

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

<b>In the Matter of:</b>	)	
	)	
<b>Iowa Telecommunications Services, Inc.</b>	)	<b>Transmittal No. 22</b>
<b>Tariff FCC No. 1</b>	)	
	)	

**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 Iowa Telecommunications Services, Inc. (Iowa Telecom) on July 3, 2002.<sup>1</sup>

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<sup>1</sup> 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. 22, Iowa Telecom proposes to revise Section 2.1.8 of its tariff, which currently requires Iowa Telecom to provide 30 days' notice before it may discontinue the provision of interstate access services to a customer. In Transmittal No. 22, Iowa Telecom proposes to shorten the notice period to only 15 days.

Iowa Telecom also proposes to substantially revise Section 2.4.1 of its tariff. Whereas the existing tariff language specifies that Iowa Telecom may request a security deposit only from those existing customers that have a proven history of late payments to the company, the new tariff language would permit Iowa Telecom to demand a security deposit “[i]f a customer represents a significant financial risk based on objective financial standards such as but not limited to Moody’s Investor Services, Standard and Poor’s, D&B, and ratings issued by independent and non-affiliated regional analysis of financial information.”<sup>2</sup>

The Commission should reject or, in the alternative, suspend and investigate Iowa Telecom Transmittal No. 22 because (1) Iowa Telecom’s proposal to reduce the notice period for disconnections from 30 days to 15 days is unjust and unreasonable; (2) Transmittal No. 22's proposal to modify the security deposit provisions of its tariff violates a Commission prescription; (3) the proposed security deposit tariff language is vague and ambiguous in violation of Sections 61.2 and 61.54(j) of the Commission’s rules; (4) the proposed security deposit tariff language is unjust and unreasonable in violation of Section 201(b) of the Act; and (5) Iowa Telecom has failed to make the showing required by the Commission’s “substantial cause” test.

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<sup>2</sup> Iowa Telecom Transmittal No. 22, proposed 3<sup>rd</sup> revised page 2-12.

## **II. Iowa Telecom's Proposal to Shorten the Notice Period is Unjust and Unreasonable**

The Commission should reject or, in the alternative, suspend and investigate Iowa Telecom Transmittal No. 22 because the proposal to reduce the notice period for disconnections from 30 to 15 days is unjust and unreasonable.

The 30-day notice period has been found in every LEC access tariff for almost twenty years, since the initial post-divestiture access tariff investigation in 1984.<sup>3</sup> After the LECs had initially proposed 10-day and 20-day notice periods, the Commission's skepticism about those extremely short notice periods led the LECs to revise their tariffs to provide for a 30-day notice period.<sup>4</sup>

Notably, this is not the first time that a LEC has tried to replace the 30-day notice period with a 15-day notice period. BellSouth proposed a similar change in its 1987 annual access filing.<sup>5</sup> While the Commission, in the 1987 Access Tariff Order, did not find that BellSouth proposal was so unlawful as to warrant rejection,<sup>6</sup> the Commission imposed conditions on BellSouth that BellSouth was apparently unable to satisfy. BellSouth's tariff continues to provide for a 30-day notice period, as does every other

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<sup>3</sup> 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 2.1.8.

<sup>4</sup> Id.

<sup>5</sup> Annual 1987 Access Tariff Filings, Memorandum Opinion and Order, 2 FCC Rcd 280, 304-305 (1986) (1987 Access Tariff Order).

<sup>6</sup> 2 FCC Rcd at 304.

LEC interstate access tariff.<sup>7</sup>

As the Commission has explained, the 30-day notice period is essential because it allows sufficient time for the LEC and customer to investigate or cure alleged tariff violations before the LEC takes the drastic step of discontinuing service. In the Phase I Order, for example, the Commission noted with approval commenters' statements that the 30-day notice period "provides reasonable time for [customers] to convey their concerns to the telco."<sup>8</sup> And, in reviewing BellSouth's 1987 proposal for a 15-day notice period, the Commission expressed concern that the BellSouth proposal "may impair the cooperative spirit we have attempted to promote between carriers and customers."<sup>9</sup>

One of the Commission's key concerns about the BellSouth 1986 proposal was that a customer might be faced with imminent disconnection for payments that were "late" only because of deficiencies in LEC billing. The Commission stated that the proposed BellSouth revisions "should not reach customers who have not paid their bills by the late payment date if such failure occurred because they did not receive their bills in a timely manner and sufficiently in advance of the late payment date so as to allow them an opportunity to review and verify their bills; such customers do not pose a risk to BellSouth."<sup>10</sup> For that reason, the Commission stated that it would require BellSouth to file clarifying revisions that indicated that BellSouth would discontinue service 15 days

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<sup>7</sup> BellSouth Tariff FCC No. 1, Section 2.1.8.

<sup>8</sup> Phase I Order, Appendix D, discussion of Section 2.1.8.

<sup>9</sup> 1987 Access Tariff Order, 2 FCC Rcd at 304.

<sup>10</sup> Id.

after nonpayment only in those cases where the customer receives the bill within 3 days after the billing date.<sup>11</sup> As discussed above, BellSouth decided not to revise its tariff on those terms.

The Commission's concerns about LEC billing deficiencies are equally applicable to Iowa Telecom. One reason is that Iowa Telecom has sent and continues to send some bills manually. And, while most of the bills are, since approximately the beginning of 2001, sent electronically, Iowa Telecom's electronic bills have not always allowed for a seamless exchange of information with WorldCom's systems.

### **III. Transmittal No. 22 Violates a Commission Prescription**

The existing security deposit language in Section 2.4.1(A) of Iowa Telecom'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 . . . ."<sup>12</sup> Reflecting its prescription by the Commission, that language has been found unchanged in the GTE (and

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<sup>11</sup> Id., 2 FCC Rcd at 304-305.

<sup>12</sup> 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).

now Iowa Telecom) interstate access tariff since 1984.

There can be no doubt that Iowa Telecom'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;<sup>13</sup> 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 Iowa Telecom in Transmittal No. 22 would violate the Commission's prescription. The tariff language 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.<sup>14</sup> Consequently, the Phase I Order's prescription prohibits Iowa Telecom from requesting deposits from customers other than those with a history of late payment or without established credit. In particular, Iowa Telecom may not request deposits from any of the additional classes of customers named in Transmittal No. 22 -- customers whose gross monthly billing has increased beyond the amount initially used to estimate a security deposit, or customers whose credit worthiness has been found wanting by a Iowa Telecom.

Given that the tariff language proposed in Transmittal No. 22 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,

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<sup>13</sup> Phase I Order, Appendix D, discussion of Section 2.4.1(A).

<sup>14</sup> Id.

suspending, or setting aside the prescription.<sup>15</sup> Because Iowa Telecom has not even sought such a waiver or order, the Commission should reject Transmittal No. 22 for violating a Commission prescription. It is well-established that the Commission can reject a tariff transmittal that violates a Commission prescription as patently unlawful, and the Commission has done so on several occasions.<sup>16</sup>

#### **IV. The Proposed Tariff Provisions are Vague and Ambiguous**

The Commission should reject or, in the alternative, suspend and investigate Transmittal No. 22 because the proposed provisions are vague and ambiguous in violation of Section 61.2 and Section 61.54(j) of the Commission's rules.<sup>17</sup>

As the Commission explained in the recent Second Global NAPs Order, “[u]nder section 61.2 [of the Commission's rules], a tariff must be clear and explicit on its face as to when it applies, in order to give fair notice to carriers or other customers about

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<sup>15</sup> 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.

<sup>16</sup> 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).

<sup>17</sup> 47 C.F.R. §§ 61.2, 61.54(j).

the terms under which they might be taking service and incurring charges.”<sup>18</sup> Contrary to that requirement, the tariff language proposed in Iowa Telecom Transmittal No. 22 is not “clear and explicit on its face as to when it applies.”

First, it is impossible for customers to determine how Iowa Telecom will measure credit worthiness; Iowa Telecom’s proposed tariff language merely lists an array of information sources that Iowa Telecom might consult. Second, the proposed tariff provides no objective standards for determining whether a customer represents a “significant financial risk.” While Iowa Telecom’s proposed tariff language describes Moody’s, S&P, and D&B as “objective financial standards,”<sup>19</sup> those services are in fact credit and financial information sources, not standards. Nothing in the proposed tariff language actually defines the criteria that Iowa Telecom would use to determine whether to request a deposit. Iowa Telecom would apparently have complete discretion to determine what constitutes a “significant financial risk.”

Consequently, the language proposed in Transmittal No. 22 violates Sections 61.2 and 61.54(j) of the Commission’s rules because it does not provide the requisite “fair notice to carriers or other customers” about the conditions under which security deposit requests might be triggered. Even worse, Iowa Telecom would have virtually unlimited discretion to change both the credit rating methodology and the threshold “score” without notice.

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<sup>18</sup> Bell Atlantic-Delaware et al. v. Global NAPs, Memorandum Opinion and Order, 15 FCC Rcd 20665 ¶ 23 (2000) (Second Global NAPs Order).

<sup>19</sup> Iowa Telecom Transmittal No. 22, 3<sup>rd</sup> revised page 2-12.

**V. The Proposed Terms and Conditions are not Just and Reasonable**

Not only does Transmittal No. 22 violate a valid Commission prescription, but the proposed terms and conditions are unjust and unreasonable in violation of Section 201(b) of the Act.

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.

In contrast to the existing security deposit provisions of Iowa Telecom's tariff, the tariff language proposed in Iowa Telecom Transmittal No. 22 does not reasonably balance Iowa Telecom's interests against the interests of Iowa Telecom's customers. As an initial matter, because the credit rating methodology would not be specified in Iowa Telecom's tariff, there would be no assurance that the credit rating methodology selected by Iowa Telecom would represent a reasonable approach for evaluating the risk of nonpayment for interstate access services. For example, the "ratings issued by independent and non-affiliated regional analysts of financial information"<sup>20</sup> almost certainly are not designed to measure the risk that an interstate access customer will be unable to pay for interstate access services provided by Iowa Telecom.

Moreover, because the proposed tariff language affords Iowa Telecom near-complete discretion in selecting the credit rating methodology and threshold score, Iowa

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<sup>20</sup> Iowa Telecom Transmittal No. 22, proposed 3<sup>rd</sup> revised page 2-12.

Telecom would have the ability to set an unreasonably high standard for the credit worthiness that it deems to represent “a significant financial risk.” Indeed, Iowa Telecom could potentially seek a security deposit from virtually any customer. While it would be in Iowa Telecom’s interest to craft such an onerous policy, in order to virtually eliminate its risk of nonpayment, such a policy would unreasonably shift the balance to Iowa Telecom at the expense of its customers.

Finally, the overbroad tariff language proposed in Transmittal No. 22 is potentially unreasonably discriminatory in violation of Section 202(a) of the Act. Because the proposed tariff language gives Iowa Telecom virtually unfettered discretion to decide which customers would be assessed a security deposit, Iowa Telecom could, for example, request deposits only from CLECs and unaffiliated IXCs, but not from its own affiliates or from “retail” special access or end user customers.

## **VI. Transmittal No. 22 Fails to Meet the “Substantial Cause for Change” Test**

The Commission should reject or, in the alternative, suspend and investigate Transmittal No. 22 because Iowa Telecom’s proposal to revise the security deposit regulations applicable to existing term plan customers in mid-term fails to meet the Commission’s “substantial cause for change” test. As the Commission recognized in the RCA Americom Decisions,<sup>21</sup> customers have “legitimate expectations . . . for stability in

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<sup>21</sup> 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).

term arrangements.”<sup>22</sup>

Contrary to term plan customers’ expectation for stability, Transmittal No. 22 would revise material provisions of existing term plans. When existing term plan customers entered into their term arrangements, they relied on Iowa Telecom’s existing security deposit tariff language that permits Iowa Telecom to request a security deposit from only those existing customers with a “proven history of late payment.”

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.<sup>23</sup> The Commission has 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 explanation of the factors necessitating the desired changes at that particular time.”<sup>24</sup> 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.<sup>25</sup>

Iowa Telecom has experienced no change in circumstances that could be used to

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<sup>22</sup> RCA Americom 1981 Order, 86 FCC 2d at 1201.

<sup>23</sup> RCA Americom 1981 Order, 86 FCC 2d at 1201-1202

<sup>24</sup> Id.

<sup>25</sup> Showtime Networks, Inc. et al. v. FCC, 932 F.2d 1, 3 (D.C. Cir. 1991).

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.<sup>26</sup> Iowa Telecom 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 [Iowa Telecom] that outweigh[s] the existing customers’ legitimate expectation of stability.”<sup>27</sup>

Notably, Iowa Telecom acknowledges the applicability of the substantial cause for change test to the Section 2.1.8 tariff revisions proposed in Transmittal No. 22. In its revised language for that section, Iowa Telecom proposes to exempt existing term plans from the new 15-day notice period for disconnections; existing term plans would instead continue to be subject to the 30-day notice period.<sup>28</sup> There is no reasoned basis for Iowa Telecom’s failure to provide similar “grandfathering” of the current security deposit provisions for existing term plan customers.

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<sup>26</sup> 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).

<sup>27</sup> 5 FCC Rcd at 6779 ¶ 21.

<sup>28</sup> Iowa Telecom Transmittal No. 22, proposed original page 2-5.1.

**VII. Conclusion**

For the reasons stated herein, the Commission should reject or, in the alternative, suspend and investigate Iowa Telecom Transmittal No. 22.

Respectfully submitted,  
WORLDCOM, INC.

/s/ Alan Buzacott

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July 10, 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 July 10, 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 10th day of July, 2002.**

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/s/

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Alan Buzacott