

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

In the Matter Of)	
)	
Ameritech Operating Companies)	Transmittal No. 1430
)	
Nevada Bell Telephone Companies)	Transmittal No. 84
)	
Pacific Bell Telephone Company)	Transmittal No. 187
)	
Southern New England Telephone Companies)	Transmittal No. 843
)	
Southwestern Bell Telephone Company)	Transmittal No. 3022
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PETITION OF SPRINT TO REJECT
OR ALTERNATIVELY SUSPEND AND INVESTIGATE

Sprint Corporation ("Sprint"), pursuant to Section 1.773 of the Commission's Rules, hereby respectfully requests that the Commission reject, or alternatively, suspend for the full five month period permitted under Section 204(a) of the Act and institute an investigation of the tariff revisions filed by the above-captioned SBC Telephone Companies ("SBC") on December 13, 2004 under the above-captioned transmittals.

I. INTRODUCTION AND SUMMARY

SBC's proposed revisions seek to significantly revise the terms and conditions applicable to the payment of deposits and other payments. Specifically, such proposed revisions include defining "a history of late payments" based on an unreasonable definition of "de minimus" delinquent payments; reducing the notice period for refusal to

accept an order for service or discontinuance of service for customers that receive their bills within 7 business days of the bill date, rather than the 3 days previously suggested by the Commission for such action; and allowing SBC to stop providing switched services and to refuse to accept new Primary Interexchange Carrier (PIC) change requests from its customers who are also its competitors. SBC is also proposing to define the resolution date of disputes unreasonably in its favor. Finally, SBC has failed to comply with the substantial cause test or to justify its proposed revisions.

As more fully discussed below, the revisions are unjust and unreasonable in violation of Section 201(b) of the Act; are unjustly discriminatory in violation of Section 202(a) of the Act; and are impermissibly vague in violation of Sections 61.2 and 61.54(j) of the Commission's Rules. In addition, SBC has failed to demonstrate that the measures it proposes which would impose serious penalties on its long distance competitors are reasonably required to guard against nonpayment of bills.

II. DISCUSSION

SBC's currently effective tariffs require security deposits only from "those customers who have a proven history of late payments to the Telephone Company or do not have established credit..." See, e.g., Southwestern Bell Telephone Company, Tariff FCC No. 73, §2.5.2, 2nd Revised Page 2-60. That tariff provision conforms to language prescribed by the Commission in its 1984 decision in CC Docket 83-1145 (Phase I), *Investigation of Access and Divestiture Related Tariffs*, 97 FCC 2d 1082, 1169 (1984) (1984 Access Tariff Decision). Under the proposed revisions, SBC would define "a history of late payment" as any time "the customer has failed to pay the undisputed amount of a monthly bill by the billed due date 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 minimus*.” Southwestern Bell Telephone Companies, Transmittal No. 3022, 2nd Revised Page 2-55.1. SBC proposes to define “De minimus late payment” as “either 1) the payment received that was deficient in balance by 5% or less of the original billed undisputed amount or 2) the payment received was late by one day as compared to the required bill payment date.” *Id.* By this definition, SBC could consider a customer to have a history of late payments if a miniscule fraction of its total monthly bills were not paid. For example, Sprint receives over one thousand bills under various accounts from SBC each month. If it did not pay 5% or less of the undisputed amount on any two bills from each operating company, SBC could impose significant deposit requirements on it. This is clearly unreasonable. Similarly, if just two bills out of the thousands Sprint receives from SBC in a 12 month period were one day late, SBC could again impose onerous deposit requirements.¹ Although the Commission’s Policy Statement recommends that carriers consider defining “proven history of late payment” 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*,”² SBC’s definition of “*de minimis*” would afford it the ability to impose huge deposits and other constraints on customers that do not pose a serious risk of nonpayment.

¹ To further exacerbate the issue, not all bills are received on a timely basis, and in some cases they are not received at all. In the latter case, the bill would be considered late and Sprint would have no knowledge of its existence.

SBC also proposes to discontinue service to a carrier upon fifteen days' written notice if it sent the customer a bill within seven business days of the bill date. Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, 8th Revised Page 2-20. Discontinuance of service includes either (1) SBC's refusal to accept additional applications for service or to complete pending orders or to process an end user's request to designate the customer as the end user's PIC (Section 2.1.6(A)(1)); or (2) to discontinue to "route any switched access traffic that uses the customer's Carrier Identification Code(s) (CIC)" (Section 2.1.6(A)(2)). Clearly, such language would afford SBC the ability to completely terminate service to a customer with whom it competes for the provision of long distance service on the basis of a single notification. SBC has not offered any justification for such a draconian result. Thus, the Commission should find this provision unjust and unreasonable, in violation of Section 201(b) of the Act.

Nor has SBC identified any criteria for selecting between the two alternative discontinuance options. Such vagueness in the tariff violates Section 61.2 and 61.54(j) of the Commission's Rules. Although refusal to accept pending orders and to process new PIC requests is harsh, discontinuing service for all switched services is even worse. Thus, SBC must clearly define when it would apply the alternative penalties.

SBC proposes to be able to apply one of the two discontinuance alternatives on fifteen days' notice if it has sent a bill to the customer "within seven (7) business days of

² *In the Matter of Verizon Petition for Emergency Declaratory and Other Relief*, CC Docket No. 02-202, FCC 02-337, released December 23, 2002, ¶26.

the bill date.” In its Policy Statement (¶ 8), the FCC noted that it had previously required that the customer receive the bill within 3 days after the billing date in order to have the notice period shortened to 15 days. Here, SBC is proposing 7 business days, or 9 calendar days, for itself to send the bill, while reducing notice to 15 calendar days for the customer to review and pay the bill. SBC’s shortening of the notice period while it retains a lengthy time period for producing the bill is clearly inequitable.

Also inequitable is SBC’s proposal to assume that the date of the resolution of a billing dispute when SBC decides in its favor is “the date upon which a written decision on this dispute is received by the customer.” Transmittal No. 3022, Southwestern Bell Telephone Company, Tariff FCC No. 73, §2.5.3(B), 5th Revised Page 2-65. SBC’s decision in its favor should not be the resolution date, as the customer should be permitted to further dispute the bills. Indeed, Sprint typically wins approximately three-quarters of its disputes with carriers. This win rate includes disputes which the carriers initially decides in their favor. Thus, SBC should not be permitted to assume that the dispute is resolved when it claims to have found that it has billed its customer properly, as Sprint’s billing dispute history has proven otherwise.

In its above-captioned transmittals, SBC has not met the “substantial cause for change” test which is used to assess the lawfulness of proposed revisions to tariffs, involving long-term service commitments.³ The Commission imposed this test on dominant carriers offering term plans -- and term plans are available under SBC’s access

³ See *RCA American Communications, Inc.*, 86 FCC 2d 1197 (1981), *clarified on remand*, 94 FCC 2d 1338 (1983).

tariffs and are widely employed -- because the Commission recognized that it had to take into account the "legitimate expectations of customers for stability in term arrangements" when assessing the reasons why the dominant carrier wished to make such change. 86 FCC 2d at 1201. Clearly, SBC has not even come close to meeting this test. SBC has presented no facts which could possibly justify the massive wealth transfer from its competitor-customers to itself. In fact, SBC does not even acknowledge that it is subject to the substantial cause test. SBC's failure to even attempt to present evidence going to the substantial cause for change test requires that the Commission reject or suspend and investigate the instant revisions. SBC's proposed tariffs should also be rejected or suspended and investigated because the revised language does not -- indeed cannot -- meet the requirements of Sections 201(b) and 202(a) of the Act. For example, SBC's reservation of the right to require a deposit or advance payment upon a carrier with no proven history of late payments and with established credit simply because the carrier has failed to pay 2 bills out of thousands is clearly unjust and unreasonable. SBC does not demonstrate that there is any correlation between the non-payment of 2 bills and the carrier's ability to pay its current access bills on a timely basis. And given that its carrier customers are its competitors, SBC's exercise of such discretion is likely to have serious anti-competitive effects.

III. CONCLUSION

For the above reasons, Sprint urges the Commission to reject, or alternatively suspend for the full statutory period and investigate, SBC's proposed deposit requirements.

Respectfully submitted,

SPRINT CORPORATION



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition of Sprint to Reject or Alternatively Suspend and Investigate in the Matter of Ameritech Operating Companies Transmittal No. 1430, Nevada Bell Telephone Companies Transmittal No. 84, Pacific Bell Telephone Company Transmittal No. 187, Southern New England telephone Companies Transmittal No. 843, and Southwestern Bell Telephone Company Transmittal No. 3022, was sent by electronic mail, U.S. First Class Mail, postage prepaid, and/or facsimile on this 20th day of December, 2004, to the parties listed below.


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