

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

REPLY

The National Exchange Carrier Association Inc. (NECA), pursuant to Section 1.773 of the Commission's rules,¹ submits this Reply to petitions from WorldCom, Inc. (WorldCom) and Sprint Corporation (Sprint) seeking rejection or suspension of the above captioned tariff filing.²

WorldCom claims that NECA's proposal to reduce the notice period for refusal or discontinuance of service and the proposed security deposit revisions are unjust and unreasonable and are in violation of Section 201 (b) of the Act. WorldCom also purports that NECA has failed to make the showing required by the Commission's "substantial cause" test.

Sprint makes similar claims to those of WorldCom and also argues that NECA's proposed standard for determining credit worthiness is unjustly discriminatory under Section 202(a) of the Act; and is impermissibly vague in violation of Section 61.2 and

¹ 47 C.F.R § 1.773

² WorldCom Petition to Reject or, in the alternative, suspend and investigate (filed Aug. 28, 2002); Petition of Sprint Corporation to Reject or Alternatively Suspend and Investigate (filed Aug. 28, 2002).

61.54(j) of the Commission's rules. Finally, Sprint alleges that NECA's revisions violate Commission prescriptions for customer deposit requirements.

Section 1.773 of the Commission's rules establishes standards for rejection or suspension of a tariff filing. A petitioner must demonstrate that the challenged tariff filing raises substantial questions of lawfulness, and must provide specific reasons why the tariff warrants investigation, suspension or rejection.³ For the reasons discussed below, petitioners have not met this burden of proof. NECA's proposed tariff revisions should be allowed to take effect as filed.

I. NECA'S PROPOSAL TO REDUCE THE NOTICE PERIOD FOR REFUSAL OR DISCONTINUANCE OF SERVICE IS JUST AND REASONABLE.

According to WorldCom, a 30-day notice period for refusal or discontinuance of service is essential because it allows sufficient time for the LEC and customer to investigate or cure alleged tariff violations. WorldCom further claims that the proposed tariff revisions are excessively broad because they could apply to customers who are less likely to default.

The current tariff provides a 30-day period between the time that a bill is rendered and the time that payment is due. Requiring an additional thirty days' notice after a carrier has already failed to make payments required under the tariff simply increases the total amount of the customer's default.⁴ The proposed change is in line with terms

³ See 47 C.F.R § 1.773(a).

⁴ In the case of a customer that is served with a notice for a refusal or discontinuance of service because they are not considered credit worthy, the customer actually has a minimum of 24 days between the time the deposit notice is sent and the time the service is disconnected for failure to pay a deposit. The request for deposit notice requires a minimum of 14 days before the deposit is due. Upon rejection of this request, the

already present in other carriers' existing tariffs. For example, WorldCom's own tariff states that it may cancel service "upon written notice".⁵ Similar provisions exist in Sprint's tariffs.⁶

Carriers should not be required to continue to provide service to customers that cannot or will not pay. During the first six months of 2002, NECA has incurred estimated uncollectible revenues due to payment defaults of over \$70 million. Reducing the notice period to 10 days will help mitigate the overall financial loss to the telephone companies caused by defaulting access customers.

II. THE PROPOSED SECURITY DEPOSIT PROVISIONS ARE JUST AND REASONABLE.

WorldCom states it would not be just and reasonable 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".⁷ It then justifies its statement with a statistic from Moody's Investors Service that shows the rate of default among speculative-grade issuers in 2001 is only 10.2 percent. The fact that 10.2% of companies in this category default is sufficient justification by itself for requiring companies with high-risk credit ratings to pay deposits.⁸

customer could be served a disconnect notice, which would require an additional 10 days notice before service is actually affected.

⁵ WorldCom TX PUC Tariff No. 1 § 2.7.

⁶ Sprint Schedule No. 11 § 2.15 (stating that it may, by written notice, "immediately" cancel service.)

⁷ WorldCom at 5.

⁸ Sprint also claims that the tariff reference to "other debt agencies" is impermissibly vague in violation of Sections 61.2 and 61.54(j) of the Rules. The proposed tariff

WorldCom states that a "properly-balanced security deposit policy would require the NECA LECs to absorb a somewhat higher level of risk, because it would target only those customers that present a substantial risk of nonpayment".⁹ However, NECA's proposed revision does target those companies that are most likely to default. A Moody's Investor Service report shows that "over 90% of all rated companies that have defaulted since 1983 were rated Ba3 or lower at the beginning of the year in which they defaulted."¹⁰ The Moody's Ba rating is equivalent to the S&P rating of BB, the proposed trigger for which a customer deposit may be required.¹¹

In reply comments regarding its recent proposed tariff changes to customer deposit requirements, Verizon Communications Inc. provided its own internal analysis that demonstrated a clear correlation between S&P credit ratings and customers with outstanding receivables for 90 days or more.¹² Requiring deposits from financially troubled access customers is not unreasonable.

reference to "other debt rating agencies" provides needed flexibility because not all customers have ratings from Standard and Poor's.

⁹ WorldCom at 6.

¹⁰ Moody's Investor Service, Rating Policy, "Understanding Moody's Corporate Bond Ratings and Rating Process" at 9 (May 2002).

¹¹ Transmittal No. 951 proposes a minimum S&P credit rating of BBB for a customer to be considered credit worthy.

¹² *Id.* at 14 and Exhibit D.

III. THE “SUBSTANTIAL CAUSE” TEST SHOULD NOT BE APPLIED TO NECA TRANSMITTAL NO. 951

WorldCom asserts that NECA has failed to make the showing required by the "substantial cause" test outlined in the Commission's RCA Americom Decisions¹³ for changes in term arrangements.¹⁴

Tariff provisions regarding term plans contain information related to pricing and length of agreements, but do not govern the payment of bills and security deposits related to the plans. The overall terms and conditions that apply to the term plans and to all of the services offered under the tariff are those contained in Section 2, General Regulations.

Term plans do not state that the tariff's General Regulations will not change during the length of the plan. Transmittal No. 951 does not alter the operative conditions of any term plans (*i.e.*, discounts or commitment lengths). In fact, the only way that the proposed revisions would affect term plans would be to provide a waiver of any applicable termination charges in cases where a customer refuses to pay a deposit.¹⁵ Thus, the Commission's "substantial cause" test should not be applied to NECA's proposed tariff revisions.

¹³ 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 American Communications, Inc., Memorandum Opinion and Order, 2 FCC Rcd 2363 (1987).

¹⁴ WorldCom at 7.

¹⁵ See NECA Tariff FCC No. 5, Transmittal No. 951 at Section 2.4.1(A)(2), page 2-26.3. ("The Telephone Company will waive the applicable termination liability charge(s) for each such term plan commitment terminated.")

In any event, NECA has shown that the adverse effects on paying customers associated with defaults by financially troubled customers easily provide “substantial cause” for allowing the proposed revisions to become effective. As WorldCom acknowledges, “the reasonableness of a proposal to revise *material* provisions in the middle of a term must hinge to a great extent on the carrier’s explanation of the factors necessitating the desired changes at that particular time.”¹⁶ Here, NECA has explained in detail the problems associated with allowing financially troubled carriers to obtain service from local exchange carriers for extended periods of time without payment. Even if the revisions proposed in Transmittal No. 951 could be considered “material” from the point of view of a term plan customer (which they are not), “substantial cause” has been shown.

IV. NECA'S TRANSMITTAL NO. 951 DOES NOT VIOLATE ANY COMMISSION PRESCRIPTIONS

Sprint argues that Transmittal No. 951 violates a prescription contained in the Commission’s Phase I Access Order issued in 1984 under CC Docket 83-1145. Sprint argues that the Commission in that proceeding determined that a local exchange carrier may request a deposit only from customers that have a history of late payment or do not have established credit. According to Sprint, this prohibits NECA tariff participants from requesting deposits from any of the additional classes of customers named in Transmittal No. 951.¹⁷

The Phase I Access Order did not prescribe any particular language governing tariff deposit requirements. It merely required clarification and justification of the types and

¹⁶ WorldCom at 7 (emphasis added).

amount of deposits that may be required under the initial access tariffs, and provided direction to carriers as to what types of deposit provision might be permitted to become effective in the context of the initial access charge tariff filings. The Order certainly did not constitute a “prescription” under Section 205 of the Act, nor did it purport to establish any permanent standards governing access tariff deposit requirements.

Even if the Phase I Access Order did somehow constitute a Section 205 prescription, it could now be considered stale given the current financial instability facing the industry. More than 18 years have passed since the Phase I Access Order was issued. The telecommunications marketplace has changed radically since 1984. What was unthinkable then (*i.e.*, the apparent unwillingness or inability of major interexchange carriers (IXCs) to make timely payments) has now become an unfortunate reality. Under these circumstances, the Commission should not unthinkingly continue to enforce an out-of-date tariff ruling to the detriment of NECA tariff participants or to access customers that pay their bills on time.

¹⁷ Sprint at 5.

V. CONCLUSION

WorldCom and Sprint have not demonstrated that Transmittal No. 951 raises substantial questions of lawfulness. NECA is proposing clear and specific standards for determining when the telephone company may require a deposit from a customer with less than an acceptable credit rating. Transmittal No. 951 clearly specifies what constitutes a commercially acceptable level of credit worthiness and meets the “substantial cause for change” test.

The proposed shortened notice periods for non-compliance disconnect notices and for paying deposits are reasonable and will help minimize the impact that defaulting customers have on the rates of access customers that pay their bills. Transmittal No. 951 does not violate any Commission prescriptions nor does it unfairly discriminate against or disadvantage particular customers. Accordingly, the petitions should be denied and NECA’s tariff revisions allowed to become effective as filed.

Respectfully submitted,

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September 3, 2002

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Reply was served this 3rd day of September 2002, by electronic delivery, facsimile transmission, or by hand delivery to the persons listed below.

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