

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

In the Matter of

**Verizon Tariffs F.C.C. No. 1, 11, 14, 16
Transmittal No. 226**

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PETITION OF AT&T CORP.

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PETITION OF AT&T CORP.

Pursuant to Section 1.773 of the Commission's Rules, 47 C.F.R. § 1.773, AT&T Corp. ("AT&T") submits this Petition to reject or, in the alternative, to suspend and investigate the above-captioned transmittal filed by the Verizon Telephone Companies ("Verizon") on July 25, 2002, in which Verizon seeks to amend its tariffs i) to provide it with virtually unfettered discretion to require massive advance payments or "deposits" from any access customer that Verizon wishes, and ii) to reduce to just one week Verizon's ability to cut off a customer's access services for nonpayment, regardless of the customer's financial status.

INTRODUCTION AND SUMMARY

Verizon's Transmittal is the latest of a series of dominant LEC-proposed tariff revisions purporting to accelerate the time in which the LEC can cut off an interexchange carrier's ("IXC") access service and require security deposits (or, at Verizon's sole option, advance payments) from any IXCs that the LEC unilaterally elects to burden with such a duty. As in the other prior filings, Verizon's Transmittal does not propose limited, specified, and reasonable measures to secure payment from customers who have actually demonstrated, by objective criteria, that they in fact present unusual risks of nonpayment. The Transmittal should therefore be rejected or, at a minimum, suspended and investigated.

First, the Transmittal is patently unlawful because it violates existing Commission prescriptions regarding security deposits and service termination that have been in force since 1984. In adopting the tariff language on security deposits that has been in place since then, the Commission struck an appropriate balance by allowing dominant LECs to require security deposits, but only for certain IXC's with either poor payment histories or with no established credit. Moreover, since that time, the Commission has repeatedly reaffirmed its prescribed tariff language – and has determined that language to be sufficient to handle any risks to dominant LECs presented by the potential of nonpayment by bankrupt carriers. There is no indication that this prescribed language has caused financial hardship for any LEC, and no serious claim by Verizon that such hardship is likely in the future.

Likewise, the Commission's 1984 prescription on termination provisions limited dominant LECs' ability to terminate service for non-payment, recognizing that the significant sanctions associated with termination were an unreasonably harsh response to legitimate or insignificant disputes raised by carriers. And when it subsequently reaffirmed these limits, the Commission expressly determined that termination provisions had to be narrow so that they would not apply to customers that pose no extraordinary risk of non-payment.

Verizon has effectively conceded that the revisions filed in its Transmittal cannot be implemented without Commission action beyond that provided for in the ordinary tariff review process. Specifically, on July 24, 2002 – the day prior to its filing of the instant Transmittal – Verizon filed with the Commission a "Petition for Emergency and Other Relief" ("Verizon Pet.") in which it requested, *inter alia*, that the Commission "approve . . . tariff revisions" expanding the LEC's right to demand for deposit and advance payments from IXC's, and to drastically

reduce the notice period for terminating service to access customers. Verizon Pet. at 4.¹ The fact that Verizon has petitioned for such relief underscores the impropriety of its attempt here unilaterally to alter through tariff changes Commission-prescribed terms and conditions that vitally affect access customers' rights.

Second, even if there were no existing prescriptions, the Transmittal violates the Act and the Commission's rules, because the proposed revisions are so vague that they provide i) Verizon with virtually unfettered discretion to demand security deposits or advance payments whenever Verizon has "concerns" about an IXC's ability to pay and ii) customers with little or no specific information about how they will be treated. Under the Commission's rules, tariffs must explicitly describe the conditions under which they apply. Strict enforcement of those rules is particularly important here, because Verizon could (and would) use its virtually unbounded discretion to demand security deposits – which could amount to hundreds of millions of dollars from a single IXC – to discriminate against its long distance competitors. Verizon could, for example, demand substantial security deposits/advance payments from all unaffiliated IXCs, but deem its own interLATA affiliates to meet Verizon's standards of creditworthiness.

The proposed revisions permitting termination of service on just seven days notice are also patently unreasonable. As the Commission has recently emphasized, its highest priorities include protection of customers from service disruptions. Yet Verizon seeks the unilateral right to cut off service more quickly, even in circumstances where a carrier presents minimal or no risk of nonpayment. Although Verizon asserts that concerns about service disruptions may in some cases be allayed by the existence of other mandatory wait periods, its tariff revisions apply

¹ The Commission has established a separate pleading cycle on Verizon's petition. *See* Public Notice, DA 02-1859 (released July 31, 2002). AT&T will address in its comments filed there the serious issues of overbreadth and potential discrimination against Verizon's competitors that are posed by tariff changes such as those in the instant Transmittal.

regardless, and therefore often would require IXCs to respond to LEC threats of service termination in just one week. The revisions therefore provide dominant LECs with significant and undue leverage in billing and other disputes.

I. VERIZON’S TRANSMITTAL VIOLATES LONGSTANDING COMMISSION PRESCRIPTIONS THAT STRICTLY LIMIT DEPOSIT AND TERMINATION OF SERVICE PROVISIONS.

A. Security Deposits/Advance Payments. Verizon’s transmittal should be rejected because it squarely contradicts tariff language on security deposits that the Commission prescribed for all dominant LECs in 1984. *See Investigation of Access and Divestiture Related Tariffs*, 97 F.C.C.2d 1082, 1168-70 (1984) (“1984 Access Tariff Order”). The LECs’ current tariffs have for over fifteen years permitted them to demand security deposits “only” for a narrow class of IXCs: first, those carriers that “ha[ve] a *proven history* of late payments” to the LEC, and second, those carriers that “d[o] not have established credit.” *Id.* at 1169 (emphases added). The Commission’s original prescription of a narrow security deposit requirement was prompted by dominant LEC proposals – strikingly similar to the transmittal filed by Verizon – to give the LECs discretion to require deposits from virtually any IXC. *Id.* at 1168-69. The Commission found “several flaws” in the LECs’ proposed tariff on security deposits, including the fact that it applied so broadly that “only AT[&T]” – the recent affiliate of the BOCs – “will escape this deposit requirement.” *Id.* at 1169. Because the proposals applied so generally and could be applied selectively to carriers chosen unilaterally by the LEC, the Commission found that the LECs’ proposed tariffs were “unreasonably onerous” in scope and had “anticompetitive effects.” *Id.* Accordingly, the Commission determined that those proposed tariffs “*must* be amended” and prescribed the more narrow language limiting security deposits to carriers with a “proven history of late payments” or with “no established credit.” *Id.* The Commission has never suspended or set aside its prescription, and Verizon’s transmittal is for this reason alone patently unlawful and

should be rejected. *See, e.g., Beehive Tel. Co., Inc. Transmittal No. 14*, 14 FCC Rcd. 1984 (1998); *Beehive Tel. Co., Inc. Transmittal No. 11*, 13 FCC Rcd. 12647 (1998)

Verizon and other LECs have repeatedly attempted in a variety of contexts to expand their ability to demand significant security deposits from other carriers. In each instance, the Commission has refused to allow these dominant LECs the broad discretion to determine whether their captive IXC customers must provide a security deposit prior to purchasing access services. In 1987, for example, BellSouth sought to revise its tariff to increase – by 50 percent – the deposit that affected IXCs were required to pay BellSouth. *See Annual 1987 Access Tariff Filing*, 2 FCC Rcd. 280, 317-18 (1987) (“1987 Access Tariff Order”). BellSouth had claimed that such provisions were necessary because “some IXCs have filed for bankruptcy while owing payments to BellSouth.” *Id.* at 304. The Commission, however, rejected the proposed tariff revision, noting that “BellSouth does not adequately identify the need” for its proposed increase and “has not explained why other available measures have been unavailing to avoid the risks” of non-payment. *Id.* at 318. Further, the Commission again found that the proposal to increase the security deposit was overbroad, and that any advantages to be gained by BellSouth were “outweighed by the disadvantages to *customers that may not pose a risk to BellSouth.*” *Id.* at 318 (emphasis added).

In short, the Commission has, for nearly two decades, prescribed and enforced the specific language that dominant LECs must use in their tariffs when demanding a security deposit. Verizon’s transmittal is flatly inconsistent with the Commission’s settled prescription.

Verizon’s tariff filing is especially brazen in light of the recent *Iowa Telecom* decision, where the Pricing Policy Division suspended and instituted an investigation of a proposed revision to the Commission’s prescribed language on security deposits. Order, *Iowa Telecomm.*

Serv. Inc. Tariff FCC No. 1., Transmittal No. 22. (July 17, 2002). That proposal, like Verizon's current Transmittal, purported to widen the class of IXC's from which dominant LECs could demand security deposits. *See* Transmittal No. 22, Iowa Telecomm. Services, Inc. (filed July 3, 2002). Because the Commission's Pricing Policy Division found "substantial questions regarding the lawfulness" of the revisions, the Division suspended the Iowa Telecom Tariff and instituted an investigation. Order, *Iowa Telecomm.* (July 17, 2002). Verizon's Transmittal is even more problematic and onerous. *See infra* Part II.

Verizon presents no valid basis to justify its Transmittal, even in the face of Commission orders requiring LECs to "explain why other available measures have been unavailing" to reduce non-payment risks. *1987 Access Tariff Order*, 2 FCC Rcd. at 318. Verizon claims only that "financial disruptions" have created a "greater risk of revenue loss" from uncollected receivables. Verizon D&J, at 9. However, the Commission's *1987 Access Tariff Order* rejected a similar claim as an insufficient basis to justify modification of the Commission's prescribed language. 2 FCC Rcd. at 304, 318. The Commission explained that the LEC failed to submit information "regarding *actual* losses resulting from an *I[X]Cs* ultimate failure to pay its bills." *Id.* at 304. (emphasis added). Here, Verizon merely asserts that its "interstate uncollectible revenues . . . more than doubled in 2001 versus 2000" and are a "growing problem." Verizon D&J at 9. Even if these unsubstantiated claims are accurate, Verizon fails to show that any rise in the general level of its bad debt is due to the specific failure of IXC's to pay access charges. Indeed, if Verizon's bad debt were increasing as it has alleged, one would expect that Verizon would be attempting to implement similar measures for *all* of its customers – but it is not, and instead has chosen to aim these provisions solely at rival carriers. And in all events, as described in detail below, even if Verizon could establish that more IXC's were defaulting on access

payments, that could not justify Verizon's radical and standardless proposal to permit it to demand substantial security deposits from *any* IXC.

To be sure, carriers should have the right to demand assurances from customers that they will pay their bills and even, in appropriate circumstances, to demand a security deposit.² However, as with other tariff provisions, *dominant* LECs have the proven ability and the incentive to abuse discretion to create unfair terms that exclusively serve their own interests without regard to the harms inflicted on customers. Here, the Commission has already prescribed the proper balance regarding security deposits: dominant LECs may demand security deposits, but only for a narrow class of IXCs that have no credit history or a proven history of non-payment.

B. Termination Provisions. In these same Orders, the Commission has also prescribed tariff language that dominant LECs must use for terminating an access customer's service for nonpayment or failure to comply with other specified tariff conditions. Thus, in its *1984 Access Tariff Order*, the Commission rejected a LEC proposal to allow termination of service 20 days after written notice to an access customer that it had committed "any violation of the tariff." 97 F.C.C.2d at 1155. The Commission rejected that proposal as "unreasonable." The Commission prescribed a number of changes to the proposed tariff – including language that extended the notice period for termination to 30 days (*id.* at 1155-56) – and that prescription has been reflected in dominant LEC tariffs ever since.

Moreover, in its *1987 Access Tariff Order*, the Commission found serious flaws with BellSouth's proposal (made concurrently with its proposal to increase security deposits) to

² In this regard, AT&T has from time-to-time insisted on provisions in its contracts with customers that require security deposits and other provisions that protect against default. The critical difference is that, if the customer is not satisfied with the terms AT&T offers or the deposit that AT&T requires, the customer can seek to obtain services from another provider. The customer of a dominant LEC, by contrast, generally has no other choice.

reduce the notice period for termination to 15 days. 2 FCC Rcd. at 304. BellSouth claimed that this revision was necessary to reduce bankruptcy risks. The Commission again rejected this rationale, and explained that the reduction in the termination period was “too broad” to “address the potential problems BellSouth has identified.” *Id.* That was because the shorter period applied equally to *all* carriers, including those that did “not pose a risk [of non-payment] to BellSouth.” *Id.* For those carriers, the proposal to shrink the termination period would be unfairly burdensome and would sharply limit, for example, their “opportunity to review and verify their bills.” *Id.* Accordingly, the Commission did not allow dominant LECs the discretion to insist upon shorter notice periods, at least absent both more “adequate documentation” on the actual losses and express limitations in any proposed tariff that “more directly applied *only* to those customers that might default,” (*id.*). The Commission has not suspended or set aside its 1984 prescription on termination periods, and Verizon’s Transmittal, which purports to set a 7-day termination period, is therefore patently unlawful.³

II. VERIZON’S TRANSMITTAL IS UNLAWFULLY VAGUE.

Even in the absence of existing Commission prescriptions on security deposits and termination periods, Verizon’s Transmittal would still have to be rejected or suspended. The Act requires that a tariff be “just and reasonable” and not “unreasonab[ly] discriminat[ory],” and the Commission’s rules further mandate that a tariff “must contain clear and explicit” statements in order “to remove all doubt” as to the proper application of the tariff. *See* 47 U.S.C. §§ 201, 202; 47 C.F.R. § 61.2. The proposed language on security deposits and termination periods violates both the Act and the Commission’s rules.

³ Verizon’s Transmittal proposing to reduce the termination period to seven days runs afoul not only of these *Orders* prescribing tariff language on termination, but the Commission’s *Iowa Telecomm.* decision, which suspended a transmittal which proposed to shorten the termination period to 15 days – 8 days longer than Verizon’s proposal.

A. Security Deposits/Advance Payments. The Transmittal fails to specify in a clear or explicit manner the conditions under which Verizon may demand a security deposit or advance payment from an IXC. As a consequence, Verizon’s proposed revisions would provide it with effectively unlimited discretion to require from *any* IXC either security deposits or, if Verizon so chooses, advance payments. Further, because Verizon can unilaterally determine which IXCs must provide Verizon with cash, the revisions provide Verizon with a powerful weapon that it could and would use in a manner to discriminate unlawfully against rival carriers.

Under the proposed tariff revisions, Verizon has “carefully crafted” provisions that, if they become effective, would “give Verizon flexibility” immediately to demand from virtually any access customer either substantial advance payments or a large security deposit – a choice that Verizon is entitled to make entirely “at its discretion.” Verizon D&J at 3. Verizon claims that its revisions would in practice apply only to carriers that “exhibit *undeniable* signs of troubled financial conditions that raise concerns about continued payment, as defined by *specific, objective criteria*.” *Id.* at 7 (emphasis added). In fact, those revisions would apply to virtually any company, even ones that are not remotely close to default. Verizon’s revisions set forth six different ways in which an IXC can become required to provide a security deposit or advance payments. Verizon D&J at 3. Nearly all are vague and excessively broad.

The first two triggers that would enable Verizon to choose to require a security deposit or advance payment relate to lack of payment: an IXC must pay Verizon if (1) it “has fallen in arrears on its account balance in any two (2) months out of any consecutive twelve (12) month period” or (2) it “owes \$250,000 or more to [Verizon] that is thirty (30) days or more past due” Transmittal 226, First Revised Page 2-26. These incredibly broad provisions are in no way

“undeniable” signs of financial distress (*cf.* Verizon D&J at 7), and they go far beyond the existing prescription that limits deposits to carriers with a “proven history” of non-payment.

They could apply, for example, to an IXC that twice in a year had paid less than its full access bills by only *de minimis* amounts (that may themselves be the subject of legitimate billing disputes). Especially given the complexity of the intercarrier billing process, such minor discrepancies are hardly unexpected, and do not provide any justification for Verizon to demand advance payments or deposits that would necessarily be grossly disproportionate to these access bill payment discrepancies. Alternatively, an IXC that was even a single day late (for any reason) with a relatively insubstantial access payment for a given month could be required to forfeit cash – for an entire year – equal to two months worth of access charges. For example, the \$250,000 amount specified in the Verizon tariff to trigger the deposit or advance payment requirement represents only a small fraction of one percent of AT&T’s average monthly access payments to Verizon. Such conditions are precisely the type that “impose significant sanctions” for very “insignificant violations” of a tariff, *1984 Access Tariff Order*, 97 F.C.C.2d at 1155, and are therefore unreasonable.⁴

The other objectionable set of triggers allows Verizon to demand advance payments and security deposits for customers with senior debt securities that are either “below investment

⁴ Contrary to Verizon’s claims (Verizon D&J at 2 & n.1), these triggers are not the “same market-based protections” that suppliers in competitive industries can typically impose. Those types of companies generally are not able to insist that their customers provide security deposits or advance payments when they are late (by any amount) with two payments in a given year; rather, they generally charge interest or late fees. And because of the market forces that dominant LECs do not encounter, companies in competitive industries cannot use imprecise and incredibly broad provisions to lump customers with ample ability to pay with those that have a proven history of non-payment. If they did, the financially viable customers would find a new supplier – an option not available to IXCs, which must purchase the LECs’ access. Thus, while Verizon asserts that these revisions are necessary to ensure that “struggling companies do not impose unnecessary harm upon healthy carriers,” what is in fact necessary is for the Commission to reject these provisions so that dominant carriers do not impose unnecessary harm upon healthy interexchange carriers.

grade” or are “at the lowest investment grade rating category by a nationally recognized statistical rating organization and are put on review for a possible downgrade.” Verizon D&J at 4. These provisions are hopelessly overbroad. AT&T, for example, has recently had its debt ratings downgraded by certain companies, but it has not failed to make a non-disputed access payment to Verizon and poses no serious credit risk to Verizon. Nevertheless, under Verizon’s Transmittal, AT&T (or any other IXC with an exemplary payment history) could be made to provide Verizon with substantial deposits or advance payments, simply because Verizon has “concerns” that AT&T’s bond rating may be lowered.

Indeed, Verizon’s tariff revisions would create powerful perverse incentives for Verizon to be less, rather than more, accurate in its access billing to IXCs, or even to engage in intentional overbilling. Faced with an inaccurate or clearly overstated access bill, an IXC would be confronted with the “Hobson’s choice” of either paying the excessive access charges or laying itself open to being mulcted by Verizon for an enormous deposit or advance payment, at the peril of having its service almost immediately terminated if it did not accede to the latter demands. There can be no justification for allowing Verizon to implement tariff changes that have such serious untoward consequences.

What is perhaps most troubling about the proposal is that Verizon and other dominant LECs would almost certainly use any such newly-obtained discretion to discriminate against IXC rivals and in favor of the LECs’ own affiliated IXC (or some other favored carrier). Thus, Verizon could rely on these tariff provisions to demand that all IXCs provide significant security deposits/advance payments, but then determine that Verizon’s long distance affiliates are sufficiently creditworthy to be excused from such a requirement. Indeed, even if Verizon required its affiliate to post a deposit or make an advance payment – and in an amount similar to

those posted by IXC – there would still be little hardship on Verizon, because such a deposit would constitute the classic “left-pocket, right-pocket” transfer. In both cases, the unfettered right to demand a security deposit from any IXC would, as the Commission recognized in 1984, be a powerful anti-competitive and discriminatory weapon.

In addition to the conditions that trigger the payments, there are a number of other objectionable provisions in Verizon’s Transmittal. First, it is significant that the amount of the deposits that Verizon demands are very substantial. The revision allows Verizon to insist that an IXC either make a deposit of up to two months of access charges or make an advance payment for one month of access charges. For a carrier the size of AT&T, these amounts would require AT&T to deposit *hundreds of millions of dollars* with Verizon alone – and much more than that given that other LECs are attempting to follow suit. And these deposits must be paid “in cash” or using credit instruments that are costly and that themselves require significant amounts of cash. There is no reason for most IXCs (*i.e.*, those that have a history of timely payment) to devote scarce cash in order to provide the substantial security deposits that Verizon and other dominant LECs might demand.

Second, Verizon unreasonably retains any security deposits for up to one year *after* the conditions that triggered the deposits have ceased to exist. Even if the conditions triggering the deposits were reasonable (which they are not), there is no possible justification for Verizon to keep any deposits for so long – particularly in light of the fact that its proposal would in many cases allow it to retain almost indefinitely a deposit or advance payment once tendered, or at a minimum to immediately demand another deposit if an IXC once again met one of the six

specified conditions.⁵ But the provisions are particularly draconian because Verizon is in fact able to demand deposits even from carriers that pose no serious financial risk of non-payment. In that circumstance, Verizon's proposal would require healthy carriers to tie up tens or even hundreds of millions of dollars for no valid reason at all.

B. One Week Termination Provisions. Verizon's proposal to reduce the time in which it may terminate access services from 30 days to just 7 is equally unreasonable. Verizon claims that the current 30 days is "not necessary to protect the [IXC's] customers," in part because Verizon asserts that the 30 days specified in the tariff often occurs "in addition to other mandatory wait periods" or after "negotiations" with the IXC. Verizon D&J at 9. Even assuming that is true, however, Verizon's tariff revisions would not merely apply in those circumstances, but would apply whenever *any* IXC – even those that present no payment risks – fails to pay an access bill in full (or to meet one of the other conditions specified in the tariff). The Commission has recognized for many years that such accelerated termination provisions are not reasonable when they apply generally to IXCs that pose no risk. *See 1987 Access Tariff Order* at 304. Such provisions give the dominant LECs far too much leverage in negotiating billing or other disputes with IXCs. The ability to so promptly terminate access services – which would disrupt the long distance services of an IXC's customers – is a powerful threat in the hands of dominant LECs, which could and would be used in a discriminatory fashion.

For all of these reasons, and to prevent the dominant LECs from obtaining additional methods of harming interLATA competition, Verizon's Transmittal must be rejected.

⁵ For example, under the tariff revisions Verizon could retain an IXC's deposit or advance payment so long as that access customer's senior debt securities are classified as below investment grade, regardless of how long the IXC makes timely payment of Verizon's access bills in full.

CONCLUSION

For the foregoing reasons, the Commission should reject, or at a minimum, suspend and investigate the Verizon Telephone Companies Tariffs F.C.C. No. 1, 11, 14, 16, Transmittal No. 226 (filed July 25, 2002).

Respectfully submitted,

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August 1, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of August, 2002, I caused true and correct copies of the forgoing Petition of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: August 1, 2002
Washington, D.C.

/s/ Patricia A. Bunyasi

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