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

In the Matter of	)
Ameritech Operating Companies Tariff F.C.C. No. 2 Transmittal No. 1312	)
Nevada Bell Telephone Company F.C.C. No. 1 Transmittal No. 20	)
Pacific Bell Telephone Company F.C.C. No. 1 Transmittal No. 77	)
Southern New England Telephone Companies F.C.C. No. 39 Transmittal No. 772	)
Southwestern Bell Telephone Company Tariff F.C.C. No. 73 Transmittal No. 2906	)

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 transmittals filed by Ameritech Operating Companies, Pacific Bell Telephone Company, Southern New England Telephone Companies, Nevada Bell Telephone Companies, and Southwestern Bell Telephone Company (collectively "SBC Companies" or "SBC") on August 2, 2002, in which the SBC Companies seek to amend their tariffs (1) to provide them with virtually unfettered discretion to require massive advance payments or "deposits" from any

access customer that the SBC Companies wish, and (2) to reduce by half or more the notice period for service disconnections.

INTRODUCTION AND SUMMARY

The SBC Companies' Transmittals are 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 advance payments) from any IXCs that the LEC unilaterally elects to burden with such a duty. As in these prior filings, the SBC Companies' Transmittals do 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. Accordingly, the SBC Companies' Transmittals should be rejected or, at a minimum, suspended and investigated.

First, the Transmittals are patently unlawful because they violate 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 IXCs 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 in good times and bad – 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 demonstration by the SBC Companies 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. The SBC Companies Transmittals simply ignore these prior Commission decisions. However, other incumbent LECs have effectively conceded that in light of those prior Commission rulings, tariff revisions like those proposed by the SBC Companies in this proceeding cannot be implemented without Commission action beyond that provided for in the ordinary tariff review process.[1]

Second, even if there were no existing prescriptions, the Transmittals violate the Act and the Commission's rules, because the proposed revisions are unreasonably (and thus unlawfully) vague and overbroad and also starkly anticompetitive. The SBC Companies propose to give themselves unfettered discretion to slap an "impaired credit worthiness" label on, and demand "security" deposits or advance payments from, any IXC that has any debt security that has been put on review for a *possible* downgrade below investment grade. And the SBC Companies propose to give themselves discretion to deem any IXC customer that has twice in a year paid a penny less than the full amounts SBC billed – regardless of legitimate billing disputes – a customer "with a history of late payments" and to demand even larger deposits or advance payments. The SBC Companies' claims that the new tariff requirements – which would result in a large windfall of cash and income for the SBC Companies – are necessary to address concerns about customers' ability to pay the SBC Companies' monthly bills, and not to pad their financial accounts, are thus highly suspect on their face.

[1] On July 24, 2002, Verizon filed a "Petition for Emergency and Other Relief" ("Verizon Pet.") in which it requested, *inter alia*, that the Commission "approve . . . tariff revisions" expanding dominant LECs' rights to demand deposit and advance payments from IXCs, and to drastically reduce the notice period for terminating service to access customers. Verizon Pet. at 4. The Commission has established a pleading cycle on Verizon's petition. *See* Public Notice, DA 02-1859 (released July 31, 2002).

The bad debt "emergency" the SBC Companies have conjured to defend their unlawful tariff revisions simply does not exist. The SBC Companies and others can and are pursuing their Bankruptcy Code rights to adequate assurances of payment from WorldCom and other bankrupts, but the tariff revisions at issue here are not directed at bankrupts or even at deadbeats, but at responsible carriers with sound credit. And ARMIS reports confirm that, notwithstanding the recent industry downturn, the SBC Companies continue to have very low levels of bad debt expenses. For example, SBC's uncollectibles for special (and switched) access services averaged less than *one-half of one percent* of revenues in 2001, an extraordinarily low level of bad debt expense by comparison to most competitive industries. But even if SBC's bad debt experience was much worse, it could hardly claim that the industry downturn has had a "serious impact" on SBC – whose rate or return on special access services last year exceeded *50 percent* according to SBC's own ARMIS filings. On these facts, the SBC Companies' claims that draconian measures are required to protect it from protect it from non-payment of access bills are irresponsible at best.

In all events, these "bad debt" triggers are vastly overbroad and would allow the SBC Companies to sweep in virtually any IXC, regardless of the actual credit risk posed by that IXC. And the SBC Companies could (and would) use this virtually unbounded discretion to demand security deposits – which could amount to hundreds of millions of dollars from a single IXC – to discriminate against captive IXC customers, which happen also to be their competitors. The SBC Companies could, for example, demand substantial security deposits/advance payments from all unaffiliated IXCs, but deem their own interLATA affiliates to meet the SBC Companies' standards of creditworthiness, thereby providing the SBC Companies' interLATA affiliates with a competitive advantage in the long-distance market. Endowing the SBC

Companies with the unilateral power to determine whether competitors and other captive customers are credit risks would truly place the fox in charge of the hen house.

The proposed revisions permitting termination of service on just 10-15 days' notice are also patently unreasonable. As the Commission has recently emphasized, its highest priorities include protection of customers from service disruptions. Yet the SBC Companies seek the unilateral right to cut off service more quickly, even in circumstances where a carrier presents no abnormal credit risk. Although the SBC Companies assert that concerns about service disruptions may in some cases be allayed by the existence of other mandatory wait periods, the tariff revisions apply regardless, and therefore often would require IXCs to respond to LEC threats of service termination in just over one week. The revisions therefore provide dominant LECs with significant and undue leverage in billing and other disputes.

I. THE SBC COMPANIES' TRANSMITTALS VIOLATE LONGSTANDING COMMISSION PRESCRIPTIONS THAT STRICTLY LIMIT DEPOSIT AND TERMINATION OF SERVICE PROVISIONS.

A. Security Deposits/Advance Payments. The SBC Companies' Transmittals should be rejected because they squarely contradict 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 Transmittals filed by the SBC Companies – 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 the SBC Companies' Transmittals are 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).

The SBC Companies 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. The SBC Companies' Transmittals do not even acknowledge these prior Commission rulings, and are flatly inconsistent with the Commission's settled prescription.

The SBC Companies' tariff filings are especially suspect in light of the recent *BellSouth* and *Iowa Telecom* decisions, where the Pricing Policy Division suspended and instituted investigations of proposed revisions to the Commission's prescribed language on security deposits.[2] Those proposals, like the SBC Companies' current Transmittals, purported to widen the class of IXCs from which dominant LECs could demand security deposits. *See, e.g.*, Transmittal No. 22, Iowa Telecomm. Services, Inc. (filed July 3, 2002).[3] Because the Commission's Pricing Policy Division found "substantial questions regarding the lawfulness" of the revisions, the Division suspended those tariffs and instituted investigations. Order, *Iowa Telecomm.* (July 17, 2002). The SBC Companies' Transmittals are even more problematic and onerous. *See infra* Part II.

The SBC Companies present no valid basis to justify their Transmittals, 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. The SBC Companies claim only that the "revisions are necessary to provide [them] greater assurance

[2] See BellSouth Telecommunications, Inc. Tariff FCC No. 1., Transmittal No. 657 (August 2, 2002); Order, Iowa Telecomm. Serv. Inc. Tariff FCC No. 1., Transmittal No. 22. (July 17, 2002).

[3] See also BellSouth Telecommunications, Inc. Tariff FCC No. 1., Transmittal No. 657 (August 2, 2002).

of payment for services rendered to financially troubled companies." SBC D&Js at 1.[4] According to the SBC Companies, "[e]xperience over the past year has shown" that current credit protections are insufficient to protect [them] from non-payment of access bills. *id.* 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, the SBC Companies merely assert that their "top twenty-two customers account for over $300 million in monthly access service revenues," but the companies do not allege that – let alone provide evidence that – the Commission's prescribed language on security deposits is insufficient to protect against default from these customers. SBC D&Js at 8. As noted SBC's own data filed with the Commission show that for 2001 its uncollectibles for special access, as a percentage of revenues for that service, were on average less than 0.5 percent, and its uncollectibles for switched access were only .47 percent of associated revenues.[5] These data belie the SBC Companies' strained claims that they are experiencing untoward losses for uncollectible access charges. Instead, ignoring its own reported financial information, the SBC Companies point solely to the "sudden collapse" of WorldCom, but that was apparently a result of massive – and unprecedented – accounting issues that masked WorldCom's financial

[4] The D&Js submitted by the SBC companies are virtually identical and are cited herein collectively as "SBC D&Js."

[5] *See* 2000 & 2001 ARMIS 43-01 Report, Special Access, Column (s), Network Access Services, Row 1020 (special access data); 2000 & 2001 ARMIS 43-01, Traffic Sensitive: Total, Column (r), Network Access Services, Row 1020 (switch access data).

problems long after they would otherwise have been evident, and the SBC Companies' other large access customers can hardly be painted with WorldCom's unique circumstances.[6]

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.[7] However, as with other tariff provisions, *dominant* LECs have the proven ability and the incentive to abuse any discretion in that area 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. The Commission also has 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

[6] The SBC Companies' claims that these miniscule levels of uncollectibles would have a "serious impact" on the companies also are refuted by the facts. For example, according to the SBC Companies most recent annual ARMIS data filed with the Commission their combined annual returns from special access exceed *50%*. *See* 2001 SBC ARMIS 43-01, Table I, Cost and Revenue Table, Special Access, Columns Average Net Investment, Row 1910, and Net Return, Row 1915. Those massive returns are due in no small part to the fact that the SBC Companies have for years leveraged their dominant positions and gamed the Commission's pricing flexibility rules to the detriment of their competitors which, ironically, the SBC Companies now claim are less creditworthy.

[7] 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 such choice – which is why the Commission has always recognized the need for prescription in this context that minimizes dominant LEC abuse of security deposit, advance payment and termination requirements.

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 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 the SBC companies' Transmittals, which purport to set a 10 to 15 day termination period, are therefore patently unlawful.[8]

[8] The SBC Companies' Transmittals proposing to reduce the termination period to ten days runs afoul not only of these *Orders* prescribing tariff language on termination, but the Commission's *BellSouth and Iowa Telecomm.* decisions, which suspended a transmittal which proposed to shorten the termination period to between 7 and 15 days – right in line with the SBC Companies' proposals.

II. THE SBC COMPANIES' TRANSMITTALS ARE UNLAWFULLY VAGUE, UNREAONSABLE AND DISCRIMINATORY.

Even in the absence of existing Commission prescriptions on security deposits and termination periods, the SBC Companies' Transmittals 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.

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

Under the proposed tariff revisions, the SBC Companies have crafted provisions that, if they become effective, would give them the ability immediately to demand from virtually any of their large access customers (and competitors) either substantial advance payments or a large security deposit. The SBC Companies claim that their revisions would in practice apply only to carriers "posing the highest risk of default and whose default could have a significant impact on [the SBC Companies]," SBC D&Js at 10, and that the conditions that trigger these new burdens are implemented in a "narrowly tailored" fashion. *Id.* at 1. In fact, those revisions would apply to virtually any large SBC competitor, even ones that are not remotely close to default. The SBC

Companies' revisions set forth several different ways in which an IXC can become required to provide a security deposit or advance payments. Nearly all are vague and excessively broad.

The first objectionable set of triggers for "Customers with Impaired Credit Worthiness" allows the SBC Companies to demand a one-month security deposit (in cash or guaranteed by an irrevocable bank letter of credit or third party guaranty agreement) whenever a customer (or its parent) has *any* debt securities that are either rated "below investment grade" or are rated "at the lowest investment grade by a nationally recognized credit rating organization and are put on review . . . for a *possible* downgrade." SBC D&Js at 8-9 (emphasis added). 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 any SBC Company and poses no serious credit risk to those companies. Indeed, it is far from clear that the SBC Companies would themselves qualify as "credit worthy" customers under their overbroad standard. *See* Fitch lists SBC-affiliated entities, Reuters Company News (July 31, 2002) (revising "the Rating Outlook on SBC to Negative from Stable"); Bellsouth, SBC, Verizon Under "Close Study" – Moody's, Reuters Company, August 8, 2002 (reporting that SBC "may suffer credit rating cuts" by that entity).

In any event, the SBC Companies would likely be able to deem all or virtually all of their large access customers "Customers with Impaired Credit" under this standard. Thus, under the SBC Companies Transmittals, even an IXC with an exemplary payment history and strong credit could – at SBC's whim – be made to provide SBC with substantial deposits or advance payments.[9]

[9] Recent events confirm that the SBC Companies are hardly in a position to assess the credit risks of other carriers – indeed, SBC is having enough difficulty ensuring that its *own* books are accurate. *See* Pat Maio, Human Error Blamed For SBC Mistake On $750 Million In Debt, Dow Jones Business News, Dow Jones Business News (August 1, 2002) ("SBC . . . said . . . that it was

The second objectionable set of triggers relates to customers that the SBC Companies classify as "Customers with a history of late payments." Under these provisions the SBC Companies could, at their discretion, demand a *two-month* deposit (or advance payment) from any "customer [that] has failed to pay two monthly bills by the bill due date within a 12-month period of time." *See, e.g.,* Transmittal 2906, Original Page 2-55.1. This incredibly broad provision is in no way an undeniable sign of financial distress, and goes far beyond the existing prescription that limits deposits to carriers with a "proven history" of non-payment.

This provision 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 the SBC Companies 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 relatively insubstantial access payments on two occasions could be required to provide a substantial deposit for an entire year. For example, the $1 million amount specified in the SBC tariffs to trigger the deposit or advance payment requirement for carriers that SBC deems to have impaired credit (discussed below) represents only a small fraction of one percent of AT&T's average monthly access payments to the SBC Companies. Such conditions

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revising the balance sheets for its first two fiscal quarters of 2002 to correct misstated classifications of $750 million in debt"). Moreover, this recent episode underscores the validity of concerns that similar "human error" by the SBC Companies in computing access customers' payment histories could lay IXCs open to unwarranted demands for enormous deposits or advance payments, at the peril of having their service unjustifiably disconnected.

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.[10]

The SBC Companies attempt to downplay the significance of this overly broad trigger by characterizing it as a "clarification" to their existing tariff language which allows the SBC Companies to require deposits from customers with a "proven history of late payment." *See* SBC D&Js at 3. As explained above, the SBC Companies' assertion that two late payments in a twelve month period is equivalent to a "proven history of late payment" – regardless of the amounts outstanding or whether they are in dispute – is frivolous and overbroad on its face. Moreover, there is no need to "clarify" further this Commission-prescribed language because that language is "narrowly circumscribed" and has been in place, and upheld by this Commission, for more 16 years. *See Investigation of Access and Divestiture Related Tariffs*, 97 F.C.C.2d 1082, 1168-70 (1984) ("*1984 Access Tariff Order*"). Indeed, the SBC Companies' new tariff language should be assessed based on what it is – a change to their tariffs that substantially alters the rights of the their customers.

Indeed, the SBC Companies' tariff revisions would create powerful perverse incentives for the companies to be less, rather than more, accurate in their access billing to IXCs, or even to engage in intentional overbilling. Faced with an inaccurate or clearly overstated access bill, an

[10] Contrary to the SBC Companies' claims (SBC D&Js at 2 & n.1), these triggers are not the same market-based "protections" that suppliers in competitive industries 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 the SBC Companies assert 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.

IXC would be confronted with the "Hobson's choice" of either paying the excessive access charges or laying itself open to being mulcted by the SBC Companies 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 the SBC Companies to implement tariff changes that have such serious untoward consequences.

A carrier the size of AT&T could be required to deposit *hundreds of millions of dollars* with the SBC Companies – 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 the SBC Companies and other dominant LECs might demand. Yet the tariff revisions would allow the SBC Companies to demand exactly that.[11]

What is perhaps most troubling about the proposal, however, is that the SBC Companies 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 IXCs (or some other favored carrier). Thus, the SBC Companies could rely on these tariff provisions to demand that unaffiliated IXCs provide significant security deposits/advance payments, but then determine that the SBC Companies' own long distance affiliates are sufficiently creditworthy to be excused from such a requirement – the tariff revisions, after all, make the right to demand a security

[11] Moreover, the SBC Companies plainly view the security deposits and advance payments that they would demand as a lucrative profit center. The SBC Companies would pay their access "depositors" simple interest at the one-year Treasury Bill rate (currently less than 2 percent) on security deposits and no interest on "prepayments" or demand deposits. SBC D&Js at 4. The SBC Companies would presumably invest the low (or no) cost funds that they would demand from IXCs – which, as noted, could total hundreds of millions of dollars – in much higher interest vehicles (or use them to fund SBC's own business operations) and could earn literally millions of dollars in illicit profits from these tariff "clarifications."

deposit from any customer that satisfies the broad trigger language entirely discretionary. But even if the SBC Companies required their affiliate to post a deposit or make an advance payment – and in an amount similar to those posted by IXCs – there would still be little hardship on those companies, 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.

B. Reduced Termination Provisions. The SBC Companies' proposal to reduce the time in which it may terminate access services from 30 days to just 10 is equally unreasonable. The SBC Companies' claims that the current 30 days is "not necessary to protect [the IXC's] customers," in part because the companies asserts that the 30 days specified in the tariff often occurs "when a firm already has failed to pay its bills." SBC D&Js at 11. Even assuming that is true, however, the SBC Companies' tariff revisions would not merely apply in those circumstances, but would apply whenever *any* IXC – even those that present no extraordinary payment risk – 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 real 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.

Moreover, reducing the time for IXCs and other carriers to respond to the SBC Companies' claims that bills have not been paid increases the likelihood of service disruptions.

The existing 30-day period provides time for carriers and the SBC Companies to work out honest billing and payment errors. The 30-day period also provides carriers with temporary cash shortfalls to address those problems and pay outstanding bills (with interest where appropriate) without disrupting service to carriers' customers. Reducing the termination intervals by more than half would substantially increase the likelihood that service would be terminated in these situations.

Notably, these service disruptions would not be limited to interstate services. Interstate and intrastate traffic are routinely carried over the same lines and switches.[12] To the extent that SBC "turns off" a carrier's interstate traffic, that carrier's intrastate traffic will be shut down as well. In this regard, the Commission should be mindful that the SBC Companies' proposed restrictions could have a substantial impact on intrastate matters within the jurisdiction of the states. Thus, the Commission should consider convening and consulting a Joint State Board before allowing any LEC to institute reduced termination intervals.

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

[12] In general, inter- and intrastate traffic is calculated for billing purposes. The inter- and intrastate traffic is not physically separated on different lines and switches.

CONCLUSION

For the foregoing reasons, the Commission should reject, or at a minimum, suspend and investigate the SBC Companies' Tariffs that were filed on August 2, 2002.

Respectfully submitted,

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August 9, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 9th 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 9, 2002
Washington, D.C.

/s/ Patricia Bunyasi
Patricia A. Bunyasi

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