

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

In the Matter Of)	
)	
National Exchange Carrier Association, Inc.)	Transmittal No. 951
_____)	

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 National Exchange Carrier Association, Inc. ("NECA") on August 21, 2002 under the above-captioned transmittal.

I. INTRODUCTION AND SUMMARY

NECA's proposed revisions seek to expand significantly the bases on which it would be able to require security deposits from its customers and to institute a short ten-day period for service discontinuance. 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 NECA's justification for the revisions, such as it is, is based entirely on its alleged increased exposure to uncollectible access charges, it

fails to demonstrate that the measures it proposes are reasonably related to this alleged problem. Moreover, these provisions would enable NECA to impose serious, but unwarranted, burdens on the cash resources of long distance carriers and, if matched by other ILECs, could conceivably create for some carriers liquidity problems that otherwise would not exist. NECA's proposed tariff revisions are similar to those of Iowa Telecommunications Services, Inc., Bell South, the SBC Companies and Verizon, all of which have been suspended and set for investigation by the Pricing Policy Division of the Wireless Competition Bureau because petitioners raise "substantial questions regarding the lawfulness" of the proposed revisions.¹ NECA's transmittal should also be suspended and set for investigation because of similar questions raised below concerning its lawfulness.

II. DISCUSSION

NECA's currently effective tariff requires security deposits only from "a customer which has a proven history of late payments to the Telephone Company or does not have

¹ See, *Iowa Telecommunications Services, Inc. Tariff FCC No. 1*, Transmittal No. 22, DA 02-1732, rel. July 17, 2002, para. 2. See also, *BellSouth Telecommunications, Inc. Tariff FCC No. 1*, Transmittal No. 657, DA 02-1886, rel. August 2, 2002, para. 5; *Ameritech Operating Companies Tariff FCC No. 2*, *Nevada Bell Telephone Companies Tariff FCC No. 1*, *Pacific Bell Telephone Company Tariff FCC No. 1*, *Southern New England Telephone Companies Tariff FCC No. 39*, *Southwestern Bell Telephone Company FCC Tariff No. 73*, Transmittal Nos. 1312, 20, 77, 772 and 2906, respectively, DA 02-2039, rel. August 16, 2002, para. 6; and *The Verizon Telephone Companies Tariff FCC Nos. 1, 11, 14 and 16*, Transmittal No. 226, DA 02-2055, rel. August 22, 2002, para. 5.

established credit.” Section 2.4.1(A) of NECA Tariff F.C.C. No. 5, 4th Revised 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*).

Under the proposed revisions, NECA would continue to use the Commission-prescribed criteria for determining when to require a security deposit from a customer. However, NECA would also be able to require a two-month security deposit even if the customer has not “established a proven history of late payments” as long as “the customer’s credit worthiness is below a commercially acceptable level.” Section 2.4.1(A)(2), 2nd Revised Page 2-26.1. NECA defines a “commercially acceptable level of credit worthiness” of a customer which issues debt securities to be “a corporate debt securities rating with respect to any outstanding general debt obligations of at least BBB according to Standard & Poor’s or an equivalent rating from other debt rating agencies.” Section 2.4.1, 5th Revised Page 2-26. For customers without debt securities, the customer must have “a composite credit appraisal rating published by Dun & Bradstreet of at least ‘good’ or a Paydex score as published by Dun & Bradstreet of at least ‘average’.” *Id.* In addition, NECA is proposing an extremely short time period for posting the deposit to “within fourteen (14) days of the date of the notice,” and the deposits must be “in the form of funds that are available for use by the Telephone Company on the same day on which the funds are received” such as “U.S. Federal Reserve Bank wire transfers, U.S. Federal Reserve notes (i.e., paper cash) and/or U.S. Postal Money Orders.” Section 2.4.1(A)(2), 2nd Revised page 2-26.2.

NECA argues that these revisions are justified because of “the financial stress currently facing the telecom industry” and to enable “incumbent local exchange carriers (ILECs) ... [to] be able to protect their ability to obtain payment for services that they are required to provide all customers, including access services to financially troubled carriers.” D&J at 1. Its primary examples of such “stress” are the recent WorldCom and Global Crossing bankruptcy filings which have resulted in \$70 million of uncollectible revenues. *Id.* at 3. However, NECA 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 NECA with adequate assurance of payment for access services provided post-petition. NECA’s actual losses may be far less because it may receive payment for some or all of its pre-petition bills.² NECA’s bare allegations of uncollectibles simply do not provide the justification that NECA 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 tariff and indeed reserves the right to do so if the RBOCs are permitted to revise

² A bankruptcy filing does not necessarily mean that the 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.

their tariffs. However, existing access tariffs of NECA (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 NECA'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 access tariffs filed by NECA, 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 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, NECA 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

³ NECA does not indicate whether it invoked the deposit requirements in its current tariff against any of the customers which have produced the \$70 million of uncollectible revenues.

modifications would 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, NECA's proposed revisions must be rejected or at least suspended and investigated.

NECA's proposed tariff changes 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, NECA's reservation of the right to require a security deposit from a carrier with no proven history of late payments and with established credit simply because the carrier's debt securities are below "BBB according to Standard & Poor's or an equivalent rating from other debt agencies" is clearly unjust and unreasonable. NECA does not demonstrate that there is any correlation between the debt rating given a carrier by a bond rating agency⁴ -- 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 BBB 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 BBB include such well-known and established entities as Boise Cascade, Cablevision, Delta Airlines, Goodyear,

⁴ Moreover, NECA's reference to "other debt agencies" is impermissibly vague in violation of Sections 61.2 and 61.54(j) of the Rules. The language affords NECA undue discretion in the selection of a credit rating organization which will be the basis of NECA's determination of credit worthiness.

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 BBB; 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 Poor's is now rated below investment grade. Surely NECA cannot maintain that nearly half of U.S. businesses are serious credit risks. In any event, there are substantial variations in the quality of bonds rated below BBB. Standard and Poor's, for one, has ten rating categories below BBB above its "default" rating.

NECA'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.”⁵ 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.

Also unjust and unreasonable is the short time period for posting the deposit when the customer is deemed by NECA to have impaired credit worthiness and for discontinuance of service. NECA is proposing a very short interval for posting the requested deposit of 14 days from the date of the notice, which will be sent “via Certified US Mail.” Assuming 3 to 5 days for delivery, NECA’s customers would have only 9 to 11 days to post the deposit. NECA has not demonstrated that the short period will enable it to minimize its exposure to uncollectibles which is its putative justification for the revisions at issue.

Similarly, it is unreasonable for NECA to reduce the amount of notice given customers before service is discontinued from 30 to 10 days. Such a short interval may result in service disruptions where the customer is not a credit risk based on historical payments. Indeed, the 10-day period violates the 30-day notice period for termination which the FCC found addressed its concerns in its *1984 Access Tariff Decision*, 97 FCC 2d 1082, 1155-56. In light of the FCC’s 1984 decision, NECA’s proposed 10-day interval is clearly unreasonable.

⁵ Aline van Duyn, “Aggressive Downgrades Under Question: Bond Investors Are Concerned By The Apparent Changes in Rating Agencies Assessments,” Financial Times, July 12, 2002.

NECA's proposed requirement that the deposit be in the form of cash is yet another unjust and unreasonable provision. In their revised deposit languages, other carriers have proposed "a surety bond or an irrevocable letter of credit." *See, e.g.,* Bell South Transmittal No. 657, Section 2.4.1, 2nd Revised Page 2-21.1. NECA's requirement for "funds available for use on the day received" (D&J at 2) will place an undue burden on its customers to produce one of the identified instruments on short notice.

Finally, NECA argues that its proposed tariff revisions will "add assurances that ILECs and the ILECs' remaining customers are not left "holding the financial bag" when a customer files for protection under bankruptcy laws." D&J at 3. But none of the alternatives it proposes goes to whether a NECA 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 tariff, NECA is seeking to give itself unfettered discretion over which customers will be required to transfer to NECA millions of dollars in deposits. Such unfettered discretion would enable NECA 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.

III. CONCLUSION

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

Respectfully submitted,

SPRINT CORPORATION

A handwritten signature in cursive script, appearing to read "Marybeth M. Banks", is written over a horizontal line.

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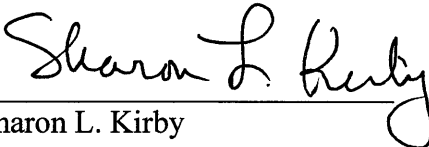
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August 28, 2002

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 National Exchange Carrier Association, Inc., Transmittal No. 951, was sent by United States First Class Mail, postage prepaid, or hand delivery on this 28th day of August, 2002, to the following parties.


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