Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
National Exchange Carrier Association	)	**Transmittal No. 951**
Tariff FCC No. 5	)	
	)	

WORLDCOM PETITION TO REJECT OR, IN THE ALTERNATIVE, SUSPEND AND INVESTIGATE

I. Introduction and Summary

WorldCom, Inc. (WorldCom), pursuant to Section 1.773 of the Commission's Rules, hereby petitions the Commission to reject or, in the alternative, suspend and investigate the above-captioned transmittal filed by the National Exchange Carrier Association (NECA) on August 21, 2002.[1]

The Commission should suspend NECA Transmittal No. 951 because (1) NECA's proposal to reduce the notice period for refusal or discontinuance of service is not just and reasonable; (2) the proposed security deposit provisions are unjust and

[1] Rejection of a proposed tariff or proposed changes to an existing tariff is warranted when the proposal is prima facie unlawful in that it can be demonstrated that it conflicts with the Communications Act or a Commission rule, regulation, or order. See, e.g., American Broadcasting Companies, Inc v. FCC, 633 F.2d 133, 138 (D.C. Cir. 1980); Associated Press v. FCC, 448 F.2d 1095, 1103 (D.C. Cir. 1971); MCI v. AT&T, 94 FCC 2d 332, 340-341 (1983); AT&T, 67 FCC 2d 1134, 1158 (1978); recon denied, 70 FCC 2d 2031 (1979)

Suspension and investigation of a proposed tariff or tariff modification is warranted when significant questions of lawfulness arise in connection with the tariff. See AT&T Transmittal No. 148, Memorandum Opinion and Order, FCC 84-421 (released Sept. 19, 1984); ITT, 73 FCC 2d 709, 719 (1979); AT&T, 46 FCC 2d 81, 86 (1974); see also Arrow Transportation Company v. Southern Railway Company, 372 U.S. 658 (1963).

unreasonable in violation of Section 201(b) of the Act; and (3) NECA has failed to make the showing required by the Commission's "substantial cause" test.

II. Reducing the Notice Period from 30 Days to 10 Days is NotJust and Reasonable

The Commission should reject or, in the alternative, suspend and investigate NECA Transmittal No. 951 because NECA's proposal to reduce the notice period for refusal and discontinuance of service from 30 days to 10 days is unjust and unreasonable.

The 30-day notice period has been found in every LEC access tariff for almost twenty years, since the initial post-divestiture access tariff investigation in 1984.[2] As the Commission has explained, the 30-day notice period is essential because it allows sufficient time for the LEC and customer to investigate or cure alleged tariff violations before the LEC takes the drastic step of refusing or discontinuing service. In the Phase I Order, for example, the Commission noted with approval commenters' statements that the 30-day notice period "provides reasonable time for [customers] to convey their concerns to the telco."[3] And in reviewing BellSouth's 1987 proposal for a 15-day notice period, the Commission expressed concern that the BellSouth proposal "may impair the cooperative spirit we have attempted to promote between carriers and customers."[4] The Commission also "believe[d] that the advantages of BellSouth's revisions are outweighed by the disadvantages to consumers."[5]

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[2] Investigation of Access and Divestiture-Related Tariffs, Memorandum Opinion and Order, CC Docket No. 83-1145 Phase I, 97 FCC 2d 1082 (1984) (Phase I Order), Appendix D, discussion of Section 2.1.8.
[3] Id.
[4] Annual 1987 Access Tariff Filings, Memorandum Opinion and Order, 2 FCC Rcd 280, 304-305 (1986) (1987 Access Tariff Order).
[5] Id.

Reducing the notice period from 30 days to 10 days would drastically alter the balance of power in any dispute between a NECA LEC and its customers. The threat of imminent refusal or disconnection of service would give a NECA LEC an unreasonable degree of leverage in any negotiations between the NECA LEC and its customer concerning the alleged tariff violations. Given that there are generally no alternatives to the NECA LECs' access services, and that customers would be unable to switch quickly even in the rare instances where competing facilities are available, customers receiving a 10-day notice simply could not afford to risk the possibility that the NECA LEC would stop processing orders or terminate service altogether.

In light of the risks associated with shifting the balance between the NECA LECs and their customers so drastically, and consistent with the Commission's findings in the 1987 Access Order, the Commission should permit shorter notice periods only under very narrowly-defined circumstances. NECA's proposed changes are, however, excessively broad. First, NECA's proposed changes are not just and reasonable because they would not apply "only to those customers that are likely to default."[6] While NECA presents the reduction in the notice period as necessary to protect the NECA LECs against an accumulation of bad debt, NECA offers no justification for reducing the notice period for all customers, including those that present no risk of nonpayment, to 10 days. Moreover, even if the 10-day discontinuance provision were narrowed to apply only to high-risk customers, the changes proposed by NECA would still be excessively broad. NECA has failed to demonstrate that both expanded security deposit provisions and a shorter notice period are required to protect NECA LECs' interests against the risks posed by such customers.

To the extent that the Commission permits NECA to reduce the refusal and discontinuance period, it should impose the same requirements on NECA that it imposed on BellSouth in 1987. One of the Commission's concerns about the BellSouth 1987 proposal was that it could reach customers that simply needed additional time to review and verify their bills. The Commission stated that the proposed BellSouth revisions "should not reach customers who have not paid their bills by the late payment date if such failure occurred because they did not receive their bills in a timely manner and sufficiently in advance of the late payment date so as to allow them an opportunity to review and verify their bills; such customers do not pose a risk to BellSouth."[7] For that reason, the Commission stated that it would require BellSouth to file clarifying revisions that indicated that BellSouth would discontinue service 15 days after nonpayment only in those cases where the customer receives the bill within 3 days of the billing date.[8] It is essential that the NECA LECs be subject to similar requirements.

Finally, NECA's proposed requirement that any security deposit be paid in cash would be unjust and unreasonable.[9] Verizon, SBC, and other LECs that have recently proposed revisions to their security deposit policies have also permitted customers to provide security deposits in the form of a letter of credit, which may be less burdensome for some customers.

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[6] 1987 Access Tariff Order, 2 FCC Rcd at 304.
[7] 1987 Access Tariff Order, 2 FCC Rcd at 304.
[8] Id.
[9] Transmittal No. 951, 2nd revised page 2-26.2.

III. The Proposed Criteria for Triggering Security Deposit Demands are Not Just and Reasonable

In assessing whether LEC tariff terms and conditions are just and reasonable, the Commission has consistently emphasized that the interests of the LEC must be balanced against the interests of the LEC's customers. While the Commission has recognized the legitimate interests of the LEC, it has at the same time required that any regulations designed to protect the LEC's interests not place undue burdens on customers. In particular, the Commission has required that any regulations designed to protect the LEC's interests be limited in scope, commensurate with the risk faced by the LEC, and narrowly targeted to address the source of the risk.[10]

NECA's proposal is not just and reasonable because it does not provide the requisite balancing of carrier and customer interests. NECA is overreaching, seeking to use industry conditions as a pretext to impose onerous security deposit provisions on a broad class of customers that, by any objective standard, presents only a low or moderate risk of nonpayment.

Specifically, it would not be just and reasonable for NECA to demand a security deposit or advance payment from any customer with an S&P rating below BBB or an "equivalent rating from other debt rating agencies,"[11] i.e., any customer with non-investment grade debt. While issuers of speculative-grade debt securities may present a higher risk of nonpayment than issuers of investment-grade debt securities, issuers of speculative-grade debt securities do not present a risk of nonpayment that is so

[10] See, e.g., Phase I Order, 97 FCC Rcd 1082, Appendix D, discussion of Section 2.4.1(A) (the Commission "recognize[d] that it is prudent for the telephone company to seek to avoid non-recoverable costs imposed by bad credit risks," but rejected "vague charges [that] could become unreasonably burdensome," provisions that "allow[ed] the telco unnecessarily broad discretion" and provisions that had "potential anticompetitive effects.")

[11] Transmittal No. 951, proposed 5th revised page 2-26.

substantial that a security deposit is required to protect NECA's interests. Statistics published by Moody's Investors Service show that the rate of default among speculative-grade issuers in 2001 was only 10.2 percent.[12] Moreover, 2001 was the second-worst year in history for speculative-grade defaults; in more typical years, the rate of default has been even lower.[13] And the *credit* loss rate, which reflects the amounts recovered in the bankruptcy process, is lower still.[14]

NECA's proposal to target all customers with non-investment grade debt is one-sided, reducing NECA's risk almost to zero by imposing a crushing burden on every customer that presents even the slightest risk of nonpayment. A properly-balanced security deposit policy would require the NECA LECs to absorb a somewhat higher level of risk, because it would permit the NECA LECs to target only those customers that present a substantial risk of nonpayment. While it is understandable that NECA would want to eliminate all of its risk by targeting low- and moderate-risk customers as well, such a broad security deposit policy is simply not just and reasonable. No CLEC or IXC could ever hope to demand a security deposit from every customer with speculative-grade debt; in a competitive market, all but the riskiest of those customers would easily be able to switch to a competitor that (accurately) determined that there was no need to require a security deposit.

NECA's proposal to demand a security deposit from any customer with two late payments in the previous year is similarly unreasonable. As an initial matter, it is disingenuous for NECA to contend that this proposal simply "clarifies" the existing

[12] Moody's Investors Service, "Default and Recovery Rates of Corporate Bond Issuers," February 2002, at 1 (http:riskcalc.moodysrms.com/us/research/defrate/02defstudy.pdf).
[13] Id. at 6.
[14] Id. at 20.

"proven history of late payment" language in NECA's tariff;[15] to the best of WorldCom's knowledge, no NECA LEC has ever tried to claim that two late payments in a year constitutes a "proven history of late payment." In reality, NECA is proposing a far more stringent policy than was contemplated by the Commission when it prescribed the "proven history of late payment" language in 1984.

Moreover, a history of two late payments in a twelve-month period – no matter how inconsequential the amount or the delay – simply does not correlate with a level of risk of nonpayment that is so substantial that a two-month cash deposit is required to protect the NECA LECs' interests. Often, LEC customers pay portions of their bills "late" simply because they require additional time to scrutinize LEC access bills that are late and, in many instances, incorrect.

IV. NECA Transmittal No. 951 Fails to Meet the Substantial Cause Test

The Commission should reject or, in the alternative, suspend and investigate NECA Transmittal No. 951 because NECA's proposal to revise the discontinuance and security deposit provisions applicable to existing term plan customers in mid-term fails to meet the Commission's "substantial cause for change test."

As the Commission recognized in the RCA Americom Decisions,[16] customers have "legitimate expectations . . . for stability in term arrangements."[17] For that reason, the reasonableness of a proposal to revise material provisions in the middle of a term

[15] D&J at 2.
[16] RCA American Communications, Inc., Memorandum Opinion and Order, 86 FCC 2d 1197 (1981) (RCA Americom 1981 Order); RCA American Communications, Inc., Memorandum Opinion and Order, 94 FCC 2d 1338 (RCA Americom 1983 Order); RCA American Communications, Inc., Memorandum Opinion and Order, 2 FCC Rcd 2363 (1987) (RCA Americom Final Order).
[17] RCA Americom 1981 Order, 86 FCC 2d at 1201.

"must hinge to a great extent on the carrier's explanation of the factors necessitating the desired changes at that particular time."[18]

NECA has not, and could not, demonstrate compliance with the substantial cause test. NECA claims only that it "has experienced an increase in uncollectibles that is unprecedented in its history."[19] But it is perfectly normal for uncollectibles to vary depending on the point in the business cycle, and NECA should have anticipated such variations in uncollectibles when it established its term plan rates. All carriers, not just the NECA LECs, have seen their uncollectibles increase as the telecommunications industry downturn has deepened. Time Warner Telecom, for example, recently reported to the SEC that its uncollectibles have increased due to customer bankruptcies.[20]

Moreover, it is well-established that mere reductions from anticipated revenues do not constitute substantial cause.[21] Rather, the carrier must demonstrate unanticipated changes in business circumstances of such degree that they would "constitute an injury to [the carrier] that outweigh[s] the existing customers' legitimate expectation of stability."[22] The Commission has, for example, suspended tariffs when the carrier failed to demonstrate that "its projected losses [were] sufficiently large or certain to demonstrate 'substantial cause.'"[23] NECA has not demonstrated such "large" or "certain" losses. Significantly, NECA is not claiming that "it will fail to recover its costs or that net revenues [from term plan] services will become negative."[24]

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[18] RCA Americom 1981 Order, 86 FCC 2d at 1201-1202.
[19] D&J at 3.
[20] Time Warner Telecom, SEC Form 10-K, March 28, 2002, at 34.
[21] 5 FCC Rcd at 6779, ¶ 21,
[22] Id.
[23] AT&T Communications Contract Tariff No. 360, Order, 11 FCC Rcd 3194, ¶ 20 (1995).
[24] 5 FCC Rcd at 6779, ¶ 21.

V. Conclusion

For the reasons stated herein, the Commission should reject or, in the alternative, suspend and investigate NECA Transmittal No. 951.

Respectfully submitted
WORLDCOM, INC.

/s/ Alan Buzacott

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August 28, 2002

Statement of Verification

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on August 28, 2002.

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CERTIFICATE OF SERVICE

I, Alan Buzacott, do hereby certify that copies of the foregoing Petition to Reject or, in the Alternative, Suspend and Investigate were sent via first class mail, postage paid, and by facsimile*, to the following on this 28th day of August, 2002.

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