Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
BellSouth Telecommunications, Inc. Tariff F.C.C. No. 1	)	Transmittal No. 746

AT&T PETITION TO SUSPEND AND INVESTIGATE

Pursuant to Section 1.773 of the Commission's Rules, 47 C.F.R. § 1.773, AT&T Corp. ("AT&T") petitions the Commission to suspend and investigate the above-captioned tariff revisions filed on October 14, 2003 by BellSouth Telecommunications, Inc. ("BellSouth") with an effective date of October 29, 2003.[1]

With this filing BellSouth is revising its F.C.C. Tariff No. 1 to update rates associated with its nonrecurring charge for a change in Preferred Interexchange Carrier ("PIC"). The PIC is the end user's designated Interexchange Carrier ("IXC)" to which the end user's InterLATA calls are routed without the end user having to dial a carrier access code. BellSouth is proposing to increase its nonrecurring charge for a change in PIC from $1.49 to $3.10 as a result of updating its purported costs to provide the service.

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[1] Suspension and investigation are appropriate where a tariff raises substantial issues of lawfulness. *See AT&T (Transmittal No. 148),* Memorandum Opinion and Order, 56 RR2d 1503 (1984); *ITT (Transmittal No. 2191),* 73 F.C.C.2d 709, 716, n.5 (1979) (*citing AT&T (Wide Area Telecommunications Service*)), 46 F.C.C.2d 81, 86 (1974).

Currently, the PIC change charge is subject to a $5 safe harbor.[2] On May 16, 2001, the Competitive Telecommunications Association ("CompTel") petitioned the Commission to initiate a rulemaking proceeding to revise its policies governing PIC change charges.[3] As a result of its petition, on March 20, 2002, the Commission issued an Order and Notice of Proposed Rulemaking to address the PIC change charge $5 safe harbor.[4] The Commission concluded that "significant industry and market changes have occurred since the implementation of the safe harbor in 1984, and that it is appropriate for the Commission to reexamine the existing safe harbor for incumbent LEC PIC change charges at this time."[5] Moreover, the Commission emphasized the crucial role that PIC change charges play in constraining customers' ability to exercise choices among competing carriers, and the resultant detrimental impact on disciplining prices to consumers. As the NPRM stated, the "Commission relies on the fiercely competitive nature of the long distance market to ensure reasonable prices for consumers. The ability of end users to change carriers easily and for any reason gives long distance carriers an incentive to provide their services at reasonable rates and to maintain customer-friendly

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2 *Annual 1985 Access Tariff Filings*, CC Docket No. 86-125, Memorandum Opinion and Order, 2 FCC Rcd 1416, 1445-46, ¶¶ 272-274 (1987) *("1987 Access Tariff Order").*

3 Petition for Rulemaking Regarding Presubscribed Interexchange Carrier Charges, Competitive Telecommunications Association Petition for Rulemaking (filed May 16, 2001) ("Petition").

4 *In the Matter of Presubscribed Interexchange Carrier Charges*, CC Docket No. 02-53, CCB/CPD File No. 01-12, RM-10131, Order and Notice of Proposed Rulemaking", released March 20, 2002 ("NPRM").

5 NPRM, ¶¶ 1, 8-13.

business practices. . . . . Accordingly, it is appropriate to consider the effect on the long distance market of PIC-change charges that are not strictly cost-based."[6]

Numerous parties filed both comments and reply comments in connection with the Commission's NPRM on PIC change charges. To date, the Commission has not issued a final Order on its NPRM regarding PIC change charges. As a result, BellSouth's Transmittal No. 746 should, at a minimum, be suspended and made subject to its final ruling regarding the Commission's policies for regulating PIC change charges.

In all events, moreover, BellSouth has fallen well short of demonstrating that its costs to perform PIC changes have increased since 1990 commensurately with its proposed rate increase. In its NPRM, the Commission restated that "The manual procedures used by the defendants [LECs] for processing PIC changes in 1985 were extremely labor intensive and time consuming and the [LECs] have since automated procedures for the majority of their PIC changes."[7] "The Commission also concluded that the parties, which included the majority of former BOCs, failed to refute this evidence."[8] Yet, in spite of these conclusions by the Commission, BellSouth's primary claim for increasing its PIC change charges is that "a larger percentage of Manual PIC Changes are being experienced today than was identified in the 1990 study."[9] Even more perplexing is the magnitude with which BellSouth claims its manual PIC changes are

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[6] NPRM, ¶ 12.

[7] NPRM, ¶ 9, *see also MCI Telecommunications Corporation v. U S West Communications, Inc. et al.*, Memorandum Opinion and Order, 15 FCC Rcd 9328, ¶ 9 (2000) ("MCI Order").

[8] NPRM, ¶ 9 (citations omitted).

[9] BellSouth Transmittal No. 746, D&J, p. 2.

increasing. For example, BellSouth states that in 1990 its percentage of manual PIC changes was about 25%, eleven years later in 2001 it claims the manual PIC changes increased to 34%, one year later in 2002 it claims an increase to 43%, and one year after that in 2003 it *projects* 54%.[10] However, AT&T's own recent actual data diverge substantially from BellSouth's claims. For example, during the months of July, August and September 2003, PIC change rejections based on "PIC restricts" (*i.e.*, PIC Freezes) ranged from approximately 6% to 9% per month of AT&T's total PIC changes for business customers submitted to BellSouth. Given AT&T's substantial long distance market share, the Commission should not uncritically accept BellSouth's claims without further investigation.[11]

Another reason cited by BellSouth for its proposed increase of its PIC change charge is the increase in cost for handling its "increasing" manual PIC changes. BellSouth claims that its increased cost for manual PIC changes is "due to the increase of the average time from 1.3 minutes to 4.1 minutes that it takes a Service Representative (SR) or Customer Service Associate (CSA) to manually handle a PIC Change."[12] BellSouth supports this increase of almost 3 minutes in average time to handle a manual PIC change by stating that in 1990 "The end user customer had fewer carrier choices and less information on each carrier. The SR did not have to invoke the Freeze option. Furthermore, customer movement between carriers was less frequent. Lastly, the SR did

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10 BellSouth Transmittal No. 746, D&J, p. 3.

11 *MCI Order* ¶¶ 8-9.

12 BellSouth Transmittal No. 746, D&J, p. 5.

not have to consume time for additional verification steps using Third Party Verification (TPV) Contractors, with a weighted cost of $.29 per PIC Change in 2003."[13]

First, customers who request a PIC change typically have already identified the IXC to which they want to presubscribe. Therefore, it is not necessary for the SR to recite to the end user all of the available carriers and the information about each carrier. Second, the Freeze option should *not* be part of BellSouth's cost basis for determining its PIC change charge. BellSouth should create a separate Carrier Freeze Charge that is assessed against those customers who wish to have a PIC Freeze. Including the manual processing costs associated with PIC Freezes by the subset of customers who have in fact elected that option through charges assessed on <u>all</u> customers who change their long carrier is squarely at odds with the Commission's longstanding policy that access ratepayers should only be charged for the service elements that they actually use.[14] Third, the fact that customer movement between carriers was less frequent in 1990 (for which there is no evidence) would have nothing to do with increasing the average cost of manually processing a PIC change charge. It would only affect the number of PIC changes requested of BellSouth, not the average cost of an *individual* PIC change. Lastly, Third Party Verification ("TPV") only applies when BellSouth is changing the customer's preferred carrier to itself. TPV is a cost of doing business that all carriers must bear, and BellSouth should not be spreading the cost of *its* own acquisition of a new customer to the customers of other carriers. By including its TPV

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13 BellSouth Transmittal No. 746, D&J, p. 5.

14 *See, e.g., Investigation of Access and Divestiture Related Tariffs*, 97 F.C.C.2d 1082 (1984); *MTS and WATS Market Structure*, CC Docket No. 78-72, Phase I, Third Report and Order, FCC 82-579 (released February 28, 1983).

costs as part of its manual PIC change charge, BellSouth has inflated its PIC change charge by $.29.[15] In addition, BellSouth's overall increase in average time from 1.3 minutes to 4.1 minutes for a SR to handle a manual PIC change, increases the cost per manual PIC change by 88 cents – more than half of its proposed rate increase.[16]

Another reason for BellSouth's increased average time for manual PIC changes that BellSouth conveniently fails to mention or seemingly adjust for, is the time that BellSouth SRs spend with end users discussing local calling features prior to executing a manual PIC change. For example, when an end user calls a BellSouth SR and has a local billing question or is requesting a local calling feature (*e.g.*, call waiting, three-way calling, etc.), the SR completes the customer's request and then bridges to a sales inquiry to see if the customer wants to switch his or her IXC to BellSouth. If the customer agrees to do so, then this is counted as a manual PIC, and the "average time" of this PIC change is inflated because of this "other" transaction (*i.e.*, ordered local calling feature, sales/marketing time), unrelated to the PIC change, that occurred during the call. BellSouth does *not* appear to have backed out this additional time from its calculation of 4.1 minutes for average time of manual PIC change calls.

Although BellSouth has gone to great lengths to allegedly support its PIC change rate increase with cost support data, many of the pages of cost support reference incorrect source lines or show calculations that make absolutely no sense. For example, on Attachment A WP-CON, lines 34 through 38 show Provisioning and Billing Costs for PIC changes. However, the source for these costs refers back to lines on Attachment A

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15 BellSouth Transmittal No. 746, D&J, p. 5.

16 *Id*.

INPUT that either are blank or have numbers that do not compute to the same costs shown on lines 34 through 38. Another example is the Service Order entry costs on Attachment A WP-SBS lines 27 through 30. These lines show calculations and source lines referring back to lines of data that do not come close to equaling the Service Order entry costs actually shown on lines 27 through 30. These types of sourcing errors appear throughout other work papers in Attachment A, which is the primary Attachment, and contains 19 pages of cost support data for BellSouth's PIC change charge increase. These sourcing errors, coupled with the fact that most of BellSouth's cost support data are self reported and contain no explanation about where the data came from or how they were computed, make it impossible to verify BellSouth's PIC change cost support data.

BellSouth's claims that its volume of manual PIC changes, as well as its cost for each manual PIC change, is increasing is not representative of proposed rate levels that should be reflecting forward-looking incremental costs and the most technologically efficient process for implementing PIC changes.[17] Given the lack of verifiable cost data, BellSouth's proposed rate increase raises substantial questions of lawfulness and should be suspended. Ultimately, BellSouth's PIC change charges should be made subject to the policies and regulations for governing LECs' PIC change charges that the Commission will adopt in its NPRM on the subject.

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[17] *See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, 14 FCC 1508, 1572, ¶ 105 (1998) ("Slamming Order"), *recon*. 15 FCC Rcd 8050 (2000) (stating that the Commission expects carriers executing PIC changes to "us[e] the most technologically efficient means available to implement changes to subscribers' telecommunications services").

CONCLUSION

WHEREFORE, for the reasons stated above, the Commission should suspend BellSouth's tariff for the full five months, initiate an investigation and impose an accounting order.

Respectfully submitted,

AT&T CORP.

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CERTIFICATE OF SERVICE

I, Judy Sello, do hereby certify that on this 21st day of October, 2003, a copy of the foregoing "AT&T Petition to Suspend and Investigate" was served by facsimile and U.S. first class mail, postage prepaid, on the parties named below.

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