

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

In the Matter of

**Verizon Tariffs F.C.C. No. 1, 11, 14, 16
Transmittal No. 296**

)
)
)
)
)
)

PETITION OF AT&T CORP.

David L. Lawson
Michael J. Hunseder
SIDLEY AUSTIN BROWN & WOOD, LLP
1501 K Street., N.W.
Washington, D.C. 20005
(202) 736-8000

Mark C. Rosenblum
Peter H. Jacoby
James W. Grudus
AT&T CORP.
One AT&T Way
Bedminster, NJ 07921
(908) 532-1830

Attorneys for AT&T Corp.

March 7, 2003

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

In the Matter of

**Verizon Tariffs F.C.C. No. 1, 11, 14, 16
Transmittal No. 296**

)
)
)
)
)
)

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 transmittal filed by the Verizon Telephone Companies ("Verizon") on February 28, 2003, in which Verizon seeks to amend its tariffs to reflect guidance issued by the Commission in its *Policy Statement*¹ regarding security deposits and shortened notice periods to discontinue service or to refuse new service orders. Although Verizon's tariff transmittal is largely consistent with the *Policy Statement*, certain provisions are either unlawfully ambiguous or violate the Commission's guidance in the *Policy Statement*, and would be unjust and unreasonable if permitted to go into effect.

INTRODUCTION AND SUMMARY

In 2002, several incumbent local exchange carriers, including Verizon, proposed to revise their access tariffs by granting themselves broad and unprecedented authority to demand security deposits or advanced payments from virtually every carrier in the industry – discretion they could exercise in a discriminatory manner. The ILECs claimed such revisions were needed to

¹ See Policy Statement, *In the Matter of Verizon Petition for Emergency Declaratory And Other Relief*, WC Docket No. 02-202 (rel. Dec. 23, 2002) ("*Policy Statement*").

address the risk of uncollectible access charges, which they asserted was growing uncontrollably. On December 23, 2002, in response to a request for declaratory ruling made by Verizon, the Commission issued a *Policy Statement*, which recognized that the risk presented by uncollectibles was exaggerated by the LECs. *Policy Statement* ¶¶ 14, 20. The Commission therefore found that additional security deposit requirements are not warranted. *Id.* ¶¶ 14, 16. In the *Policy Statement*, the Commission recommended that incumbent LECs consider other alternatives, but stressed that any “additional protections [must be] narrowly targeted to meet directly the risk of nonpayment.” *Id.* ¶ 20. With respect to shortened notice periods for terminating service, the Commission recommended that incumbent LECs consider a reduction in the notice period “to some shorter period” where customers “receive bills quickly enough to allow review and dispute.” *Policy Statement* ¶ 26.

In its Transmittal No. 296, Verizon attempts to respond to some of the concerns raised in the *Policy Statement*. Verizon’s Tariff contains new and modified language that, among other things, (1) reduces the time period for discontinuing service for nonpayment of undisputed bills from 30 to 15 days, provided Verizon meets certain conditions; (2) sets forth procedures for customers to dispute bills; (3) provides for at least 14 days notice to make any required deposits without service interruptions; and (4) purports to address the bills that are subject to shortened notice periods. Overall, Verizon’s tariff appears to be consistent with the *Policy Statement*. In particular, Verizon no longer seeks to impose security deposits or advanced payments on customers that do not pose any unusual risk of nonpayment. Nevertheless, as detailed below, there are a handful of provisions in Verizon’s tariff that are ambiguous and that are inconsistent

with the guidance offered by the Commission in the *Policy Statement*. These provisions must be addressed and clarified before the tariff can be lawfully implemented.²

I. Verizon's Tariff Transmittal Is In Part Ambiguous and Inconsistent With The *Policy Statement*.

1) 7 Business Day Trigger.

The first objectionable provision of Verizon's tariff transmittal relates to proposed conditions that would allow Verizon to reduce the notice period to discontinue service or refuse to provision new service for nonpayment to just 15 days. Under Verizon's tariff transmittal, reduced notice provisions are triggered so long as Verizon sends the bill within 7 "business" days of the bill date. This 7 business day time period is far too long, is inconsistent with the *Policy Statement*, and, as set forth in Exhibit 1, should be shortened to 3 business days, as the Commission has required since 1987.

As the *Policy Statement* recognizes, "interstate access billing is a complex and time-consuming process." *Policy Statement* ¶ 24. "[I]nterstate access bills [can] . . . run to tens of thousands of pages," and carriers have reported that they receive as many as "1700 bills per month."³ Moreover, the record in the prior proceedings showed (and the ILECs did not dispute) that access "bills often arrive several days after the bill date," and that even "electronic bills [often arrive] up to 5 days after the bill date." *Policy Statement* ¶ 24. Accordingly, the Commission emphasized in the *Policy Statement* that any tariff provisions that trigger a shortened notice period "should be tied to timely arrival of the bill." *Id.* ¶ 25.

² For the Commission's convenience, AT&T is attaching as Exhibit 1 a revised version of one of the Verizon tariffs which makes changes to the transmittal to address the inconsistencies and ambiguities.

³ *Id.*; see also Y. Noguchi, *Telecom's Downturn Spurs Another Sector*, Wash. Post at E5 (Feb. 19, 2003) (describing software that audits bills, and stating that the task is "immensely complex. . . . There are more than 200 categories of fees, taxes, tariffs and service fees that

Verizon's tariff does not comply with this basic principle. Instead, Verizon proposes to reduce notice periods even where Verizon sends the bill up to 7 *business* days late. As a simple example demonstrates, that schedule would not allow customers adequate time to review and, if necessary, contest Verizon's access bills. Payment of an access bill with a *bill date* of July 1, 2003, will typically be due on July 31. *See Policy Statement* ¶ 24. Under the proposed tariff transmittal, however, Verizon could send that bill as late as July 10, 2003, (accounting for weekends and holidays), and still qualify for the shortened notice of termination, allowing Verizon to terminate service for nonpayment as early as August 16, 2003. A bill that Verizon sends on July 10 will often not arrive on that day, and may even arrive days after it is sent. But even assuming that the customer receives the bill on the same day that it is sent, the customer would have a mere 15 business days (21 calendar days) to review and verify the tens of thousands of pages in that bill before the July 31 payment deadline. Further, if the carrier is unable to complete that task in that substantially shortened time period and does not pay in a timely manner, Verizon could elect to discontinue service as early as August 16 – only about 35 days after the customer first receives the bill.⁴

That is far too short. Customers need to be assured that they will have adequate time to review access bills before service might be discontinued on an expedited basis. As the Commission found, incumbent LECs' access bills are complex, and indisputably contain

carriers charge for carrying each other's traffic. So over the course of a month, a carrier's bills . . . take up reams of paper").

⁴ Verizon's shortened notice periods purport to apply whenever a customer fails to pay in full "all bills" by the bill payment date that were sent within 7 days of the bill date. *See* § 2.4.1(B)(3). Given the Commission's guidance in the *Policy Statement* (¶ 26) that deposits should not be triggered for *de minimus* delinquent payments, it would plainly be unlawful for Verizon to apply its tariff so that the shortened notice periods apply to a customer that has paid all but a *de minimus* amount (*i.e.*, 10 percent) of the total of all bills rendered to it in a month.

significant inaccuracies.⁵ In these circumstances, and as the Commission has found, customers require sufficient time “to allow review and dispute” of access charges. *Policy Statement* ¶ 26.

To address this deficiency in Verizon’s proposal, the Commission should allow Verizon to reduce notice periods for service termination only if Verizon provides bills to customers within 3 business days of the bill date.⁶ Indeed, in prior Commission decisions, the Commission explicitly required LECs to send bills within 3 days in order to reduce termination periods. *Annual 1987 Access Tariff Filings*, 2 FCC Rcd 280, 304 (1987). Verizon’s proposal is inconsistent both with this decision and the *Policy Statement’s* requirement that shorter termination periods be accompanied by firm commitments by incumbents to provide bills in a timely manner.

2) Billing Dispute Date

Another objectionable provision of Verizon’s tariff transmittal is the process by which customers dispute inaccuracies in Verizon’s access bills. As explained by the Commission, “it is incumbent upon the [I]LECs to charge properly and therefore to demonstrate to their customers that these charges are accurate.” *Annual 1987 Access Tariff Filings*, 2 FCC Rcd 280, 299 (1987). Therefore, any tariff that shifts this burden of proof to the customer is “an unreasonable tariff practice under Section 201(b) of the Communications Act.” *Id.* The new language in Verizon’s tariff setting forth how a customer may initiate a “good faith” billing dispute, *e.g.*,

⁵ *Policy Statement* ¶¶ 24-25; *see also* Y. Noguchi, *Telecom’s Downturn Spurs Another Sector*, Wash. Post at E5 (Feb. 19, 2003) (reporting that “on average, 3 to 8 percent of the charges are wrong”).

⁶ AT&T recognizes that it typically takes incumbent LECs some time to gather the data necessary to create and format bills, which may require additional effort in order for the ILECs to send bills within 3 days of the end of the usage period. However, nothing (as far as AT&T is aware) compels the incumbent LECs to select the day following the end of the usage period (*i.e.*, the first of the month) as the bill date. Rather, if ILECs wanted to be more sure that customers received access bills within 3 days of the bill date, they could select a bill date that is closer to the actual date that the ILEC in fact sends the bills. *See* § 2.4.1(B)(2).

§ 2.4.1.(B)(3)(c)(1) (1st Rev. Page 2-29), is ambiguous, and could violate this fundamental principle. Although Verizon's *methods* for instituting a billing dispute appear to be appropriate,⁷ the documentation required by the new tariff language to institute a billing dispute can be read to unlawfully shift the burden of proof in a billing dispute to the customer.

Specifically, when the new provision in Verizon's tariff (§ 2.4.1.(B)(3)(c)(1) (1st Rev. Page 2-29) is read in conjunction with the existing language providing that the date of the dispute is when the LEC receives "sufficient documentation to investigate the dispute," the tariff becomes vague and could be applied unlawfully. For example, those provisions could be interpreted to mean that a customer could raise a good faith dispute in writing on a certain day, as required by the new provision, but then may not be deemed by Verizon to have initiated the dispute until much later, *i.e.*, after the customer provides what Verizon deems to be "sufficient documentation" to investigate the claim. As noted, this tariff language confers unwarranted discretion on Verizon and thus would be unlawful. Accordingly, and as provided in Exhibit 1, the tariff should be revised to make clear that a dispute begins on the date the customer provides the written notice called for in § 2.4.1.(B)(3)(c)(1), or pursuant to agreement by the parties.⁸

3) Notice of Deposits.

Verizon's proposed tariff also specifies how Verizon notifies a customer that it is required to provide a deposit. However, the tariff is unclear as to the consequences of the notice

⁷ Any tariff revisions, of course, would apply only on a prospective basis. Thus, to the extent that AT&T has already raised a billing dispute with Verizon for charges prior to the effective date of any revised tariff (and whether or not Verizon has finally resolved the dispute), it is plainly unnecessary for AT&T to invoke new procedures and to re-submit disputes that it has already raised in an appropriate manner.

⁸ The written notice called for in that section would briefly describe the dispute, but would not (and could not) contain all the documentation to fully investigate a claim. As the Commission has found, burdensome tariff requirements that the access customer provide information that is not normally within its possession "would complicate . . . the resolution of billing disputes" and would not "promote the cooperation that is required to resolve such disputes." *Annual 1987 Access Tariff Filings*, 2 FCC Rcd at 299.

for such customers. It provides that “[t]he customer will be required to make payment of such deposit *prior to the provision of new service* or within 15 business days of such notice for customers with existing services.” § 2.4.1(A). The language, properly read, distinguishes between new customers and existing customers. New customers can receive no service until payment of the deposit. Existing customers have 15 business days to pay a deposit, but will continue to receive service and to submit new orders for service. The language in Verizon’s tariff however could be read to allow LECs to refuse to provide new services even to existing customers until the deposit is paid. Such action would be plainly unreasonable, because other provisions of the tariff make clear that new service can only be refused or terminated upon proper notice. *See* § 2.1.8. Accordingly, and as provided in Exhibit 1, the tariff should be revised to make clear that existing customers will continue to receive service and will be permitted to submit new orders for service even after a deposit is demanded.

4) “Subject Bill”

Verizon’s tariff proposes to reduce notice of termination of service where it sends a “subject bill” within 7 business days of the billing date. The term “subject bill” is unlawfully vague, and must be defined more precisely. As noted above, customers can receive thousands of bills from Verizon each month. It is not clear whether the term “subject bill” refers to a single bill, or all of the aggregated bills a customer receives in a given period. Because of the ambiguity, it is possible that Verizon’s proposed tariff could be applied so that non-payment of a single bill out of thousands would trigger a shortened notice period for all of a customer’s services – a result that is plainly unjust and unreasonable. Accordingly, and as provided in Exhibit 1, the tariff should be revised to specify that “subject bill” refers to all bills rendered to a customer in a given period.

Significantly, this same ambiguity would arise for tariff revisions that seek to revise the existing security deposit prescription to define “proven history of late payment” as a failure to pay the undisputed amount of a “*monthly bill*” in any two of the most recent 12 months, provided the past due period and the delinquent payment amount are more than *de minimus*. *Policy Statement* ¶ 26. Although Verizon’s tariff does not present this issue, any LECs seeking to implement such revisions should likewise make clear that “monthly bill” would include all of the bills received by a customer in a given period. Thus, any security deposit may not be triggered by a customer’s failure to pay a single bill out of thousands of different bills or account numbers.

CONCLUSION

For the foregoing reasons, the Commission should reject, or at a minimum, suspend and investigate the Verizon Telephone Companies Tariffs F.C.C. No. 1, 11, 14, 16, Transmittal No. 296 (filed February 28, 2003).

Respectfully submitted,

/s/ Mark C. Rosenblum

David L. Lawson
Michael J. Hunseder
SIDLEY AUSTIN BROWN & WOOD, LLP
1501 K Street., N.W.
Washington, D.C. 20005
(202) 736-8000

Mark C. Rosenblum
Peter H. Jacoby
James W. Grudus
AT&T CORP.
One AT&T Way
Bedminster, NJ 07921
(908) 532-1830

March 7, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 2003, 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: March 7, 2003
Washington, D.C.

/s/ Patricia A. Bunyasi

Patricia A. Bunyasi

SERVICE LIST

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room CY-B402
Washington, D.C. 20554

Qualex International
Portals II
445 12th Street, SW, Room CY-B402
Washington, D.C. 20554

Tamara L. Preiss, Chief
Pricing Policy Division
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Richard T. Ellis
Director, Federal Affairs
Verizon
1300 I Street, N.W. Suite 400
Washington, D.C. 20005
(202) 336-7922*

* Served via fax