

BellSouth's currently effective tariff requires security deposits only from (1) new customers with no established credit and (2) existing customers with “a proven history of late payments to the Telephone Company.” Section 2.4.1 of BellSouth Telecommunications Tariff FCC No. 1, 1st Revised Page 2-21. BellSouth's tariff provision here conforms to Commission imposed requirements set forth in the

Commission's 1984 decision in CC Docket 83-1145 (Phase I), *Investigation of Access and Divestiture Related Tariffs*, 97 FCC 2d 1082, 1169 (1984).¹

Under the proposed revisions, BellSouth seeks to significantly expand the bases on which it would be able to require security deposits from its existing customers. For example, BellSouth would give itself "the right to require an initial or an additional deposit of an existing Customer if that existing Customer's credit worthiness decreases to a commercially significant extent as compared to the level of credit worthiness determined by BellSouth when that Customer's service was established." Proposed Section 2.4.1, Deposits Required of Existing Customers. BellSouth does not explain whether it has ever established a "credit worthiness" profile of its customers under its current tariff. If it did establish such profile, it does not delineate for the benefit of the Commission and its customers the factors that it used in doing so.

Presumably, given the language in its current tariff, the only criteria BellSouth now uses is the customer's credit history and whether the customer has a history of late payments.² Under its proposed revisions, however, BellSouth's determination of a

¹ Whether the Commission or the courts would consider the Commission-imposed language to be a prescription under Section 205 of the Act is unclear. Of course, if the language was prescribed by the Commission, BellSouth would not be permitted to modify such language by the filing of tariff revisions. Rather, BellSouth would have to file a petition with the Commission pursuant to Section 205 requesting that the Commission modify such prescription. *See, e.g., AT&T v. FCC*, 487 F.2d 865, 874 (2nd Cir. 1973). At the very least, this uncertainty requires that the proposed revision be suspended to enable the Commission to address the issue in the subsequent investigation.

² In its explanatory materials in which it seeks to justify its use of "scoring tools" for determining a customer's "credit worthiness," BellSouth appears to suggest that its existing business relationship with the customer does not have any bearing on whether that customer has an ability to pay. D&J at 2-3. What is odd about such suggestion is that an existing business relationship between a carrier and customer provides the carrier

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customer's "credit worthiness" will be based on "a commercially acceptable credit scoring tool" and a "commercially acceptable financing scoring tool." The "credit scoring tool" will be based on "number of years in business; management history; liens; suits and judgments; payment history with third parties; payment history with BellSouth (on undisputed amounts); [and] publicly available information." But aside from the "payment history with BellSouth" criterion, none of the other "credit scoring" factors can reasonably and reliably predict whether the customer can pay its undisputed bills in a timely fashion. Certainly BellSouth does not provide any information as to how the other criteria it has selected have such predictive abilities. And it is doubtful that BellSouth could do so. For example, the number of lawsuits filed against a customer -- some of which are highly likely to be frivolous -- should not diminish a customer's ability to pay its current bills. Nor does BellSouth attempt to explain what it means by "management history" or what other "publicly available information" it will examine.

Similarly, BellSouth does not explain how the "financing scoring tool," which includes but is not limited to "debt ratings; debt performance; net worth; cash flow; debt/net worth; profitability and financial statements," can reasonably predict a customer's ability to pay its BellSouth bills on a timely basis. In any event, given the current state of the telecommunications industry, Sprint strongly doubts that any carrier, including BellSouth itself who just this week reported lower profits for the second quarter

with firsthand knowledge as to whether its customer is paying its bills in a timely manner. Indeed, one of the elements of BellSouth's "credit scoring tool" is the customer's "payment history with BellSouth." Thus, BellSouth's justification here is no justification at all and provides yet another reason why the proposed tariff revisions should be rejected or suspended and investigated.

and predicted lower profits for the year, would be able to achieve a satisfactory “financial score” with the criteria that BellSouth would use to evaluate whether or not to impose security deposits on its customers.

Of course, BellSouth does not specify how it will use the scoring tools and what levels will be deemed unacceptable. Absent such information, a customer has no way of knowing in advance whether a change in its financials or other information might trigger a deposit requirement. Further, a customer has no way of being certain that the threshold applied to it is also being applied to other customers. Such vagueness with respect to the critical evaluation criteria violates Section 61.54(j) which requires that “[t]he general rules (including definitions), regulations, exceptions, and conditions which govern the tariff must be stated clearly and definitely.”

BellSouth’s proposal to use a “credit scoring tool” and a “financial scoring tool” for determining a customer’s so-called “credit-worthiness” is nothing more than a blatant attempt to give itself unfettered discretion to impose or not to impose security deposits on its customers. And given that its carrier-customers are its competitors and given that BellSouth would be able under these revisions to require that such competitors transfer to BellSouth hundreds of millions of dollars in deposits, BellSouth’s exercise of such discretion is likely to have serious anti-competitive effects.³ For this reason alone, the

³ The fact that BellSouth proposes to give itself unfettered discretion over which customers will be required to make an initial or additional deposits also would enable BellSouth to violate the Section 202(a) proscription against unjust discrimination with impunity. It will be able to pick and choose among its customers for the imposition of deposit requirements.

revisions going to the establishment of a customer's "credit-worthiness" should be rejected or suspended and investigated.

BellSouth would also give itself the right "to require an additional deposit from an existing Customer" whose "credit worthiness is still determined by BellSouth to be of a level that requires a security deposit," when such customer's gross monthly billing has increased as compared to the billing level used to determine the initial security deposit."⁴

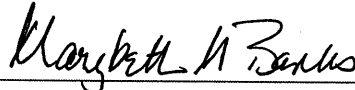
Id. Presumably, most carriers' usage has grown from the time it first obtained service from BellSouth. Thus, BellSouth's new category for obtaining new and additional deposits from its customers would affect most, if not all, carriers providing service in BellSouth's territory. Here again, the criteria for requiring deposits -- an increase in the customer's bills over time -- bears no relationship to a carrier's payment of its bills. The collection of additional deposit from carriers that have historically paid their bills on time simply because their usage of BellSouth's access services has grown is plainly unreasonable in violation of Section 201(b).

⁴ These "additional deposits" purportedly will not "exceed in total the rates and charges for two months of the Customer's estimated billing for service(s) calculated by using an average of the most recent three months of undisputed charges." *Id.*

For the above reasons, Sprint urges the Commission to reject, or alternatively suspend for the full statutory period and investigate BellSouth's proposed deposit requirements.

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY L.P.

A handwritten signature in dark ink, appearing to read "Marybeth M. Banks", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition of Sprint to Reject or Alternatively Suspend and Investigate in the matter of BellSouth Tariff F.C.C. No. 1 (Transmittal No. 657) was sent by United States First-Class Mail, postage prepaid, or hand delivery on this 26th day of July, 2002 to the following parties.



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