

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

<b>In the Matter of:</b>	)	
	)	
<b>National Exchange Carrier Association</b>	)	<b>Transmittal No. 995</b>
<b>Tariff FCC No. 5</b>	)	
	)	

**MCI PETITION TO REJECT OR, IN THE ALTERNATIVE,  
SUSPEND AND INVESTIGATE**

WorldCom, Inc. d/b/a MCI (MCI), 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 5, 2003.<sup>1</sup>

In Transmittal No. 995, NECA proposes to make certain changes to tariff provisions governing security deposits and discontinuance of service:

- ? NECA proposes to amend its tariff to allow NECA to, under certain circumstances, discontinue service on 15 days' notice, rather than the 30 days' notice required by NECA's existing tariff. Pursuant to the proposed tariff,

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<sup>1</sup> 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);

NECA could discontinue service for nonpayment of a bill on 15 days' notice if either (1) NECA had sent the "subject bill" to the customer within seven business days of the bill date; or (2) at least 30 days had elapsed since the subject bill was sent.

- ? NECA proposes to define the "proven history of late payment" language in its existing tariff as two occasions within the previous twelve months in which payment for undisputed charges was not received within three business days of the due date, provided the outstanding undisputed amount of each unpaid bill represented at least ten percent of the monthly bill.

The Commission should reject or, in the alternative, suspend and investigate NECA Transmittal No. 995 because the new tariff language proposed by NECA is unjust and unreasonable and, in addition, is inconsistent with the Commission's instructions in the Policy Statement.<sup>2</sup>

#### **I. The 7-Day Interval is Inconsistent with the Policy Statement**

NECA Transmittal No. 995's proposal to permit 15-day discontinuance notices as long as the "subject bill" is "sent within 7 days" is inconsistent with the Policy Statement's determination that a reduced notice period must be "tied to timely arrival of the bill."<sup>3</sup> If a NECA LEC mails a bill seven days after the bill date, that bill will likely not be received by the customer until ten or more days after the bill date. The Commission's discussions of LEC billing deficiencies make clear that such a long

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AT&T, 46 FCC 2d 81, 86 (1974); see also Arrow Transportation Company v. Southern Railway Company, 372 U.S. 658 (1963).

<sup>2</sup> Verizon Petition for Emergency Declaratory and Other Relief, Policy Statement, WC Docket No. 02-202, released December 23, 2002 (Policy Statement).

interval cannot be characterized as “timely:” arrival of a bill ten or more days into the billing cycle is not materially better than the twelve-day delay that the Commission found lacking in the Policy Statement<sup>4</sup> or the 15-day delay that the Commission found lacking in the 1987 Annual Access Order.<sup>5</sup>

The long billing delays permitted under Transmittal No. 995 would create a substantial risk that customers could be faced with imminent disconnection of service simply 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.”<sup>6</sup> As the Commission explained in the Policy Statement, the review and verification of interstate access bills is a complex and time-consuming task.<sup>7</sup> Bills received ten or more days after the bill date would leave the customer with little or no time to review the bill and mail the payment in time to be received by the due date. The risk to customers is heightened in the case of larger customers, who may receive many paper bills every month from a given NECA LEC. Pursuant to Transmittal No. 995, it appears that any of those bills could be a “subject bill” whose late payment would be sufficient to trigger a 15-day disconnect notice.

NECA’s proposed “sent within 7 days” tariff language is apparently modeled on similar Verizon tariff language that the Commission permitted to go into effect earlier this year.<sup>8</sup> But even if the “sent within 7 days” tariff language were just and reasonable

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<sup>3</sup> Policy Statement at ¶ 25.

<sup>4</sup> Policy Statement at ¶ 24.

<sup>5</sup> Annual 1987 Access Tariff Filings, Memorandum Opinion and Order, 2 FCC Rcd 280, 304 (1986) (1987 Annual Access Order).

<sup>6</sup> 1987 Annual Access Order, 2 FCC Rcd at 304.

<sup>7</sup> Policy Statement at ¶ 24.

<sup>8</sup> Verizon Tariffs FCC No. 1, 11, 14 & 16, Transmittal No. 296, February 28, 2003.

when applied by a larger LEC such as Verizon, it would not be just and reasonable when applied by the NECA LECs.

One of the key differences between the NECA LECs and large LECs such as Verizon is that the large LECs offer electronic billing, while many NECA LECs offer only paper billing. Because customers of large LECs such as Verizon can ask to be billed electronically, they can ensure that bills “sent within 7 days” are actually received within 7 days of the bill date or shortly thereafter – not ten or more days into the billing cycle, as would be the case with paper bills. In its reply to petitions filed against Verizon Transmittal No. 296, Verizon argued that its “sent within 7 days” language was consistent with the Policy Statement because “customers with the most complex bills usually arrange to receive their bills electronically, which can save as much as three days in delivery time, as the electronic bills go out as soon as the usage data are collected and extracted.”<sup>9</sup>

Because many NECA LECs only offer paper billing, and because paper bills sent within seven days of the bill date would not be received until ten or more days after the bill date, the Commission should find that NECA Transmittal No. 995 violates the Policy Statement’s requirement that any reduced notice period be tied to “timely arrival” of the bill. In order to comply with that requirement, NECA should be required to amend its tariff to provide that the 15 day notice period may be applied to bills “sent within seven days” only by those NECA LECs that give their customers the option of receiving electronic bills.

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<sup>9</sup> Verizon Reply to Petitions to Reject, Suspend and Investigate, Transmittal No. 296, March 13, 2003, at 4-5..

## II. The Proposed Security Deposit Provisions are Unlawful

The Commission should also reject or, in the alternative, suspend and investigate NECA Transmittal No. 995 because the proposed definition of “proven history of late payment” is flawed in several respects.

As an initial matter, the proposed definition of “proven history of late payment” is vague and ambiguous in violation of sections 61.2 and 61.54(j) of the Commission’s rules.<sup>10</sup> In particular, the provision that a payment will be considered late if the unpaid amount represents at least ten percent of the “monthly bill”<sup>11</sup> is vague and ambiguous because it is unclear whether “monthly bill” refers to an individual monthly bill or to a customer’s total monthly billing with that LEC. As the Commission noted in the Policy Statement, customers often receive multiple bills from the same LEC each month.<sup>12</sup>

In addition to being vague and ambiguous, NECA’s proposed definition of “proven history of late payment” is unjust and unreasonable in several key respects. First, the proposed tariff language is unjust and unreasonable because it could be used to trigger security deposit requests even when late payments are not the fault of the customer, i.e., when the LEC does not send the bill in time for the customer to review and pay by the due date. MCI routinely receives paper bills from NECA LECs well after the bill date, leaving little or no time to review the bill and mail the payment. In fact, Puerto Rico Telephone – the largest NECA LEC -- routinely sends its switched access bills to MCI more than 30 days after the bill date, i. e., after the due date.

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<sup>10</sup> 47 C.F.R. §§ 61.2, 61.54(j).

<sup>11</sup> Transmittal No. 995, proposed 7<sup>th</sup> revised page 2-26.

<sup>12</sup> Policy Statement at ¶ 24.

The Commission should require that a payment will be deemed “late” for the purpose of determining whether a customer has a “proven history of late payment” only if the customer has received the bill in a timely manner. At a minimum, the timely bill delivery that is a prerequisite for application of the 15-day notice provision of NECA’s tariff should also be a prerequisite for counting a payment as “late,” i.e., whatever standard is ultimately applied in section 2.1.8(B) should also be applied in section 2.4.1(A). The Policy Statement makes clear that the tariff changes suggested by the Policy Statement must be linked to LEC efforts “to improve the accuracy and timeliness of their interstate bills.”<sup>13</sup>

Second, the proposed “3 days late/10 percent of bill” formula does not comply with the Policy Statement’s requirement that the past due period and the amount of the delinquent payment must be more than *de minimis*.<sup>14</sup> The Policy Statement’s use of the term “*de minimis*” must be read in light of the Policy Statement’s goals. In particular, the Policy Statement makes clear that the suggested revision of “proven history of late payment” is not intended to change the credit standard. Rather, the Policy Statement makes clear that the sole purpose of the suggested revision of “proven history of late payment” is to define that phrase in a more precise manner.<sup>15</sup> Consequently, the past due period and the amount of the delinquent payment may be deemed “more than *de minimis*” only if the resulting definition of “proven history of late payment” is consistent with the credit standard that has long been associated with that phrase.

The credit standard associated with the “proven history of late payment” language in NECA’s existing tariff was discussed by the Commission when it reviewed the

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<sup>13</sup> Policy Statement at ¶ 25.

<sup>14</sup> Policy Statement at ¶ 26.

original NECA security deposit tariff proposal in 1985. As the Commission explains in the Policy Statement, the Commission found the “proven history of late payment” language to be permissible because “it is prudent for the telephone company to seek to avoid non-recoverable costs imposed by bad credit risks.”<sup>16</sup> In other words, the “proven history of late payment” language is intended to identify customers that are “bad credit risks,” i.e., customers that present a substantial likelihood of default.

The “3 days late/10 percent or more” formula proposed by NECA simply does not correlate with customers that present a substantial risk of default:

- ? A past due period of 3 days is *de minimis*, not an indicator of substantial credit risk. Commercial credit scoring tools generally attach significant weight only to those customer payments that are 30-, 60-, or more days late. For example, the documentation for the Dun & Bradstreet credit scoring tool that BellSouth filed in the record in WC Docket No. 02-340 indicates only that credit risk is higher when payments are 31-60 or 61-90 days past due.<sup>17</sup> The possibility that a security deposit request could be triggered by payments that are only slightly past due is particularly unreasonable in the telecommunications context, where customers often receive a large number of complex bills from each LEC and the bills often do not arrive in a timely manner.
- ? Two months of delinquent payments representing 10 percent of the customer’s monthly bill is *de minimis*, not an indicator of substantial credit risk. As an example, a customer with \$1 million in monthly billings could

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<sup>15</sup> Policy Statement at ¶ 29.

<sup>16</sup> Policy Statement at ¶ 7 (citing Access Tariff Order, 97 FCC 2d at 1169).

<sup>17</sup> See, e.g., Dun & Bradstreet, “Understanding the D&B Commercial Credit Score,” June 2002 at 11 (Attachment 2 to BellSouth Rebuttal in WC Docket No. 02-304).

trigger a security deposit request under that formula with two late payments of \$100,000, or less than 1.7 percent of the customer's total annual bill of \$12 million. In its capacity as a provider of wholesale telecommunications services, MCI generally views customers that pay over 98 percent of their annual billed charges on time as good customers, not credit risks.

Consistent with commercial credit practice in a competitive market, NECA should, at most, be permitted to demand a security deposit if the customer's two late payments are more than 30 days late, and account for all or substantially all of the monthly billings for that month.

### **III. Conclusion**

For the reasons stated herein, the Commission should reject or, in the alternative, suspend and investigate NECA Transmittal No. 995.

Respectfully submitted  
WORLDCOM, INC. d/b/a MCI

/s/ Alan Buzacott

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August 12, 2003

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 12, 2003.

/s/ Alan Buzacott  
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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 12<sup>th</sup> day of August, 2003.**

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