Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
	)	
BellSouth Telecommunications, Inc.	)	**Transmittal No. 746**
Tariff FCC No. 1	)	
	)	

MCI PETITION TO REJECT OR, IN THE ALTERNATIVE, SUSPEND 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 transmittal filed by BellSouth Telecommunications, Inc. (BellSouth) on October 14, 2003. [1]

In Transmittal No. 746, BellSouth proposes to increase its charge for a change in Preferred Interexchange Carrier (PIC) from $1.49 to $3.10 per change. BellSouth attributes the dramatic rate increase – in excess of 100 percent – to (1) an increase in the percentage of PIC changes that require manual processing; (2) an increase in the labor

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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, 340-341 (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).

time associated with manual PIC changes; and (3) an increase in the cost of computer systems used for service order entry, billing, and provisioning.

The Commission should reject or, in the alternative, suspend and investigate BellSouth Transmittal No. 746 because BellSouth's proposal to recover PIC freeze costs, marketing costs, and other costs unrelated to the direct costs of a subscription change is contrary to the Commission's orders regarding PIC changes. Furthermore, BellSouth has failed to provide adequate support for the claimed costs of various computer systems used for processing, billing, and provisioning PIC changes.

I. The $5 "Safe Harbor" Is Not Applicable to Transmittal No. 746

As an initial matter, the $5 "safe harbor" discussed in the PIC Charge NPRM[2] does not in any way limit the Commission's authority to reject or suspend BellSouth Transmittal No. 746. In the MCI Order,[3] the Commission explained that it adopted the "safe harbor" approach in the 1984 Access Charge Order[4] principally because of the difficulty faced by the LECs, in the initial post-divestiture access tariff filings, in determining the cost of providing PIC change services.[5] The MCI Order makes clear, however, that the $5 safe harbor is not applicable to subsequent tariff PIC change tariff revisions if the LEC is able to determine the actual costs of providing PIC change services. As the Commission found in the MCI Order, the 1984 Access Tariff Order and 1987 Access Tariff Order "merely established $5 as a reasonable amount absent detailed

[2] Presubscribed Interexchange Carrier Charges, Order and Notice of Proposed Rulemaking, CC Docket No. 02-53, released March 20, 2002 (PIC Charge NPRM).
[3] MCI Telecommunications Corp. v. U S West Communications, Inc., File Nos. E-97-08, E-97-20 through 24, Memorandum Opinion and Order, 15 FCC Rcd 9328 (MCI Order).
[4] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Memorandum Opinion and Order, released April 27, 1984 (1984 Access Tariff Order).

cost support from the LECs."[6] Furthermore, those orders "specifically provided that LECs could assess a higher charge if they could provide adequate cost justification, or a lower charge."[7] Consequently, the $5 safe harbor is not applicable to PIC change tariff revisions filed by BellSouth, which was first able to provide detailed cost support for PIC change tariff revisions in 1990, and has been able to provide similarly detailed cost support for Transmittal No. 746.

II. The Commission's Orders Do Not Permit the Recovery of PIC Freeze and Marketing Costs Through BellSouth's PIC Change Charge

In the 1984 Access Tariff Order, the Commission strictly limited the types of costs that may be recovered through the PIC change charge, stating that "[a] presubscription charge that recovers the unbundled costs of a subscription change would be reasonable."[8] And, in the PIC Charge NPRM, the Commission confirmed that, under current rules, the PIC change charge may only recover the costs of actually processing a "subscription change" – not those costs that the LEC may incur in performing other presubscription-related functions. For example, the PIC Charge NPRM makes clear that the Commission would have to "expand" the basis for the PIC change charge in order to permit the inclusion of slamming-related costs.[9] Similarly, the PIC Charge NPRM makes clear that PIC freeze costs constitute "additional" costs that are not recovered through the PIC change charge under current rules.[10]

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[5] MCI Order, 15 FCC Rcd at 9333.
[6] MCI Order, 15 FCC Rcd at 9330 ¶ 5 n.8 (emphasis added).
[7] Id.
[8] 1984 Access Tariff Order at App. B, 13-5 (emphasis added).
[9] PIC Charge NPRM at ¶ 10.
[10] Id. at ¶ 17 ("If commenters argue that the additional costs of conducting a PIC change for a customer subscribing to a PIC freeze service should be recovered through the PIC-change charge, we seek comment on how to allocate the additional costs among jurisdictions.")

The Commission should reject or, in the alternative, suspend and investigate BellSouth Transmittal No. 746 because BellSouth is seeking to recover, through its PIC change charge, costs that are unrelated to the "unbundled cost[] of a subscription change."

PIC Freeze Costs

As BellSouth showed in 1990, the work time required to implement a "manual" PIC change is roughly one minute.[11] The dramatic increase in work time shown in BellSouth's new cost study, to over four minutes per PIC change, is attributable almost entirely to activities that are unrelated to a change in subscription and whose costs should therefore be excluded from recovery through the PIC change charge.

To a significant extent, BellSouth's claimed increase in manual PIC change work time reflects time that BellSouth's customer service representatives spend implementing and lifting PIC freezes.[12] But the cost of implementing PIC freezes cannot be characterized as among the "unbundled costs of a subscription change." To implement a subscription change, the incumbent LEC's customer service representative need only solicit the customer's choice of presubscribed carrier and enter the identity of the new interLATA carrier selected by the end user. The solicitation and implementation of a PIC freeze is not a step in that process; rather, the PIC freeze is a separate and optional service that the incumbent LEC has chosen to offer.

The Commission's rules and orders emphasize that the cost of implementing a PIC freeze cannot be characterized as among the "unbundled costs of a subscription change." As an initial matter, section 64.1190(d)(1)(iii) of the Commission's rules

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[11] See, e.g., BellSouth Tariff FCC No. 4, Transmittal No. 303-Amended, Workpaper 40, line 4.
[12] D&J, Attachment M.

specifically contemplates that incumbent LECs may impose a separate charge for implementing PIC freezes.[13] And, as discussed above, the PIC Charge NPRM makes clear that a rule change would be required before PIC freeze costs could be recovered through the PIC change charge.

Marketing Costs

The Commission should also reject or, in the alternative, suspend and investigate BellSouth Transmittal No. 746 because BellSouth is proposing to recover through its PIC change charge costs that are related to the marketing of BellSouth services.

First, it is inappropriate for BellSouth to include a "Telemarketing Vendor Charge Per PIC Change"[14] in the development of the PIC change cost for BellSouth Small Business Services and a similar "Authorized Agent" telemarketing charge in the development of the PIC change cost for BellSouth Business Systems.[15] Clearly, any telemarketing costs that BellSouth incurs when selling its own services are unrelated to the cost of a "subscription change," and should thus be recovered through charges for BellSouth's services, not through PIC change charges that are assessed, in many instances, on BellSouth's competitors.

Furthermore, the inclusion of telemarketing costs in BellSouth's cost study indicates that BellSouth's cost study may include other marketing costs as well. In particular, it appears likely that the inflated work times shown for manual PIC changes include time that BellSouth customer service representatives may spend marketing BellSouth's services during the same call. Although it is the practice of BellSouth and

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[13] 47 C.F.R. § 64.1190(d)(1)(iii).
[14] D&J, Attachment A, page 11, WP-SBS, line 43; see also D&J at page 27, item 9.
[15] D&J, Attachment A, page 12, WP-BBS, line 45; see also D&J at page 27, item 9.

other incumbent LECs to use every customer contact as an opportunity to market the services of the incumbent LEC or its affiliates, including services offered by BOC interLATA affiliates, BellSouth has failed to demonstrate that it has properly excluded the time associated with such marketing activities from the work times shown in the cost study.

Third Party Verification Costs

A significant contributor to BellSouth's claimed manual PIC change cost is payments that BellSouth makes to Third Party Verification (TPV) vendors.[16] BellSouth does not explain whether the claimed TPV costs are associated with the implementation of PIC freezes or the verification of PIC changes – the two circumstances under which TPV is required by the Commission's rules.[17] In either case, however, BellSouth's inclusion of TPV costs would be inappropriate.

- The inclusion of TPV costs associated with the implementation of PIC freezes would be inappropriate because, as explained above, the implementation of PIC freezes is a separate, optional service, not a step in the PIC change process.
- The inclusion of TPV costs associated with the verification of PIC changes would be inappropriate because the verification of PIC changes is not a step in the subscription change process. Rather, interexchange carriers use TPV to verify PIC changes before submitting the PIC change request to the incumbent LEC. If BellSouth uses TPV to verify PIC changes, it would do so only in those instances where BellSouth BOC personnel are marketing interexchange

[16] See D&J, Attachment A, page 3, column E.
[17] 47 C.F.R. § 64.1120(c)(3); 47 C.F.R. § 64.1190(d)(2)(iii).

services, e.g., on behalf of BellSouth's interLATA affiliate. Consequently, any TPV costs that BellSouth incurs to verify PIC changes should be recovered through sales and marketing fees that BellSouth charges to its interLATA affiliate pursuant to section 272(b)(5) of the Act.

III. BellSouth Fails to Provide Adequate Justification for Service Order and Other Computer System Costs

According to BellSouth's cost study, "service order" and "provisioning and billing support" computer system costs together account for a significant portion of the total PIC change cost claimed by BellSouth (over 40 percent of the manual PIC change cost, and over 90 percent of the mechanized PIC change cost). The Commission should reject or, in the alternative, suspend and investigate Transmittal No. 746 because BellSouth has failed to justify the claimed computer system costs.

As an initial matter, BellSouth has failed to demonstrate that the claimed computer system costs are in fact associated with the processing of subscription changes. As discussed above, BellSouth is seeking to recover through its PIC change charge certain costs incurred to implement PIC freezes, market BellSouth services, and perform other functions unrelated to actually changing a customer's PIC. Any computer system costs associated with PIC freezes, marketing, or other unrelated functions should be excluded from BellSouth's cost study.

Furthermore, even if some of the computer systems shown in BellSouth's cost study are in fact used in the processing of PIC changes, BellSouth has failed to justify the claimed system costs. Indeed, BellSouth has provided little more than a list of computer systems and a cost figure for each of those systems. For example, BellSouth shows the

$1.52 per manual "consumer" PIC change "service order entry" cost as the sum of a prorated "RNS" system cost and a "KANA" system cost, but fails to show the development of the "RNS" and "KANA" costs.[18] Rather, the "RNS" and "KANA" costs (and other computer system costs) are simply shown as inputs to the cost model.[19]

Absent more detailed cost support, it is impossible for the Commission to determine whether the claimed system costs accurately reflect the cost of processing PIC changes. For example, BellSouth has failed to demonstrate that it has appropriately allocated the cost of its computer systems between the PIC change process and other services and functions that use the same systems.

IV. Conclusion

For the reasons stated herein, the Commission should reject or, in the alternative, suspend and investigate BellSouth Transmittal No. 746.

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

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October 21, 2003

[18] D&J, Attachment A, page 10, WP-CON, lines 29-31.
[19] Although the "source" reference shown for the KANA and RNS costs on WP-CON, lines 29-31, appears to be incorrect, those costs appear to be based on the KANA and RNS costs shown in the D&J, Attachment A, page 7, workpaper INPUT, lines 136-137.

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 21, 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 21st day of October, 2003.

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