

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

In the Matter of:)	
)	
Southwestern Bell Telephone Company Tariff FCC No. 73)	Transmittal No. 2946
)	
Pacific Bell Telephone Company Tariff FCC No. 1)	Transmittal No. 110
)	
Nevada Bell Telephone Company Tariff FCC No. 1)	Transmittal No. 39
)	

**WORLDCOM PETITION TO REJECT OR, IN THE ALTERNATIVE,
SUPSEND AND INVESTIGATE**

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 transmittals filed by Southwestern Bell Telephone Company (SWBT), Pacific Bell Telephone Company (PBTC), and Nevada Bell Telephone Company (NBTC) (collectively "SBC") on April 4, 2003.¹

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, 340-341 (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 lawfulness 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 the above-captioned transmittals, SBC proposes to amend its tariffs to introduce the DS1 Term Payment Plan (“DS1 TPP”), grandfather existing SWBT and PBTC DS1 term plans, and increase its month-to-month DS1 service rates.

I. The SBC Transmittals Violate the Price Cap Rules

The Commission should reject or, in the alternative, suspend and investigate the above-captioned transmittals because SBC has not performed the price cap calculations in accordance with the price cap rules.

First, SBC’s calculation of the new API resulting from the proposed increase in month-to-month DS1 rates violates section 61.46(a) of the Commission’s rules. Pursuant to that rule, LECs are required to calculate the new API by weighting P_t/P_{t-1} with v_i , where v_i must be calculated using the base period demand for the rate element in question.² SBC’s proposal to calculate the new API using “recast” or estimated demand for month-to-month DS1 services, rather than base period demand, violates that rule.

If SBC is suggesting that the increase in DS1 month-to-month rates is a restructure for which the use of recast or estimated demand is appropriate, then SBC is simply wrong. The proposed increase in month-to-month DS1 rates is exactly that – a simple rate increase – not a “modification of a method of charging or provisioning a service.”³ From the perspective of the customer, the only impact of SBC’s tariff filing is that the proposed month-to-month DS1 rate is higher than the current rate for the same service.

² 47 C.F.R. § 61.46(a).

³ 47. C.F.R. § 61.3(II).

Second, the above-captioned transmittals violate the price cap rules because they improperly characterize the introduction of the SWBT and PBTC DS1 TPPs as a “new service” filing, rather than as a rate change or a restructure. In order to qualify as a new service under the price cap rules, that service must “enlarge[] the range of service options available to ratepayers.”⁴ The above-captioned SWBT and PBTC transmittals do not qualify because the DS1 TPP will be offered in place of, rather than in addition to, those carriers’ existing term plans. It is irrelevant that those existing term plans may be temporarily grandfathered: (1) new customers’ only option will be the DS1 TPP; and (2) because SBC’s tariffs limit renewals or extensions of the grandfathered term plans,⁵ all customers will ultimately be forced under the DS1 Term Plan.

Thus, rather than “enlarg[ing] the range of service options,” the DS1 Term Plan is best characterized as amending the terms, conditions, and rates applicable to DS1 services purchased under a term commitment. Consequently, the price cap rules define the above-captioned transmittals as either a simple rate change or, possibly, a restructure, i.e., the “the introduction of a new method of charging or provisioning that does not result in a net increase in the options available to customers.”⁶

II. The Proposed Tariff Language is Contrary to the RCA Americom Decisions

In the above-captioned transmittals, SBC proposes tariff language applicable to the DS1 TPP which provides that “general terms and conditions . . . located in other sections of this tariff may be modified through the filing of tariff changes at any time

⁴ 47 C.F.R. § 61.3(x).

⁵ See, e.g., SWBT Tariff FCC No. 73, sections 7.2.20(C)(5) (HC-TPP limited to two two-year extensions); 7.2.19(F)(1) (OPP limited to one extension).

⁶ 47 C.F.R. § 61.3(l).

during the term of service.”⁷ That provision is at odds with well-established Commission policy.

In the RCA Americom Decisions, the Commission found that customers have “legitimate expectations . . . for stability in term arrangements” such as SBC’s DS1 TPP.⁸ In particular, the Commission “expressed concern over the apparent unfairness of allowing a dominant carrier to freely change the terms of such a [term] tariff at any time without cause, even though customers would remain bound by all provisions until the end of the service term.”⁹

Although the Commission has acknowledged that a carrier may revise a long term service tariff in accordance with its terms, the Commission has made clear that carriers may not craft terms that give the carrier unfettered discretion to change the terms and conditions applicable to term plan customers. Specifically, the Commission warned that “the presence of some sweeping reservation to unilaterally change any and all terms and conditions of a service will not serve to lessen our original concerns”¹⁰ about stability in term arrangements. Because SBC’s proposed tariff contains just such a “sweeping reservation,” the Commission should reject or, in the alternative, suspend and investigate the above-captioned transmittals.

It would be contrary to the policies articulated in the RCA Americom Decisions if SBC could unilaterally change any and all terms and conditions applicable to the DS1 TPP, even “material” terms and conditions, simply because those terms and conditions happen to be found in a separate section of the tariff. Because DS1 TPP customers have

⁷ See, e.g., SWBT Transmittal No. 2946, proposed section 7.2.22(A), 5th revised page 7-68.1.

⁸ RCA American Communications, Inc., Memorandum Opinion and Order, 86 FCC 2d 1197, 1201 ¶ 13.

⁹ Id., 86 FCC 2d at 1199 ¶ 7.

¹⁰ RCA American Communications, Inc., Memorandum Opinion and Order, 86 FCC 2d 1197, 1201 ¶ 13.

made a multi-year commitment to SBC, and are tied to SBC by onerous termination liabilities, those customers have legitimate expectations of stability with regard to all material terms and conditions of their service.

III. Conclusion

For the reasons stated herein, the Commission should suspend and investigate the above-captioned transmittals.

Respectfully submitted
WORLDCOM, INC.

/s/ Alan Buzacott

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April 11, 2003

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 April 11, 2003.

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CERTIFICATE OF SERVICE

I, Alan Buzacott, do hereby certify that copies of the foregoing Petition to and Investigate were sent via first class mail, postage paid, and by facsimile*, to the following on this 11th day of March, 2003.

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