

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054**

In the Matter of)	
)	
Revisions by BellSouth)	Transmittal No. 762
Telecommunications, Inc. to its)	
Tariff F.C.C. No. 1)	

**PETITION TO REJECT OR, ALTERNATIVELY,
TO SUSPEND AND INVESTIGATE**

ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom"), KMC Telecom Holdings, Inc. ("KMC"), NewSouth Communications Corp. ("NewSouth"), XO Communications, Inc. ("XO"), and Xspedius Communications LLC ("Xspedius") (collectively, the "Petitioners"), by their attorneys and pursuant to 47 C.F.R. § 1.773, hereby petition the Federal Communications Commission (the "Commission") to reject or, alternatively, to suspend and investigate the tariff revisions in Sections 6.7.2 and 7.4.4 of Tariff F.C.C. No. 1 filed by BellSouth Telecommunications, Inc. ("BellSouth") in Transmittal No. 762 on December 1, 2003, with an effective date of December 16, 2003. The Petitioners are BellSouth customers under this tariff, and therefore, the Petitioners have a direct interest in these tariff revisions.

I. INTRODUCTION

Based solely on an administrative convenience justification, BellSouth has proposed a significant revision to its tariff provisions governing the minimum service period for obtaining special access service, specifically, DS1 High Capacity Service. Specifically, in Transmittal No. 762, BellSouth seeks to modify Sections 6.7.2 and 7.4.4 its Tariff F.C.C. No. 1 in order to increase the minimum service period from one month to four months for obtaining BellSouth's DS1 High Capacity (a.k.a BellSouth SPA DS1) Service. BellSouth proposes no corresponding

reduction in recurring charges or nonrecurring charges (including installation and early termination) to offset the proposed increase in the minimum service period.

If permitted to be implemented, this tariff revision would impose unreasonable new and costly requirements on the Petitioners and other interstate access customers without adequate justification. Quadrupling the minimum service period will result in significant cost increases and burdensome changes to service ordering and provisioning processes for the Petitioners and BellSouth's other direct competitors. In addition, the proposed revision also may adversely impact the Petitioners' end user customers by compelling the Petitioners to increase prices and minimum service periods, to the extent the Petitioners are even able to do so. The proposed changes are neither just nor reasonable, nor has sufficient justification been offered by BellSouth for them. Moreover, given that DS1 High Capacity Service often is a critical input to service offered by the Petitioners and other direct competitors with BellSouth, the proposed tariff revision is anticompetitive.

Petitioners urge the Commission to reject – or, alternatively, to suspend and investigate – the minimum service period associated with the BellSouth DS1 High Capacity Service because the increase from one month to four months is highly anticompetitive as well as unjust and unreasonable in violation of Sections 201(b)¹ and 202(a)² of the Communications Act of 1934, as amended.³

¹ Section 201(b) provides, in relevant part, that “all charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful.”

² Section 202(a) provides that “it shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.”

³ 47 U.S.C. §§ 201(b) and 202(a).

II. BELLSOUTH HAS FAILED TO DEMONSTRATE THAT ITS PROPOSAL TO QUADRUPLE THE MINIMUM SERVICE PERIOD FOR ITS DS1 HIGH CAPACITY SERVICE IS JUST AND REASONABLE

In Transmittal No. 762, BellSouth seeks to modify Sections 6.7.2 and 7.4.4 of its Tariff F.C.C. No. 1 in order to increase the minimum service period from one month to four months for BellSouth's DS1 High Capacity (a.k.a BellSouth SPA DS1) Service. Petitioners urge the Commission to conclude that the increase of the minimum service period from one month to four months proposed by BellSouth, while maintaining the same levels of nonrecurring and recurring costs, is unjust, unreasonable, and facially unlawful in direct violation of Sections 201(b) and 202(a) of the Communications Act of 1934, as amended.

As indicated above, the minimum service term that BellSouth has proposed for its DS1 High Capacity Services is four times longer than the minimum service period it currently imposes for the DS1 High Capacity Service. In its D&J, BellSouth claims that this dramatic change in the minimum service period is necessary to "align BellSouth DS1 High Capacity Service with other dedicated access services,"⁴ and that it will simplify the "sales and contract management processes" for BellSouth and its customers.⁵ The simplicity of BellSouth's proffered administrative convenience justifications ignores, if not masks, and by no means justifies, the substantial nature of the proposed revision and the impact such change would have on the Petitioners and other BellSouth direct competitors.

As an initial matter, the proposed change in the minimum service period will not simplify any sales and contract management processes for the Petitioners. Petitioners will be unable to reconcile the change with their existing end user contracts and provisioning processes that have

⁴ D&J at 1. If BellSouth seeks uniformity, it should consider reducing the minimum service period on its other dedicated access services to one month.

⁵ *Id.*

been built upon the one month minimum term commitment, particularly for this critical wholesale input that Petitioners purchase from BellSouth as wholesale customers. Moreover, minimum service periods are not merely an administrative matter. Petitioners acknowledge that service periods, in conjunction with early termination charges, are a permissible method of recovering costs and allocating the risks associated with providing a service.⁶ Such requirements impact cost recovery and risk allocation for both BellSouth and its wholesale customers/retail competitors such as the Petitioners. The requirements also impact the Petitioners' provisioning and pricing for its services to its end user customers, as DS1 High Capacity Service is a key component in the Petitioners' own retail service offerings. Notably, DS1 High Capacity Service also is sometimes used as a transitional component of the Petitioners' retail service offerings, as such circuits may be converted to unbundled network elements. Because CLECs often are faced with "no facilities available" responses to DS1 UNE service orders, CLECs frequently purchase special access DS1 High Capacity Service and convert such service to UNEs upon expiration of the minimum one month service period. This practice likely will continue until the FCC's Triennial Review Order has been implemented. With relatively high customer churn levels during the first month of service, imposing a minimum service period of four months for obtaining DS1 High Capacity Service requires Petitioners not only to adjust business plans and processes but it likely would force the introduction of increased minimum terms and/or rates, in order to reasonably account for dramatic increases in breakage and line costs due to the unjustified quadrupling of the minimum term proposed by BellSouth.

⁶ See, *In the matter of Ryder Communications, Inc. v. AT&T Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 13, 603, 13611 ¶18 (2003) (citations omitted.) ("*Ryder Communications MO & O*") (Commission endorsement of service term commitments as a quid pro quo for the rate reduction associated with a long term contract).

Typically, increased term commitments are associated with reduced recurring and/or nonrecurring prices. Here, however, BellSouth offers no offsetting reductions in recurring⁷ or nonrecurring charges such as installation and early-termination charges.⁸ BellSouth also offers no explanation as to why the additional cost recovery is justified and reasonable. Indeed, BellSouth has not provided any justification as to why its costs have increased so dramatically (or at all) so as to justify a quadrupling of (or any increase in) its minimum service period. This lack of cost justification alone compels rejection or suspension of BellSouth's proposed tariff revision.⁹

Critically, by proposing to extend the minimum service period four-fold and by leaving recurring and nonrecurring charges unchanged, BellSouth increases dramatically the minimum costs competitors such as the Petitioners will incur for DS1 High Capacity Service and drives up its competitors' average DS1 line costs significantly. This increase likely will result in over-recovery for BellSouth and will impose significant costs increases on competitors such as the Petitioners. These increased costs may or may not be recoverable from existing retail customers. Thus, in addition to being unjustified, BellSouth's proposed revisions are anticompetitive.

Although BellSouth to date has failed to demonstrate that its proposed quadrupling of the minimum service period for DS1 High Capacity Service is just and reasonable – and that is reason enough to reject or suspend the proposed tariff revisions, the Petitioners submit that such a change could not likely be justified in any event. Comparison to other Bell Operating Company DS1 special access service minimum service period demonstrates that BellSouth's

⁷ See, e.g., Section 7.5.9(A)(1), BellSouth Tariff F.C.C. No. 1, effective July 22, 2002. This section regarding monthly recurring charges is unmodified by Transmittal No. 762.

⁸ Section 5.6 (E), BellSouth Tariff F.C.C. No. 1, proposed effective Dec. 16, 2003.

⁹ See *In re AT&T Corporation et al*, Case No. 03-1397 (D.C. Circuit) (filed Nov. 25, 2003) (ordering the FCC to respond to the mandamus petition of AT&T regarding ILEC over-recovery on special access charges and the FCC's *Pricing Flexibility Order*).

proposed revision is extreme in nature and at odds with industry norms. For example, Southwestern Bell Telephone Company,¹⁰ Ameritech Operating Companies,¹¹ Nevada Bell Telephone Company,¹² Pacific Bell Telephone Company,¹³ Southern New England Telephone Companies¹⁴ and Qwest Corporation¹⁵ all offer special access DS1 with a one month minimum service period. Although Verizon's two-month minimum service period also is extreme and out of line with the industry norm, it is still only half of what BellSouth currently proposes in Transmittal No. 762.¹⁶ It is difficult to fathom that BellSouth could justify a minimum service period two times longer than Verizon and four times longer than Qwest or the SBC Companies. In light of this, the Commission should reject outright BellSouth's proposed revisions as being unjust and unreasonable in violation of Section 201(b) and 202 (a) of the Communications Act of 1934, as amended.

¹⁰ See Section 7.2.8, Southwestern Bell Telephone Company Tariff F.C.C. No. 73, effective Oct. 18, 2003.

¹¹ See Section 7.4.5, Ameritech Operating Companies Tariff F.C.C. No. 2, effective Sept. 13, 2002.

¹² See Section 7.2.4, Nevada Bell Telephone Company Tariff F.C.C. No. 1, effective Nov. 21, 2003.

¹³ See Section 7.4.4, Pacific Bell Telephone Company Tariff F.C.C. No. 1, effective Nov. 21, 2003.

¹⁴ See Section 2.10.1, Southern New England Telephone Companies Tariff F.C.C. No. 39, effective July 31, 2003.


¹⁵ See Section 7.1.3, Qwest Corporation Tariff F.C.C. No.1, effective Apr. 8, 2003.

¹⁶ See Section 7.4.4, Verizon Telephone Companies Tariff F.C.C. No. 1, effective July 18, 2003.

III. CONCLUSION

For the foregoing reasons, the Commission should reject the proposed revisions to BellSouth's Tariff F.C.C. No. 1 submitted in Transmittal No. 762 as unlawful or, alternatively, exercise its full authority to suspend and investigate those proposed revisions.

Respectfully submitted,



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Dated December 8, 2003

CERTIFICATE OF SERVICE

I, Erin W. Emmott, hereby certify that, on December 8, 2003, a copy of the foregoing ***Petition To Reject Or, Alternatively, To Suspend And Investigate*** was sent, as indicated, to the following individuals:

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