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

In the Matter Of	)	
	)	
Ameritech Operating Companies	)	Transmittal No. 1312
	)	
Pacific Bell Telephone Company	)	Transmittal No. 77
	)	
Southern New England Telephone Companies	)	Transmittal No. 772
	)	
Southwestern Bell Telephone Company	)	Transmittal No. 2906
	)	

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 above-captioned SBC Telephone Companies ("SBC") on August 2, 2002 under the above-captioned transmittals.

I. INTRODUCTION AND SUMMARY

SBC's proposed revisions seek to significantly expand the bases on which SBC 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. In fact, although SBC's

justification for the revisions, such as it is, is based entirely on its alleged increased exposure to uncollectible access charges, it has failed to demonstrate that the measures it proposes are reasonably related to this alleged problem. Moreover, these provisions would enable SBC to impose serious, but 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.

II. DISCUSSION

SBC's currently effective tariffs require security deposits only from "a customer which has a proven history of late payments to the Telephone Company" or which "does not have established credit." *See, e.g.,* Section 2.4.1(A) of Ameritech Operating Companies Tariff FCC No. 2, Original Page 40. 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*).

Under the proposed revisions, SBC would continue to use the Commission-prescribed criteria for determining when to require a security deposit from a customer. However, SBC 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 impaired credit worthiness" and "the customer's most recent interstate access bills from the SBC Telephone Companies total (including any outstanding balances) $1 million dollars or more." *See, e.g.*, Section 2.4.1(B) of Ameritech Operating Companies Tariff FCC No. 2, Original page 40.3. SBC identifies five "situations" in which a customer would have "impaired credit worthiness":

(1) "if any debt securities of a customer or its parent...are below investment grade, as defined by the Securities and Exchange Commission;" (2) "if any debt securities of a customer or its parent are rated the lowest investment grade by a nationally recognized credit rating organization and are put on review by the rating organization for a possible downgrade;" (3) a customer without outstanding securities is rated as "fair" or below, or "high risk" in a Paydex score by Dun and Bradstreet; (4) the customer or its parent announces that "it is unable to pay its debts as such debts become due"; and (5) the customer or its parent is in receivership or bankruptcy (either voluntarily or involuntarily). *See, e.g.*, Section 2.4.1(A) of Ameritech Operating Companies Tariff FCC No. 2, Original Pages 40.2 and 40.3. In addition, SBC is proposing to significantly shorten the time period for paying bills from the current 30 days to 21 days for any customer with "impaired credit worthiness." *See, e.g.,* Section 2.5.3 of Southwestern Bell Telephone Company Tariff FCC No. 73, 3rd Revised Page 2-62.

SBC argues that these revisions are justified because "[t]he telecommunications industry... is in a state of crisis." D&J at 7. Although its primary example of such "crisis" is the recent WorldCom bankruptcy filing, SBC also informs the Commission that "in 53 bankruptcies over the past two years, SWBT and its other BOC affiliates have lost hundreds of millions of dollars in unpaid debts, most of which has been due for access services." *Id.* However, SBC fails to give any details as to the specific losses it has incurred to date as a result of these bankruptcies. SBC does not provide any information on the amounts of its pre-petition access billings that remain unpaid or

whether the courts handling these bankruptcies have provided SBC with adequate assurance of payment for access services provided post-petition.[1] Moreover, SBC does not explain whether any of its access customers that filed for bankruptcy would even have met the $1,000,000 uncollectible trigger for being required to remit a security deposit/advance payment to SBC. SBC simply presents a number of bankruptcies, 53, to the Commission as if such number is sufficient to demonstrate that SBC has experienced or faces a significant risk of higher uncollectibles and that accordingly the proposed tariff revisions at issue are fully justified. Similarly, SBC claims that WorldCom owes it over $300 million, but its actual losses may be far less because SBC may receive payment for some or all of its pre-petition bills. Indeed, SBC is somewhat equivocal about this loss, stating merely that it "could be lost in bankruptcy proceedings." D&J at 8 (emphasis added). SBC's bare bones statements simply do not provide the justification that SBC has assumed.[2]

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[1] 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.

[2] SBC claims that it has been left "holding the bag for millions of dollars owed for services rendered." D&J at 1. Here again SBC does not provide any other evidence as to the source or specific amounts of the increase in uncollectible revenues. Despite such alleged losses, each of the SBC Telephone Companies has earned healthy rates of return. According to ARMIS Report 43.01, Table I, Column (h), Rows 1915/Rows 1910, SBC's interstate rates of return increased from 2000 to 2001 for three of its four companies:

	2001	2000
Southwestern Bell:	18.36%	14.29%
Pacific Telesis	23.26%	19.30%
SNET	23.19%	18.49%
Ameritech	25.52%	30.59%

Footnote continues on next page

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 SBC (and Sprint) allow for security deposits where customers fall behind in their payments.[3] Thus, despite its natural desire to be free of any uncollectible 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 SBC's "justification" here, the instant 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, Sections 204 and 205 of the Act, stated that the carriers' proposed security deposit

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Overall, SBC Communications Inc.'s rate of return increased to 22.36% from 20.98%. SBC's rates of return in these years hardly supports the notion that it is facing serious economic harm due to uncollectibles.

[3] SBC does not indicate whether it invoked the deposit requirements in its current tariffs against any of the customers involved in the 53 bankruptcies it has cited.

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, SBC 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, SBC's proposed revisions must be rejected or at least suspended and investigated.

Yet another reason as to why the instant tariff revision must be rejected or suspended and investigated is that SBC 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.[4] The Commission imposed this test on dominant carriers offering term plans -- and term plans are available under SBC'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, SBC has not even come close to meeting this test. SBC has

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

presented no facts which could possibly justify the massive wealth transfer from its competitor-customers to itself.[5] In fact, SBC does not even acknowledge that it is subject to the substantial cause test. SBC's failure to even attempt to present evidence going to the substantial cause for change test requires that the Commission reject or suspend and investigate the instant revisions. SBC'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, SBC'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 debt securities are either "below investment grade" or have been rated "the lowest investment grade" and placed "on review by the rating organization for possible downgrade" is clearly unjust and unreasonable. SBC does not demonstrate that there is any correlation between the debt rating given a carrier by a bond rating agency[6] -- a rating of the entity's ability to redeem bonds that may come due several years in the future -- and the carrier's ability to pay its current access bills on a timely basis. Nor could it. Requiring a security deposit from a carrier merely because its bonds are below investment grade or because its investment grade bonds at the lowest investment grade

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[5] A one-month security deposit requirement would enable SBC to hold or control over $60 million of Sprint's money.

[6] Moreover, SBC's reference to "a nationally recognized credit rating organization," *see, e.g.,* Section 2.4.1(B)(2) of Ameritech Operating Companies Tariff FCC No. 2, Original Page 40.2, is impermissibly vague in violation of Sections 61.2 and 61.54(j) of the Rules. The language affords SBC undue discretion in the selection of a credit rating organization which will be the basis of SBC's determination of credit worthiness.

are placed on review "for a possible downgrade" paints with far too broad a brush. Many hugely successful businesses have been built on a foundation of "junk bonds" and have not defaulted, or even come close to defaulting. Companies whose debt is currently rated below investment grade include such well-known 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 SBC 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.

SBC'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 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."[7] 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 SBC to reserve to itself the right to impose a security deposit or require an advance payment "based on the total charges billed..." *See, e.g.,* Section 2.4.1(B) of Ameritech Operating Companies Tariff FCC No. 2, Original Page 40.3. SBC's wording suggests that amounts in dispute are included for purposes of determining a carrier's deposit requirement or advance payment. Certainly there is nothing in the provision to suggest otherwise.[8] If this is the case, SBC's provision here rests on the notion that SBC'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 the SBC Telephone Companies in its June 2002 bills. Such disputed amounts themselves are well in excess of SBC's $1,000,000 threshold. Over the past twelve years, of those disputes that have been resolved (excluding those which were resolved when additional information was provided to validate charges), SBC has credited Sprint's long distance unit nearly two-thirds of the disputed amounts. Sprint has

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

[8] In contrast, SBC specifically excludes the amounts in dispute for determining whether to terminate service to a carrier for failure to pay. *See, e.g.,* Ameritech Operating Companies Tariff FCC No. 2 at Section 2.1.8(A)(2), 7th Revised Page 28.

paid less than 10 percent of the disputed amounts, and approximately one-quarter of these amounts remains in dispute. Thus, not only could Sprint be required to give SBC a security deposit/advance payment because it exercised its right not to pay disputed amounts to SBC but, to add insult to injury, the security deposit/advance payment would, based upon Sprint historical billing experience with SBC, be inflated by several percentage points. Requiring customers to remit payments based on inaccurate bills is plainly unjust and unreasonable.

Also unjust and unreasonable is the shortening of the time period for payment of bills when the customer is deemed by SBC to have impaired credit worthiness. For such customers, SBC is proposing to reduce the interval from 30 days from the bill date to 21 days from the day the bill is sent or posted electronically. Access bills are massive and complex, and customers should be provided adequate time to review them and identify amounts which they dispute. In any case, SBC has not even attempted to demonstrate that a reduction in the billing payment cycle will enable it to minimize its exposure to uncollectibles which is its putative justification for the revisions at issue.

Finally, SBC argues that its proposed tariff revisions will afford it "some measure of additional protection against unpaid debt from financially distressed customers." D&J at 8. But none of the alternatives it proposes goes to whether an SBC 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, SBC is seeking to give itself unfettered discretion over which customers will be required to transfer to SBC millions, if not hundreds of millions, of dollars in deposits. Such unfettered discretion would enable SBC to violate the Section 202(a) proscription against unjust

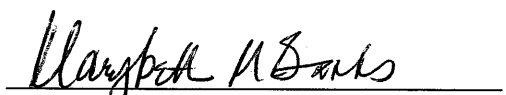
discrimination with impunity. It will be able to pick and choose among its customers for the imposition of deposit requirements. And given that its carrier-customers are its competitors, SBC's exercise of such discretion is likely to have serious anti-competitive effects.[9]

III. CONCLUSION

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

Respectfully submitted,

SPRINT CORPORATION



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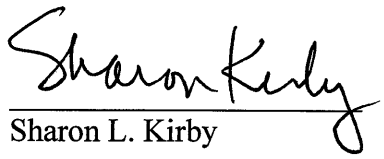
[9] SBC makes much of the fact that its $1,000,000 threshold would exclude smaller companies. This exclusion cuts against the lawfulness of SBC's revisions in two ways. First, such small companies are unlikely to pose much of a competitive threat to SBC. In contrast, the $1,000,000 threshold clearly would enable SBC to tie up the money of its major competitors such as Sprint and AT&T. Second, it is unjustly discriminatory to exempt one credit-challenged company from a deposit requirement imposed on another equally (or perhaps even less) credit-challenged company merely because of differences in the amounts billed to each.

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 Ameritech Operating Companies Transmittal No. 1312, Pacific Bell Telephone Company Transmittal No. 77, Southern New England Telephone Companies Transmittal No. 772, and Southwestern Bell Telephone Company Transmittal No. 2906, was sent by United States First Class Mail, postage prepaid, or hand delivery on this 9th day of August, 2002, to the following parties.



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