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June 4, 2002

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BY HAND DELIVERY

Ms. Blanca Bayó, Director
The Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 020420-TP

Dear Ms. Bayó:

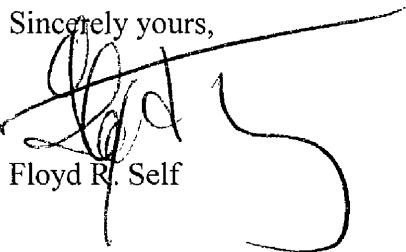
Enclosed for filing on behalf of WorldCom, Inc. are the following documents

1. An original and fifteen copies of WorldCom, Inc.'s Notice of Appearance; and
2. An original and fifteen copies of WorldCom, Inc.'s Motion to Dismiss BellSouth's Complaint and a 3 1/2" diskette with the document on it in Word format.

AUS _____
 CAF _____
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Please acknowledge receipt of this letter by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,

Floyd R. Self

FRS/amb
Enclosures
cc: Donna McNulty, Esq.
Parties of Record

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FPSC-BUREAU OF RECORDS

Notice of Appearance
DOCUMENT NUMBER-DATE
05840 JUN-4 02
FPSC-COMMISSION CLERK

Motion to Dismiss
DOCUMENT NUMBER-DATE
05841 JUN-4 02
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of BellSouth Telecommunications, Inc.)
Regarding the Practices of WorldCom, Inc. in)
The Reporting of Percent Interstate Usage for)
Compensation for Jurisdictional Access Services)
_____)

Docket No. 020420-TP
Filed: June 4, 2002

**WORLDCOM, INC.'S MOTION TO DISMISS
BELLSOUTH'S COMPLAINT**

WorldCom, Inc., for itself and its Florida telecommunications operating companies MCI WorldCom Communications, Inc. f/k/a MCI Telecommunications Corporation ("MCI") and MCI WorldCom Network Services, Inc. f/k/a Wiltel, Inc. ("Wiltel") (hereinafter collectively, "WorldCom"), pursuant to Rules 25-22.036 and 28-106.204, Florida Administrative Code, hereby moves the Florida Public Service Commission ("the Commission") to dismiss the Complaint of BellSouth Telecommunications, Inc. (BellSouth") filed before this Commission in this docket on May 14, 2002 ("Complaint"). In support of this Motion, WorldCom states as follows:

I. INTRODUCTION AND SUMMARY

This case is the latest and clearest example yet of the lengths to which BellSouth is willing to go to ignore the law and its well-established tariffs in order to rewrite history and unlawfully extract revenues from another carrier that has fully complied with the law and those tariffs. By bringing its Complaint, BellSouth seeks to recover additional intrastate access charges plus compounded interest for a period of some eight years by ignoring the dispute resolution procedures specified in its own filed and approved Florida intrastate Access Services

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Tariff (“Tariff”). Due to the numerous legal, technical, and factual deficiencies of BellSouth’s approach, its Complaint in this proceeding must be dismissed.

Through much of the period in question, WorldCom’s certificated telecommunications companies¹ reported a percentage of interstate usage (“PIU”) for terminating traffic because BellSouth was unable to determine the origin of certain terminating calls. This IXC self-reporting of PIU was expressly called for in the Tariff drafted by BellSouth and filed with and approved by this Commission. Under that Tariff, BellSouth has no independent authority to reject or change an IXC’s reported PIU except and unless there has been an independent audit of the reported PIU. If the audit demonstrates a different PIU, then and only then may the IXC’s PIU be changed to the PIU established by the audit. The audited PIU, moreover, only may be applied to the quarter in which the audit was completed, the quarter immediately preceding the audit, and the next two going forward quarters. BellSouth has ignored these requirements entirely. Instead, BellSouth has purported to study terminating traffic based on one month’s worth of data and apply the PIU it determined backward in time some eight years to recalculate the new access charges due. Based just on that analysis, BellSouth would owe WorldCom \$139,051, because on balance, even under BellSouth’s skewed methodology, MCI and Wiltel underreported PIU, meaning they overpaid BellSouth for access charges. **BellSouth’s \$21 million claim arises entirely from payment penalties it seeks to charge on unbilled amounts from 1994 and 1995.**

¹ BellSouth named only WorldCom, Inc. as a party-defendant in this case, but WorldCom, Inc. has not been granted any certificate by this Commission and is not offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility, and therefore is not a real party in interest. BellSouth alleges that WorldCom, Inc. is the “successor” of MCI and Wiltel, which is not the case. Nevertheless, for simplicity’s sake, MCI and Wiltel will be referenced collectively herein as “WorldCom.”

PIU disputes must be resolved pursuant to the procedures specified in BellSouth's Tariff. But BellSouth did not conduct, or otherwise request, an audit since first raising this issue last year and prior to the filing of its Complaint. Further, BellSouth has not at any time rendered a bill for its newly claimed access charges, or even attempted to meaningfully discuss its claims with WorldCom – there has only been this Complaint. Because BellSouth has failed to adhere to the procedures for the calculation and verification of access charges that are outlined clearly in its Tariff, because BellSouth seeks late payment penalties to which it is not entitled under the Tariff, and because BellSouth also is seeking to recover for periods expressly barred by its Tariff, or in the alternative, Florida's statute of limitations, the Commission should grant this Motion to Dismiss.

II. BACKGROUND

A. The Florida Access Services Tariff

BellSouth's Tariff has gone through several revisions over the relevant period with respect to the reporting of Feature Group D terminating PIU ("TPIU").² The version of the Tariff in effect for most of 1994 provided that BellSouth generally would determine Feature Group D TPIU,³ while the version in effect for the last part of 1994 and all of 1995 permitted IXCs to report Feature Group D TPIU or opt to have BellSouth calculate TPIU based on its calculation of originating TPIU.⁴ Beginning in 1996, all IXCs were required to report quarterly

² BellSouth has informed WorldCom that its claim is based entirely on terminating Feature Group D traffic, although the Complaint is not so limited.

³ Tariff § E2.3.14.A.4, Eighth Revised Tariff Page 8, effective June 15, 1993.

⁴ Tariff § E2.3.14.A.4, Ninth and Tenth Revised Tariff Page 8, effective December 5, 1994 and May 12, 1995, respectively.

TPIU for Feature Group D traffic.⁵ Finally, beginning in 2000, BellSouth amended its Tariff to provide that when it received sufficient call detail to determine the jurisdiction of originating and terminating minutes of use, it would bill those actual minutes and not use an IXC reported PIU.⁶ BellSouth has advised WorldCom that it did not actually begin complying with this Tariff provision and use its own TPIU for WorldCom until November 2001.

PIU reporting, which separates the percentage of interstate calls from the intrastate calls, is known as “jurisdictional separation.” Such reporting is necessary because BellSouth has lacked the necessary hardware and software to record actual access usage, and BellSouth’s terminating access rate for interstate telephone service is substantially lower than the rates for intrastate telephone service. As this Commission is well aware, although BellSouth performs exactly the same function in both cases, BellSouth charges WorldCom substantially more for terminating a call from Orlando to Jacksonville than it does a call from Atlanta to Jacksonville. BellSouth’s access charge billings to WorldCom until recently have been based on the PIU reports submitted to BellSouth by WorldCom.

In addition to establishing the methodology for calculating PIUs, BellSouth’s currently filed and approved Tariff also provides a mechanism for verifying a PIU that is reported by an IXC to BellSouth. BellSouth may require WorldCom to provide the data upon which WorldCom’s determination of PIU was based in order to permit a verification audit of the PIU report. Tariff § E2.3.14(B)(1). The written request is considered the initiation of the audit.

⁵ Tariff § E2.3.14.A.4, Eighth Revised Tariff Page 8, effective May 12, 1995, and Tariff § E2.3.14.A.4, Original Page 12, effective July 15, 1996 (the Tariff was reissued without changes to rates or regulations at that time). WorldCom is reviewing its records to determine whether in fact it reported TPIU for Feature Group D traffic during 1994-1995. To the extent WorldCom relied on BellSouth to do so, BellSouth’s claim would fail for yet another reason.

Tariff § E2.3.14(B)(1). BellSouth may request such an audit “no more frequently than once per year, except in extreme circumstances.” Tariff § E2.3.14(B)(2). An audit may be conducted by an independent auditor contracted by BellSouth, by a mutually agreed upon independent auditor, or an independent auditor selected and paid for by WorldCom. Tariff, § E2.3.14(B)(3). The data to be audited is from a recent quarter, which is the current quarter or the prior quarter. The period subject to the audit provisions is consistent with the records retention policy of the Tariff, which requires an IXC to retain the call detail records that substantiate the PIU for a minimum of six months. Tariff § E2.3.14(C)(1).

The Tariff provides that after an audit is completed, any revision of the PIU to reflect the audit results must be limited to “usage for the quarter the audit was completed, the usage for the quarter prior to completion of the audit, and to the usage for the two quarters (2) following the completion of the audit.” Tariff § E2.3.14(D)(1). Again, this application of the audited PIU results totals one year, which is consistent with the fact that BellSouth may, under normal circumstances, request that an audit be conducted only once in any 12 month period. Tariff § E2.3.14(B)(2).

B. The Present Controversy

On March 8, 2002, BellSouth’s Jerry Hendrix sent an email to Marcel Henry of WorldCom asserting that WorldCom over-reported its PIU factors to BellSouth and that region-wide WorldCom owed BellSouth a large amount plus unspecified late charges. Mr. Henry replied back to Mr. Hendrix acknowledging the receipt of the message. On March 14, 2002, Bill Moxley of WorldCom emailed Mr. Hendrix requesting the support and details associated with

⁶ Tariff § E2.3.14.A.1.a, Second Revised Page 9, effective May 10, 2000.

BellSouth's recalculated PIU. Mike Harper of BellSouth replied to Mr. Moxley on March 15, 2002, by emailing several spreadsheets to Mr. Moxley. These spreadsheets purported to reflect a restated Florida PIU applied every month from January 1994 to September 2001, and also alleged late payment charges from February 1994 to November 2001. Although these spreadsheets reflected a net *increase* in PIU (meaning MCI and Wiltel, under BellSouth's theory, had *overpaid* access charges), BellSouth's application of late penalties on unbilled amounts from 1994 and 1995 resulted in an alleged net balance due to BellSouth of some \$21 million.

Mr. Moxley responded to the receipt of the spreadsheets by proposing that the two companies meet to discuss BellSouth's recalculated PIU. While there were several phone calls and email messages exchanged regarding a meeting, there had yet to be a meeting of the parties when on May 10, 2002, BellSouth began launching a series of complaints against WorldCom by filing a petition with the Alabama Commission. Complaints with the Georgia and South Carolina commissions followed on May 13, 2002. On May 14, 2002, representatives of BellSouth and WorldCom met for the first time. In a short meeting, BellSouth explained that it took November 2001 data, calculated a PIU for that month (not that quarter), and then applied the November 2001 PIU retroactively back to the first quarter of 1994. No resolution came from the May 14 meeting, and on that same day BellSouth filed its Complaint against WorldCom with this Commission. A copy of the Florida filing was served by overnight delivery on WorldCom, which was received on or about May 15, 2002. A Louisiana Commission complaint followed on May 16, 2002. On the basis of the spreadsheets and other representations, additional complaints in other jurisdictions are expected.

From the face of the Complaint, as well as these facts, BellSouth has not complied with its own Tariff or procedures in an attempt to address its claims before it launched its barrage of complaints. Since first raising the issue of misreported of PIUs, BellSouth did not request an audit, did not request call detail records or other documentation from WorldCom, did not perform an audit, did not render a bill to WorldCom for the alleged amounts due, did not follow the company's billing dispute resolution process, and did not seek to meaningfully discuss these claims before filing its complaints. While BellSouth's claim on the merits is completely flawed, BellSouth's failure to comply with its Tariff or other applicable law requires a complete dismissal of the Complaint.

III. ARGUMENT

A. BellSouth Has Not Stated A Claim Upon Which Relief May be Granted

WorldCom recognizes that a motion to dismiss raises, as a question of law, the sufficiency of the facts alleged in the original petition or complaint to state a cause of action. Varnes v. Dawkins, 624 So.2d 349, 350 (Fla. 1st DCA 1993). The standard to be applied in disposing of a motion to dismiss is whether, with all allegations in the petition assumed to be true, BellSouth's Complaint states a cause of action upon which relief may be granted. Id. When making this determination, only the petition can be reviewed, and all reasonable inferences drawn from the petition must be made in favor of the petitioner. Id.

In the present Complaint, the facts raised by BellSouth are insufficient, as a matter of law, to sustain a complaint before this Commission because BellSouth has failed to comply with its Tariff, and its claims are, as a matter of law, barred by the Tariff or other operation of law. At

its core, BellSouth's basis for filing its Complaint is to seek this Commission's authorization to backbill WorldCom for nearly eight years of additional intrastate access charges, which in the final analysis amounts to compounded interest from alleged underreporting of PIUs from the 1994 and 1995 time period. There is simply no basis under the Commission's governing statutes, the Commission's own rules or orders, or BellSouth's Tariff that permit the backbilling now being requested. Indeed, BellSouth's Complaint recognizes the complete lack of legal authority for eight years of backbilling because the Complaint does not cite to a single specific statute, rule, order, or any tariff provision that authorizes the action it seeks. Accordingly, this Commission is without authority to grant the relief requested, and this Motion to Dismiss should be granted.

B. BellSouth's Failure to Request an Audit Bars Its Claim

As has previously been discussed, BellSouth has no unilateral authority under its Tariff to change a reported PIU *except and unless* it requests an audit from an independent auditor. Tariff § E2.3.14.B. Even then, BellSouth is still without authority to do anything to the reported PIU until the audit is completed. When the audit determines a different PIU than that which has been reported by the IXC, *then and only then* may BellSouth take *the audited PIU* and apply it to the quarter that was audited, one quarter prior to the audited quarter, and the next two going forward quarters. Tariff § E2.3.14.D. This system makes sense and works with the other provisions of the Tariff. For example, WorldCom and the other IXCs buying access from BellSouth are required to retain the records that are the basis for the self-reported PIU for only six months. Tariff § E2.3.14.C.

WorldCom, in compliance with the requirements of BellSouth's Tariff, submitted PIU reports quarterly to BellSouth. WorldCom has done so since at least 1996. MCI's PIU process in particular has been audited by Price Waterhouse periodically at MCI's request, and Price Waterhouse time and again has validated MCI's PIU process. Further, each time WorldCom submitted its PIU report, BellSouth had the opportunity to request an audit of that report. Now, for whatever reason, BellSouth has ignored established procedures and requirements set forth in its Tariff, and unilaterally has determined a new retroactive PIU for some eight years.

It is well established that the rights and remedies provided in a tariff are exclusive. *See, e.g., Bella Boutique Corp. v. Venezolana Internacional de Aviacion, S.A.*, 459 So.2d 440, 441 (Fla. Dist. Ct. App. 1984) ("A validly filed tariff constitutes the contract of carriage between the parties and conclusively and exclusively governs the rights and liabilities between the parties."); *Wackenhut Corp. v. Lippert*, 609 So.2d 1304, 1307 (Fla. 1993); *Landrum v. Florida Power & Light Co.*, 505 So.2d 552, 554 (Fla. Dist. Ct. App. 1987); *see also, e.g., American Tel. & Tel. Co. v. Central Office Tel., Inc.*, 524 U.S. 214, 1963 (1998); *Cahnmann v. Sprint Corp.*, 133 F.3d 484, 488-89 (7th Cir. 1998); *American Tel. & Tel. Co. v. Florida-Texas Freight, Inc.*, 357 F. Supp. 977, 979 (S.D. Fla. 1973). The Tariff provides an audit process for resolving disputes over the PIU, and sets forth a remedy under which any revised PIU produced by the audit will be applied for a total of only four quarters. Those provisions are plain and straightforward, but in all events, any ambiguity in the Tariff must be reasonably construed against BellSouth. Rule 25-24.485(1)(d)-(e), Florida Administrative Code; *see also, Pan American World Airways, Inc. v. Florida Public Service Commission*, 427 So.2d 716 (Fla. 1983); *Louisville & Nashville Roadroad v. Speed-Parker, Inc.* 137 So. 724 (Fla. 1931); *Bella Boutique*, 459 So.2d at 442.

BellSouth is bound by the terms of its Tariff, and is precluded from pursuing any relief that varies from the Tariff. *See Wackenhut*, 609 So.2d at 1307; *Landrum*, 505 So.2d at 554.

A dispute regarding a reported PIU requires an audit, and an audit is an absolute condition precedent to any change in a reported PIU. In its Complaint, BellSouth has not identified to this Commission any authority to the contrary. Asserting that an audit is optional does not provide BellSouth with the authority to petition this Commission to change eight years worth of history as this Commission is without authority to change eight years of PIU factors and order up additional charges. Further, conducting an audit now does not give BellSouth or this Commission the ability to change a PIU or to otherwise backbill WorldCom given the one quarter limitation and the fact that BellSouth has been measuring actual access traffic since November 2001. Moreover, given the actual network usage measurement employed November 2001, an audit at BellSouth's request would only be an admission by BellSouth that its measuring of access traffic is inaccurate.

In the final analysis, BellSouth cannot be permitted to ignore its own filed Tariff and the required audit provisions simply because it chooses to do so. There is no legal basis for sustaining this Complaint. Accordingly, it should be dismissed.

C. BellSouth's Claim Consists Entirely of Invalid Late Penalty

Spreadsheets provided by BellSouth in March 2002 to document its claim show that if late payment penalties were denied, BellSouth would owe WorldCom \$139,051. BellSouth's claim thus hinges entirely on the validity of the late payment penalties it purports to assess. Yet BellSouth's Complaint does not state the legal basis for its claim to such penalties. In fact, there is no provision in BellSouth's Tariff that would permit it to collect unbilled late payment charges

under these circumstances. *See* Tariff § E2.3.14.D.3 (describing consequences of PIU audit failure).

Putting aside the fact that BellSouth would not have been entitled to late payment charges under any circumstances had it followed the required audit process, BellSouth's claim for such charges further fails because BellSouth has never rendered a bill, let alone a proper bill with sufficient detail as to document BellSouth's claims for additional charges. BellSouth's Tariff provides the following with respect to billing practices:

For services provided under this Tariff that are billed directly to the IC, the Company will establish a bill day each month for each IC account. The bill will cover nonusage sensitive service charges for the ensuing billing period for which the bill is rendered, any known unbilled nonusage sensitive charges for prior periods and unbilled usage charges for the period after the last bill day thru the current bill day. Any known unbilled usage charges for prior periods and any known unbilled adjustments will be applied to this bill. Payment for such bills is due as set forth in 3. following. If payment is not received by the payment due date, as set forth in 3. following in immediately available funds, a late payment penalty will apply as set forth in 3. following.

Tariff § E2.4.1.B.2. If BellSouth believed it was entitled to charge WorldCom for "known unbilled usage charges for prior periods" (again, putting aside the audit requirement), it should have rendered a bill for charges. Only after a bill is rendered does the possibility arise that late charges could be due.

Section E2.4.1.B.2 of BellSouth's Tariff provides that "[i]f payment is not received by the payment due date . . . in immediately available funds, a late payment penalty will apply"

Section E2.4.1.B.3 provides:

All bills dated as set forth in 2. preceding for services provided to the IC and/or End User by the Company are due on the payment due date. The payment due date is the date which is 31 days after the bill day or by the

next bill date (i.e., same date in the following month as the bill date) whichever is the shortest interval, except as provided herein, and are payable in immediately available funds. . . . Further, if any portion of the payment is received by the Company after the payment due date as set forth preceding, or if any portion of the payment is received by the Company in funds which are not immediately available to the Company, then a late payment penalty may be due to the Company. The late payment penalty shall be the portion of the payment not received by the payment due date times a late factor. The late factor shall be the lesser of:

a. The highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of days from the payment due date to and including the date that the IC and/or End User actually makes the payment to the Company.

b. 0.000590 per day, compounded daily for the number of days from the payment due date to and including the date that the IC and/or End User actually makes the payment to the Company.

Late payment penalties thus are limited to the failure to pay a bill on time. Arguably the high interest rate underlying the penalty amount can be justified when notice in the form of a bill has been provided. However, as the Tariff itself expresses, there is no basis to apply penalties to amounts that have not been billed! Since elimination of the late payment charges would render BellSouth owing WorldCom, BellSouth's immediate issuance of a bill will not rescue its Complaint. Again, the Complaint fails as a matter of law.

D. BellSouth's "Methodology" for Recalculating PIU is Not Authorized

The basis for BellSouth's Complaint is unstated in its Complaint other than the naked assertion that its new Agilent system has determined the new PIU. However, based upon the brief meeting between WorldCom and BellSouth on May 14, 2002, BellSouth advised WorldCom that the basis for the recomputed PIU is the extrapolation of November 2001 data back to January 1994. In other words, November 2001 data is being used as a surrogate for the prior eight years. This is such a tremendous abuse of the entire PIU process as to defy all logic

and reason. One month's worth of data, picked from any month during the last 8 years, cannot be a basis for a PIU calculation for the entire eight year period.

First, there is absolutely no authority in BellSouth's Tariff or in the rules or statutes of this Commission for taking one month's worth of PIU data and applying it to any other period of time, let alone to every month of an eight year period. Since there is no legal basis for such calculation, there is not any legal authority for filing a Complaint with this Commission claiming that WorldCom has misreported its PIU and that WorldCom is, therefore, obligated to pay additional charges plus interest for the difference.

Second, there is no legal demonstration that November 2001 is a valid surrogate for any other month, let alone every month of an eight year period. BellSouth contends this approach is appropriate on the theory that PIU has remained more or less consistent over time. In fact, however, WorldCom's reported PIUs have varied significantly over time, as is reflected in the charts attached hereto as Exhibit A.⁷ Indeed, use of November 2001 data for even the fourth quarter of 2001 is problematic because WorldCom reported data on a quarterly basis, not for a single month, so an apples-to-apples comparison is not possible. Moreover, BellSouth determined PIU for only two ACNAs – MCI and WTL (the ACNA for Wiltel). WorldCom currently reports a single PIU on a quarterly basis that covers several legacy MCI and WorldCom ACNAs. Prior to and shortly after the MCI-WorldCom merger, the companies reported two TPIUs, each of which included several ACNAs. Thus, again BellSouth is not making an apples-to-apples comparison because it is comparing a PIU based on data from two companies to the PIUs MCI and WorldCom reported, and the merged company now reports,

based on data from several companies. There is no basis for applying a merged successor company's PIU to several other companies, some of which were separately reporting their own PIUs during at least part of the period in question.

As the Commission is well aware, the nature of the national and the Florida long distance market is such that there is a great deal of seasonality to the calling patterns. Attempting to apply the November 2001 sample retroactively to January 1994 assumes that the traffic patterns are month in and month out the same. Again, the long distance market in Florida has been subject to extensive marketing campaigns and rate offerings over the last eight years that have impacted company market shares and calling patterns. Another critical dynamic unaccounted for from the one month surrogate is the effect of mergers and acquisitions on traffic volumes and calling patterns. Quite simply, WorldCom's PIU has changed over time because the total volumes of traffic and calling characteristics have changed over time. There is no factual or legal basis for taking a one month sample, applying it to eight years, recalculating the amount of access charges that WorldCom owes, and filing a Complaint with this Commission for some \$21 million in "misreported" PIU charges. As such, the Complaint must fail.

E. BellSouth's Claims Are Time-Barred

Application of the appropriate limitation period is particularly critical in this case because if BellSouth's claims dating to 1994 and 1995 are wiped out, under BellSouth's theory (including its application of late payment penalties), **BellSouth would owe WorldCom \$12 million.** Applying the correct limitations period thus results in the complete foreclosure of

⁷ The early part of the claim period dates back to the early days of equal access for intraLATA calling, making that period particularly inappropriate for comparison to a recent period.

BellSouth's claim. The Commission should dismiss BellSouth's claims, whether it applies the specific Tariff provisions concerning backbilling or the statute of limitations.

1. Under the Tariff BellSouth may retroactively backbill for only one calendar quarter.

The Tariff expressly and unambiguously requires that any revision of the PIU required to reflect the audit results may be limited to the quarter when the audit is completed, to the immediate prior quarter, and then to the next two quarters going forward (for a total of 12 months). Tariff § E2.3.14(D)(1). Therefore, even if this Commission can hear BellSouth's claims, it may not hear BellSouth's request for relief dating all the way back to 1994. At most, BellSouth can only seek retroactive adjustment for one quarter prior to which an audit is conducted. All other claims are barred by BellSouth's Tariff.

This limitation is consistent with the rest of BellSouth's Tariff. BellSouth cannot reasonably expect to recover for PIU differences that date back eight years when WorldCom is not required, under the terms of BellSouth's own Tariff, to retain any call detail documentation of the PIU for more than six months. Tariff § E2.3.14(C)(1). Without such records, there would be no basis upon which BellSouth could dispute WorldCom's reported PIU, nor any basis for WorldCom to verify its usage. Indeed, Section E2.3.14(C)(1) provides an independent reason for barring BellSouth's claim because it would be unreasonable to impose backbilling on usage that dates back eight years, especially since WorldCom is required to retain data for only 6 months.

On the basis of the application of the Tariff, as a matter of law, there is no basis for any backbilling beyond the quarter preceding an audit. Since there has been no audit, there can be no backbilling. Even assuming an audit and that it was completed today, under application of the

Tariff BellSouth may backbill only one quarter, and that is the quarter preceding the audit. Accordingly, the Complaint must fail because there has been no audit, or if there was an audit, as a matter of law the Complaint must fail except as to the quarter prior to the audit.

2. Applicable statutes of limitations bar this Complaint

Even in the absence of the expressed provisions contained in the BellSouth Tariff as well as the Commission's back billing rule, BellSouth's Complaint is barred by the statute of limitations. In Florida, the statute of limitations for obligations based on written documents is five years. *See* Section 95.11(2), Florida Statutes. It is well established that a tariff constitutes a binding, written obligation between the parties that is enforceable as a contract or statute. Rule 25-24.485(1)(i), Florida Administrative Code; *Pan American World Airways, Inc. v. Florida Public Service Comm'n*, 427 So. 2d 716 (Fla. 1983); *Reinschmit v. Louisville & Nashville Railroad*, 160 So. 69 (Fla. 1935); *Corporation De Gestion Ste-Foy, Inc. v. Florida Power & Light Co.*, 385 So. 2d 124 (Fla. 3rd DCA 1980).

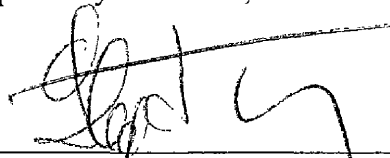
Accordingly, BellSouth cannot recover from WorldCom PIU differences that date back eight years, when claims beyond five years are barred under the statute of limitations. Application of the statutory limitation would defeat BellSouth's claims for the period prior to May 14, 1997, or at least prior to March 6, 1997 (five years prior to the first written notification of any dispute on March 6, 2002). The effect of this limitation is to abrogate BellSouth's claims because they result from applying a high compound interest to amounts claimed from 1994 and 1995. If BellSouth's claims prior to May 14, 1997 are deemed barred, BellSouth would owe WorldCom approximately \$11 million (*i.e.*, \$1 million less than if just 1994 and 1995 were

excluded from the claim period) on BellSouth's theory of this case. Obviously, application of the five-year statute would bar BellSouth's claims.

IV. CONCLUSION

Based on the foregoing, WorldCom's Motion to Dismiss should be granted, and BellSouth's Complaint should be dismissed in its entirety with prejudice or, in the alternative, BellSouth's Complaint should be dismissed in part with prejudice to the extent that BellSouth's claims arose prior to May 14, 1997.

Respectfully submitted,



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Exhibit A, page 1 of 2
Billed PIU & BST Revised PIU (MCI - FL)

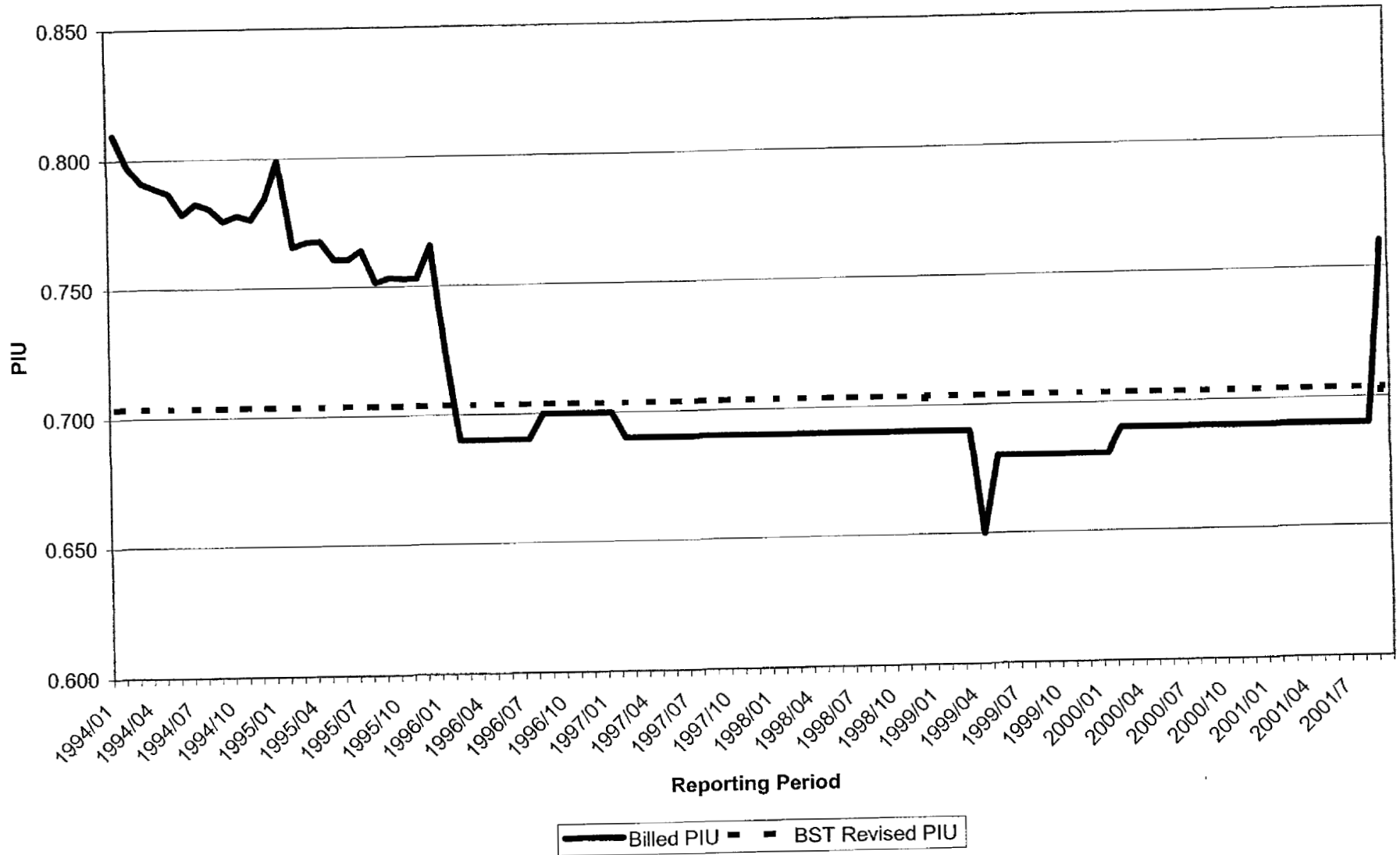
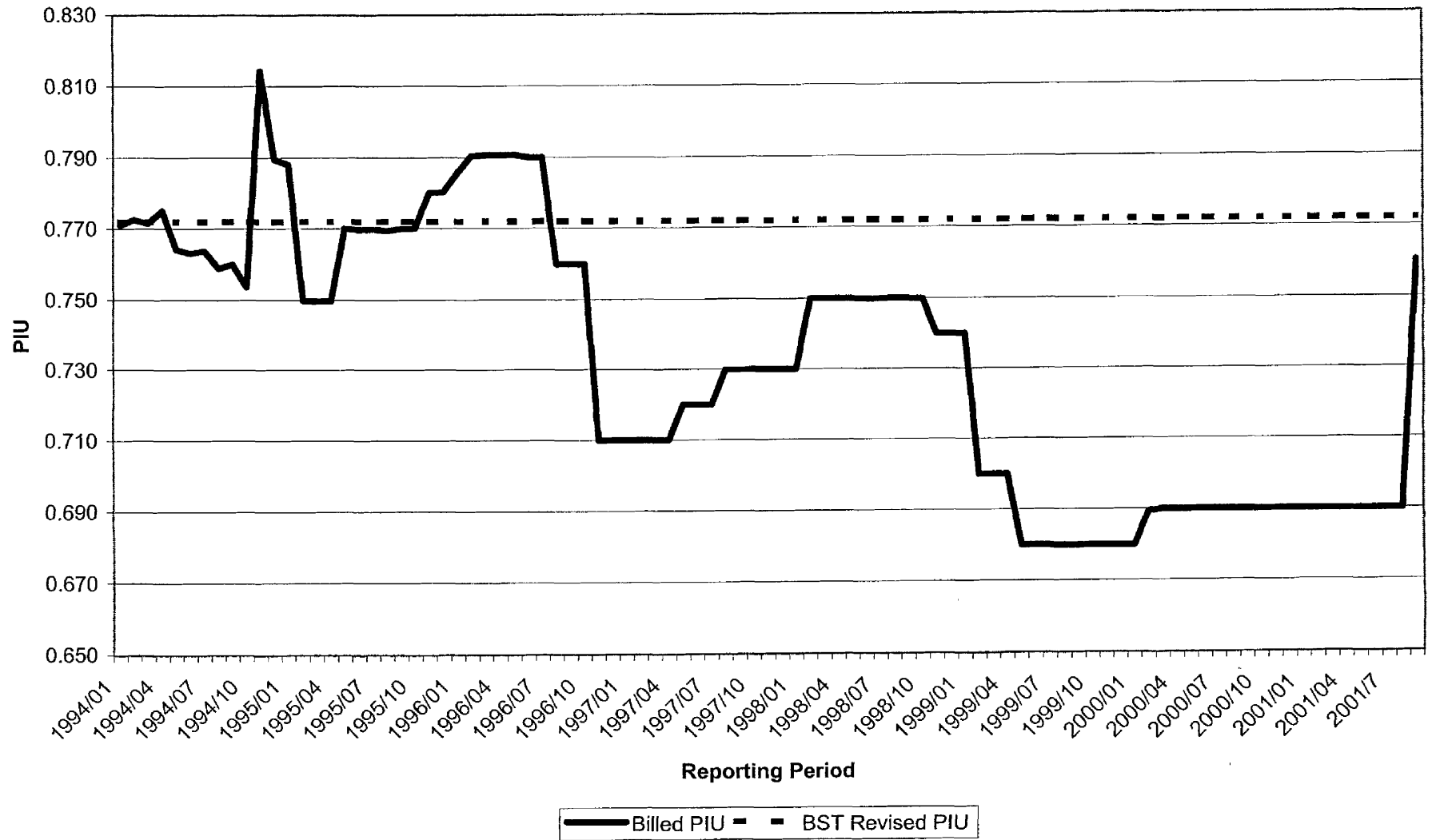


Exhibit A, page 2 of 2
Billed PIU & BST Revised PIU (WTL-FL)

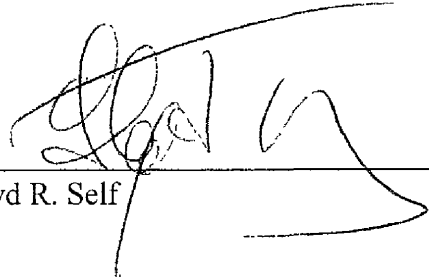


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of WorldCom, Inc.'s Motion to Dismiss BellSouth's Complaint in Docket No. 020420-TP have been served upon the following parties by Hand Delivery (*) and/or U. S. Mail this 4th day of June, 2002.

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