is necessary to prevent injury to BellSouth, BellSouth has failed to meet the substantial cause for change test.

[24] Hi-Tech Order at ¶ 22.

[25] Showtime Networks, Inc. et al. v. FCC, 932 F.2d 1, 3 (D.C. Cir. 1991)

[26] Hi-Tech Order at ¶ 15.

V. Conclusion

For the reasons stated herein, the Commission should reject or, in the alternative, suspend and investigate BellSouth Transmittal No. 635.

Respectfully submitted,
WORLDCOM, INC.

/s/ Alan Buzacott

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May 20, 2002

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on May 20, 2002.

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CERTIFICATE OF SERVICE

I, Alan Buzacott, do hereby certify that copies of the foregoing Petition to Reject or, in the Alternative, Suspend and Investigate, were sent via first class mail, postage paid, and by facsimile*, to the following on this 20th day of May, 2002.

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