

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

In the Matter of:)	
)	
Ameritech Operating Companies)	Transmittal No. 1430
Tariff FCC No. 2)	
)	
Nevada Bell Telephone Company)	Transmittal No. 84
Tariff FCC No. 1)	
)	
Pacific Bell Telephone Company)	Transmittal No. 187
Tariff FCC No. 1)	
)	
Southern New England Telephone Company)	Transmittal No. 843
Tariff FCC No. 39)	
)	
Southwestern Bell Telephone Company)	Transmittal No. 3022
Tariff FCC No. 73)	
)	

MCI PETITION TO SUSPEND AND INVESTIGATE

MCI, Inc. (MCI) pursuant to Section 1.773 of the Commission's Rules, hereby petitions the Commission to suspend and investigate the above-captioned transmittals filed by the Ameritech Operating Companies, Southwestern Bell Telephone Company, Pacific Bell Telephone Company, Nevada Bell Telephone Company, and Southern New England Telephone Company (collectively "SBC") on December 13, 2004.¹

¹ 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).

In the above-captioned transmittals, SBC proposes to amend its interstate access tariffs' security deposit provisions. In particular, SBC is proposing to implement one of the Commission's suggestions in the 2002 *Policy Statement* – that carriers define the “proven history of late payment” criterion in a more precise manner.² In the *Policy Statement*, the Commission had suggested, as an example, that it might be appropriate for “history of late payment” to be defined as “a failure to pay the undisputed amount of a monthly bill in any two of the most recent twelve months, provided that both the past due period and the amount of the delinquent payment are more than de minimis.”³

The Commission should suspend and investigate the above-captioned transmittals because they are inconsistent with the *Policy Statement*'s requirement that “both the past due period and the amount of the delinquent payment are more than de minimis.”

Pursuant to the proposed tariff language, SBC could demand a security deposit if the customer were to pay more than 5 percent of any two monthly bills more than 1 day late.⁴ Both the 5 percent threshold and the 1 day threshold are de minimis when evaluated in light of the policy considerations discussed in the *Policy Statement*.

In the *Policy Statement*, the Commission reiterated its longstanding policy that incumbent LEC security deposit tariff provisions must “balance the incumbent LECs' exposure to uncollectibles against the burdens that additional deposits would place upon incumbent LEC customers.”⁵ The Commission emphasized, in particular, that any

² Verizon Petition for Emergency Declaratory and Other Relief, *Policy Statement*, WC Docket No. 02-202, released December 23, 2002, at ¶ 29.

³ *Policy Statement* at ¶ 26.

⁴ See, e.g., Ameritech Transmittal No. 1340, proposed 2nd revised page 40.1.

⁵ *Policy Statement* at ¶ 20.

security deposit tariff provisions must be “narrowly targeted to meet directly the risk of nonpayment.”⁶

SBC’s proposed definition of “late payment” is *not* “narrowly targeted to meet directly the risk of nonpayment.” The premise underlying the “proven history of late payment” trigger is that a pattern of late payment may be an indicator that the customer is encountering financial difficulties and may, therefore, present a significant risk of nonpayment in the future.⁷ It is, however, not at all obvious that a customer that pays, for example, 6 percent of two bills per year two days late has encountered financial difficulties and thus presents *any* risk of nonpayment, much less a significant risk of nonpayment. The proposed tariff language sweeps extremely broadly, allowing SBC to demand large security deposits from customers that present little or no risk of nonpayment.

The likelihood that SBC’s proposed tariff revisions would capture customers that present little or no risk of nonpayment is heightened by the fact that SBC’s proposed definition of late payment appears to focus on individual *bills*, not on the customer’s total monthly access billing with SBC. As the Commission recognized in the *Policy Statement*, some access customers may receive hundreds or even thousands of access bills from SBC each month;⁸ MCI, for example, receives approximately 3,000 access bills from SBC each month. Under SBC’s proposed formula, if a customer that receives thousands of bills a year were to pay even two of those bills late, SBC would apparently be authorized to demand a security deposit.

⁶ *Id.*

⁷ Investigation of Access and Divestiture Related Tariffs, *Phase I Order*, 97 FCC 2d 1082, 1169 (Proven history of late payment provision would help avoid “non-recoverable costs imposed by bad credit risks.”)

⁸ *Policy Statement* at ¶ 24.

SBC appears to have picked the “more than 5 percent / more than 1 day late” formula out of thin air. There is, in particular, nothing in the D&J to suggest that the “more than 5 percent / more than 1 day late” formula is based on a statistical analysis of SBC customer payment patterns, i.e., that SBC has analyzed the relationship between payment patterns and the risk of nonpayment and found that customers that pay more than 5 percent of two bills more than 1 day late present a significant risk of nonpayment.

The Commission should suspend and investigate the above-captioned transmittals because there is no indication that SBC’s proposed “more than 5 percent / more than 1 day” formula identifies only those customers that present a significant risk of nonpayment, and every indication that the proposed formula would capture many customers that present little or no risk of nonpayment. Such an outcome would be contrary to the *Policy Statement*, which requires that SBC’s security deposit tariff language be “narrowly tailored” and not used to disadvantage SBC’s retail competitors.⁹

To be consistent with the *Policy Statement*, SBC’s proposed definition of “late payment” should reflect actual experience that a particular payment pattern identifies customers that present a significant risk of nonpayment. MCI would expect that such customers would be late on a significant fraction of their *total* monthly billing, not merely one of many bills, and would be late by at least 15 days.

⁹ *Policy Statement* at ¶ 21.

For the reasons discussed herein, the Commission should suspend and investigate the above-captioned transmittals.

Respectfully submitted
MCI, INC.

/s/ Alan Buzacott

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December 20, 2004

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 December 20, 2004.

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CERTIFICATE OF SERVICE

I, Alan Buzacott, do hereby certify that copies of the foregoing Petition to Suspend and Investigate were sent via first class mail, postage paid, and by facsimile*, to the following on this 20th day of December, 2004.

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