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

In the Matter Of	)	
	)	**Transmittal No. 226**
Verizon Tariffs F.C.C. Nos. 1, 11, 14 and 16	)	
	)	

PETITION OF SPRINT TO REJECT OR ALTERNATIVELY SUSPEND AND INVESTIGATE

Sprint Corporation ("Sprint"), pursuant to Section 1.773 of the Commission's Rules, hereby respectfully requests that the Commission reject, or alternatively, suspend for the full five month period permitted under Section 204(a) of the Act and institute an investigation of the tariff revisions filed by the Verizon Telephone Companies ("Verizon") on July 25, 2002 under the above-captioned transmittal. These proposed revisions seek to significantly expand the bases on which Verizon would be able to require security deposits and advance payments from its customers. As more fully discussed below, the revisions violate a Commission prescription; are unjust and unreasonable in violation of Section 201(b) of the Act; are unjustly discriminatory in violation of Section 202(a) of the Act; and are impermissibly vague in violation of Sections 61.2 and 61.54(j) of the Commission's Rules. Moreover, these provisions would enable Verizon -- now the fourth largest long distance carrier[1] -- to impose serious, but

1 Communications Daily, August 1, 2002, p.10.

unwarranted, burdens on the cash resources of its long distance competitors and could conceivably create for some carriers liquidity problems that otherwise would not exist.

Verizon's currently effective tariff requires security deposits only from a customer with "a proven history of late payments to the Telephone Company" or which "does not have established credit." *See e.g.*, Section 2.4.1 of Verizon Telephone Companies Tariff FCC No. 1, Original Page 2-26. That tariff provision conforms to language prescribed by the Commission in its 1984 decision in CC Docket 83-1145 (Phase I), *Investigation of Access and Divestiture Related Tariffs*, 97 FCC 2d 1082, 1169 (1984) (*1984 Access Tariff Decision*).[2]

Under the proposed revisions, Verizon would continue to use the Commission-prescribed criteria for determining when to require a security deposit from a customer. However, Verizon would also be able to require a security deposit or alternatively, advance payments, even if the customer does not "have a proven history of late payments" or has "established credit," as long as the customer "has fallen in arrears in any two months out of any consecutive months"; owes Verizon "$250,000 or more...that is thirty (30) days past due;" announces that "it is unable to pay its debts as such debts

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[2] In its petition for rejection or suspension and investigation of the tariff revisions filed by BellSouth which, like the tariff revisions at issue here, seek to significantly expand the criteria that BellSouth could, in its sole discretion, invoke to extract security deposits from its customers, Sprint did not express a firm view on whether the language in the *1984 Access Tariff Decision* governing security deposits was a prescription. Upon further review of that decision, Sprint now believes the most straightforward reading of the order is that it did prescribe the security deposit language. Such prescription requires that Verizon's proposed revision be either rejected or suspended and investigated. *See* discussion, *infra*.

become due"; is in receivership or bankruptcy (either voluntarily or involuntarily); has "senior debt securities … [that] are below investment grade"; or has "senior debt securities…[that] are rated the lowest investment grade rating category by a nationally recognized statistical rating organization and are put on review by the rating organization for a possible downgrade." Verizon Telephone Companies Tariff FCC No. 1, 1st Revised Page, Section 2.4.1(A)(2).

Verizon argues that these revisions are justified because the "telecommunications industry is in a period of unprecedented financial stress and upheaval." D&J at 6. Although its primary example of such "upheaval" is the recent WorldCom bankruptcy filing, Verizon also informs the Commission that "Verizon itself is currently a party to 92 different bankruptcy proceedings." *Id.* However, Verizon fails to give any details as to these bankruptcies. Thus, the Commission and interested parties do not know whether all of these bankruptcies involve carriers and whether the carriers that are involved are IXCs taking tariffed access services or CLECs taking service pursuant to interconnection agreements in which Verizon has the ability to include provisions governing instances where the CLEC is delinquent in its payments. Nor has Verizon provided any information on the amounts of its pre-petition billings that remain unpaid and whether the courts handling these bankruptcies have provided Verizon with adequate assurance of payment for services provided post-petition.[3] Verizon simply presents a number to the

[3] A bankruptcy filing does not necessarily mean that carrier involved will not pay its pre-petition debt. Indeed, when the CLEC Mpower filed for bankruptcy, it promised Sprint's incumbent local carrier subsidiary ("Sprint LTD") that it would pay the monies it owed Sprint LTD before the bankruptcy filing. It has fulfilled that promise.

Commission as if such number is sufficient to demonstrate that Verizon faces a significant risk of higher uncollectables and that accordingly the proposed tariff revisions at issue are fully justified.[4] But, such bare bones statements do not provide the justification that Verizon has assumed.

Sprint, both in its role as an ILEC providing access services, unbundled network elements, and local service resale, and as an IXC that provides wholesale long distance services to other carriers, is faced with pre-petition debt from other carriers that are now in bankruptcy proceedings or have gone out of business. As an ILEC, Sprint would naturally like to minimize any future exposure by changing the provisions of its interstate access tariffs and indeed reserves the right to do so if the RBOCs are permitted to revise their tariffs. However, existing access tariffs of Verizon (and Sprint) allow for security deposits where customers fall behind in their payments. Thus, despite its natural desire to be free of any uncollectable risk at all, Sprint does not believe that the financial exposure the ILEC industry has from potential future insolvencies presents a serious business risk that requires alteration of the existing provisions regarding customer deposits.

Moreover, regardless of Verizon's justification here, such as it is, the instant

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4 Verizon claims that it "is facing greater risk of revenue loss related to the increased payment delinquency by customers" and cites as evidence the fact that its "[i]nterstate uncollectible revenues ... more than doubled in 2001 from 2000." D&J at 9. Here again, Verizon does not provide any other evidence as to the source of the increase. In any case, according to ARMIS Report 43-01, Table I Column (h), Rows 1915/Rows 1910, Verizon's interstate rates of return for the years 2000 and 2001 were 17.31% and 17.18% respectively. The slight dip in Verizon's healthy rates of return in these years hardly supports the notion that Verizon's "is facing greater risk of loss" due to uncollectables.

revisions cannot be allowed to go into effect because, as noted, they seek to modify a prescription of the Commission. Specifically, in the *1984 Access Tariff Decision*, the Commission, after suspending the original tariff revisions filed by the RBOCs, including the provision governing security deposits, and conducting an investigation pursuant to, *inter alia*, Section 204 and 205 of the Act, stated that the carriers' proposed security deposit language "must be amended to allow the telco to require deposits only from an '[IXC] which has a proven history of late payments … or does not have established credit …'." 97 FCC 2d at 1169. The Commission specifically ordered the carriers "to file revised tariff material in compliance with this order … ." *Id.* at 1117. Sprint believes this amounts to a prescription, and under well-established precedent, Verizon must adhere to the prescribed language. Its only recourse is to request that the Commission conduct a Section 205 investigation to determine whether the prescription should be modified and, if so, what modifications would be meet the requirements of Sections 201 and 202 of the Act. *See, e.g., AT&T v. FCC, 487 F.2d 865, 874* (2nd Cir. 1973); *see also United Air Lines, Inc. v. Civil Aeronautics Board*, 518 F.2d 256 (7th Cir. 1975). For this reason alone, Verizon's proposed revisions must be rejected or at least suspended and investigated.

Verizon's proposed tariffs should also be rejected or suspended and investigated because the revised security deposit language does not -- indeed cannot -- meet the requirements of Sections 201(b) and 202(a) of the Act. For example, Verizon's reservation of the right to require a security deposit or advance payment upon a carrier with no proven history of late payments and with established credit simply because the carrier's senior debt securities are either "below investment grade" or have been given "the lowest investment grade rating" and placed on review for possible downgrade by a rating organization is clearly unjust and unreasonable.

Verizon does not demonstrate that there is any correlation between the debt rating given a carrier by a bond rating agency[5] and the carrier's ability to pay its access bills on a timely basis. Nor could it. Requiring a security deposit from a carrier merely because its bonds are below investment grade paints with far too broad a brush. Many hugely successful businesses have been built on a foundation of "junk bonds." Companies whose debt is currently rated below investment grade include such well-know and established entities as Boise Cascade, Cablevision, Delta Airlines, Goodyear, Pennzoil, Reader's Digest, Unisys, Playtex and Barnes and Noble, to name just a few. In the telecom sector, the debt of Broadwing and Nextel is rated below investment grade; yet both companies have a solid track record for timely payments to ILECs. In fact, the debt of fully 44% of the companies rated by Standard and Poors is now rated below investment grade. Surely Verizon cannot maintain that nearly half of U.S. businesses are serious credit risks. In any event, there are substantial variations in the quality of below-investment-grade bonds. Standard and Poors, for one, has eleven below-investment-grade rating categories **above** its "default" rating.

Verizon's criteria would also give undue credence to bond rating agencies at a time when they have been much quicker than they historically were to downgrade or put

5 Moreover, Verizon's reference to "a nationally recognized statistical rating organization," Section 2.4.1(A)(2), is impermissibly vague in violation of Sections 61.2 and 61.54(j) of the Rules.

on review a company's bond ratings. Especially since the Enron debacle, bond rating agencies have become much more conservative in assigning ratings to the debt issued by companies. The bond ratings of many companies have been downgraded to below investment grade status, not because of any significant change in the fundamentals of those companies or the sectors in which those companies operate. Rather, downgrades can occur on the basis of a negative story in the press or because a company did not meet Wall Street analysts' earnings "expectations" in a particular quarter. This, in turn, has led many financial institutions to significantly discount such ratings when making a decision to extend credit to a carrier. The Financial Times recently reported that "investors perceive [rating agencies] have been too hasty with recent downgrades."[6] Indeed, the unsecured credit facility that Sprint recently negotiated with major banks does not include any triggers based on Sprint's bond ratings for securing any credit extended pursuant to such facility.

Similarly, it is unreasonable for Verizon to reserve to itself the right to impose a security deposit or require an advance payment when a customer has an outstanding balance owing to Verizon of at least $250,000 and such balance is 30 days past due. Verizon's wording here appears to suggest that amounts in dispute are included for purposes of determining a carrier's outstanding balance. Certainly there is nothing in the provision to suggest otherwise. If this is the case, Verizon's provision here rests on the

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[6] Financial Times, "Aggressive Downgrades Under Question: Bond Investors Are Concerned By The Apparent Changes in Rating Agencies Assessments," by Aline van Duyn, July 12, 2002

notion that Verizon's access bills are invariably correct. Such notion is simply not based on reality. For example, Sprint's long distance unit disputed over 10 % of the charges assessed by Verizon in its June 2002 bills. Such disputed amounts are well in excess of Verizon's $250,000 threshold. Over the past twelve years, of those disputes that have been resolved, Verizon has credited Sprint's long distance unit with nearly three times the amount that Sprint ultimately had to pay. Yet, Sprint would, under this proposed criterion, be subject to providing Verizon with a two month security deposit.

Another reason as to why the instant tariff revision must be suspended and investigated is that Verizon does not meet the "substantial cause for change" test which is used to assess the lawfulness of proposed revisions to tariffs, involving long-term service commitments.[7] The Commission imposed this test on dominant carriers offering term plans -- and term plans are available under Verizon's access tariffs and are widely employed -- because the Commission recognized that it had to take into account the "legitimate expectations of customers for stability in term arrangements" when assessing the reasons why the dominant carrier wished to make such change. 86 FCC 2d at 1201. Clearly, Verizon has not even come close to meeting this test. As already discussed, Verizon has presented no facts which could possibly justify the massive wealth transfer from its competitor-customers to itself.[8] In fact, Verizon does not even acknowledge that it is subject to the substantial cause test. Verizon's failure to even attempt to present

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7 *See RCA American Communications, Inc.,* 86 FCC 2d 1197 (1981), *clarified on remand*, 94 FCC 2d 1338 (1983).

8 A two-month security deposit requirement would enable Verizon to hold or control over $100 million of Sprint's money.

evidence going to the substantial cause for change test requires that the Commission reject or suspend and investigate the instant revisions.

Finally, Verizon concedes that its proposed revisions are designed to give it more "flexible alternatives" for requiring security deposits or advance payments from its carrier-customers. D&J at 6. But none of the alternatives it proposes goes to whether a Verizon carrier-customer is unlikely to pay its access bills, to the extent that such bills are accurate, in a timely fashion. Rather, by attempting to include these alternatives in its tariffs, Verizon is seeking to give itself unfettered discretion over which customers will be required to transfer to Verizon millions, if not hundreds of millions, of dollars in deposits. Such unfettered discretion would enable Verizon to violate the Section 202(a) proscription against unjust discrimination with impunity. It will be able to pick and choose among its customers for the imposition of deposit requirements. And given that its carrier-customers are its competitors, Verizon's exercise of such discretion is likely to have serious anti-competitive effects.

For the above reasons, Sprint urges the Commission to reject, or alternatively suspend for the full statutory period and investigate, Verizon's proposed deposit requirements.

Respectfully submitted,

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August 1, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition of Sprint to Reject or Alternatively Suspend and Investigate in the matter of Verizon Tariffs F.C.C. Nos. 1, 11, 14 and 16 (Transmittal No. 226) was sent by United State First-Class Mail, postage prepaid, or hand delivery on this 1st day of August, 2002, to the following parties:

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