Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
	)	
BellSouth Telecommunications, Inc.	)	**Transmittal No. 745**
Tariff FCC No. 1	)	
	)	
Qwest Corporation	)	**Transmittal No. 173**
Tariff FCC No. 1	)	
	)	
Verizon Telephone Companies	)	**Transmittal No. 367**
Tariff FCC Nos. 1, 11, 14, 16 & 20	)	
	)	

MCI PETITION TO REJECT OR, IN THE ALTERNATIVE, SUPSEND AND INVESTIGATE

WorldCom, Inc. d/b/a MCI (MCI), 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 BellSouth Telecommunications, Inc. (BellSouth), Qwest Corporation (Qwest), and the Verizon Telephone Companies (Verizon) (collectively, the Regional Bell Operating Companies or RBOCs) on October 2, 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

The above-captioned transmittals purport to implement paragraph 581 of the Triennial Review Order, which requires incumbent LECs "to effectuate commingling by modifying their interstate access service tariffs to expressly permit connections with UNEs and UNE combinations."[2] Rather than "expressly permit" commingling, however, the RBOCs seek to permit commingling only to the extent that it is permitted by interconnection agreements or Statements of Generally Available Terms (SGATs).[3] The RBOCs also propose to reference the conditions imposed by section 51.318 of the Commission's rules, the eligibility criteria for enhanced extended links (EELs). The proposed cross-references to interconnection agreements and section 51.318, and the limitations on commingling imposed by those cross-references, violate both the Commission's rules and the Triennial Review Order.

I. The Transmittals' Cross-References Violate the Commission's Part 61 Rules

The RBOC transmittals' cross-references to interconnection agreements, SGATs, and rule 51.318(b) violate section 61.74(a) of the Commission's rules, which provides

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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).

[2] Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, released August 21, 2003 at ¶581 (Triennial Review Order).

[3] BellSouth Transmittal No. 745, proposed section 2.2.3 (commingling not permitted if an interconnection agreement or SGAT explicitly prohibits such commingling or requires parties to complete procedures regarding change of law prior to implementing such commingling); Verizon Transmittal No. 367, Tariff FCC No. 1, proposed section 2.2.3 (commingling not permitted if an interconnection agreement expressly prohibits such commingling or does not address commingling and the requesting carrier has not negotiated an interconnection agreement or amendment expressly permitting such commingling); Qwest Transmittal No. 173, proposed section 2.2.2(A) (commingling permitted only to the extent that an SGAT or interconnection agreement allows, either explicitly or through amendments resulting from the change of law process).

that "no tariff publication filed with the Commission may make reference to any other tariff publication or to any other document or instrument."[4] The Commission has consistently rejected tariff transmittals that included cross-references to other documents.[5] Indeed, "[f]ailure to comply with [the Part 61] rules has always been recognized as grounds for rejection."[6]

Moreover, the Commission has specifically held, in the Global NAPs decisions[7] that were upheld by the D.C. Circuit,[8] that tariffed cross-references to interconnection agreements violate section 61.74(a) of the Commission's rules. Indeed, the Commission stated in the Global NAPs I Recon Order that a tariff's cross-reference to an interconnection agreement "constitutes far more than a technical defect; it constitutes a fundamental flaw in the Tariff's clarity."[9] Given that the Commission has struck down a CLEC tariff for cross-referencing an interconnection agreement, it must clearly reject RBOC tariffs that violate the Commission's rules in the same manner.

As the Commission has explained, the requirement that the terms and conditions applicable to access services are governed by the four corners of the tariff ensures both certainty and even-handed treatment of all access customers.[10] Ensuring such even-handed treatment is particularly essential in the case of commingling, where the

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[4] 47 C.F.R. § 61.74(a).
[5] See, e.g., AT&T Communications, Revisions to Tariff FCC No. 15, Order, 8 FCC Rcd 2559 (1993); Ameritech Operating Companies et al., Order, 8 FCC Rcd 4589, 4605 ¶ 89 (1993).
[6] Global NAPS II Order at ¶ 23 (citing Amendment of Part 61 of the Commission's Rules Relating to Tariffs and Part I of the Commission's Rules Relating to Evidence, Memorandum Opinion and Order, 40 FCC 2d 149, 150 at ¶ 5 (1973)).
[7] Bell Atlantic-Delaware et al. v. Global NAPs, Memorandum Opinion and Order, 15 FCC Rcd 12946, ¶ 24 (1999) (Global NAPs I); Bell Atlantic-Delaware et al. v. Global NAPs, Order on Reconsideration, 15 FCC Rcd 5997, ¶¶ 24-25 (2000) (Global NAPs I Recon Order; Bell Atlantic-Delaware et al. v. Global NAPs, Memorandum Opinion and Order, 15 FCC Rcd 20665 (2000) (Global NAPs II); Bell Atlantic-Delaware et al. v. Global NAPs, Order on Reconsideration, 17 FCC Rcd 7902, ¶ 22 (2002) (Global NAPs II Recon Order).
[8] Global NAPs, Inc. v. FCC, 247 F.3d 252, 258 (D.C. Cir. 2001).
[9] Global NAPs I Recon Order at ¶ 25.

Commission has found that restrictions on commingling constitute an "undue and unreasonable prejudice or advantage" under section 202 of the Act.[11]

Furthermore, the proposed tariffs must be rejected as unlawfully vague and ambiguous in violation of section 61.2 of the Commission's rules.[12] Because customers must consult the interconnection agreements, a customer cannot determine if the tariff applies simply by reading the tariff language itself.[13] Moreover, given the variety of existing interconnection agreements, and the possibility of future amendments to interconnection agreements, the Commission cannot readily determine whether the conditions set forth in the proposed tariffs, e.g., whether an interconnection agreement "expressly permit[s] such commingling"[14] are unambiguous.

II. The RBOC Transmittals Violate the Triennial Review Order

The RBOCs' proposals to condition the availability of commingling violate the Triennial Review Order in at least three respects:

? Pursuant to the Triennial Review Order, the incumbent LECs are required to "expressly permit" commingling. Obviously, tariff provisions that condition or limit the availability of commingling in any way are inconsistent with the requirement that incumbent LECs "expressly permit" commingling. Consequently, the Commission should require the RBOCs to implement the Triennial Review Order's commingling requirement without limitations or conditions. As other ILECs have shown (and BellSouth showed in Transmittal

[10] Ameritech Operating Companies et al., Order, 8 FCC Rcd 4589, 4605 ¶ (1993)
[11] Triennial Review Order at ¶ 581.
[12] 47 C.F.R. § 61.2.
[13] See, e.g., Global NAPs II Order at ¶ 22.

No. 742),[15] the "expressly permit" requirement can be tariffed in a straightforward manner by simply adding a single sentence that states that commingling is permitted.

? The RBOCs' proposal to prohibit commingling unless customers have negotiated interconnection agreements that permit commingling is at odds with the Triennial Review Order. Because paragraph 581 states that incumbent LECs are to "effectuate" commingling through their interstate tariff filings, the Triennial Review Order precludes the RBOCs from imposing the additional requirement that customers negotiate an interconnection agreement that permits commingling. Moreover, the Triennial Review Order's requirement that incumbent LECs effectuate commingling through interstate tariff filings removes commingling issues from the state-supervised section 251/252 process.

? The RBOCs' proposed references to the conditions set forth in section 51.318(b) of the Commission's rules are not permitted by the Triennial Review Order. First, the sole tariff change contemplated by the Triennial Review Order is an explicit statement that commingling is permitted. Second, tariff references to rule 51.318(b) are unnecessary because rule 51.318(b) does not even govern commingling; the sole purpose of rule 51.318(b) is to limit access to certain unbundled network elements.

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[14] Verizon Transmittal No. 367, Tariff FCC No. 1, proposed original page 2-11.1.

[15] See, e.g., ALLTEL Transmittal No. 130, filed October 2, 2003, proposed 1st revised page 6-1; 7-1; Cincinnati Bell Transmittal No. 786, filed October 2, 2003, proposed 2nd revised page 44; Frontier Telephone of Rochester Transmittal No. 71, filed October 2, 2003, proposed 3rd revised page 1-1

III. Conclusion

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

Respectfully submitted
WORLDCOM, INC. d/b/a MCI

/s/ Alan Buzacott

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October 9, 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 October 9, 2003.

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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 9th day of October, 2003.

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