

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

In the Matter of	)	
	)	
Ameritech Services	)	Transmittal No. 1449
Tariff F.C.C. No. 2	)	
	)	
Nevada Bell Telephone Company	)	Transmittal No. 97
Tariff F.C.C. No. 1	)	
	)	
Pacific Bell Telephone Company	)	Transmittal No. 207
Tariff F.C.C. No. 1	)	
	)	
Southern New England Telephone Company	)	Transmittal No. 860
Tariff F.C.C. No. 39	)	
	)	
Southwestern Bell Telephone Company,	)	Transmittal No. 3045
Tariff F.C.C. No. 73	)	

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

VarTec Telecom, Inc. and Excel Telecommunications, Inc. (collectively, "VarTec"), pursuant to Section 1.773 of the Commission's rules, 47 C.F.R. § 1.773, submit this petition to request that the Commission reject, or, in the alternative, suspend for the full five-month period set forth in Section 204(a) of the Communications Act, as amended ("Act"), 47 U.S.C. § 204(a), and conduct an investigation of the tariff revisions filed on March 4, 2005, by the above-captioned SBC Communications operating telephone companies (collectively, "SBC"). SBC's proposed revisions are unjust and unreasonable in violation of Section 201(b) of the Act, 47 U.S.C. § 201. They are anticompetitive, will impose an unwarranted financial burden on customers, and are impermissibly vague in violation of Section 61.2 of the Commission's rules, 47 C.F.R. § 61.2. Due to their ambiguity, SBC's proposed tariff revisions also pose a serious risk

of being used against customers in a discriminatory manner in violation of 47 U.S.C. § 202. In support hereof, VarTec states as follows:

I. Background.

On December 13, 2004 SBC filed revisions to the billing dispute, discontinuance of service, and security deposit provisions of its interstate access tariffs. VarTec filed a petition to reject, or, in the alternative, to suspend and investigate SBC's tariff revisions on December 20, 2004, for many of the same reasons described herein. On December 27, 2004, the Commission granted VarTec's petition in part, suspended SBC's tariff revisions, and instituted an investigation.<sup>1</sup> The Commission determined that SBC's proposed tariff revisions raised substantial questions regarding their lawfulness.<sup>2</sup> SBC then voluntarily withdrew those tariff revisions before they became effective. On March 4, 2005, SBC refiled almost identical tariff revisions. The SBC tariff revisions that are the subject of this petition are unlawful for the same reasons identified in VarTec's earlier petition and in the Commission's Investigation Order.

II. No Standards for Resolving Billing Disputes.

Section 61.2 of the Commission's rules requires that, "in order to remove all doubt as to their proper application, all tariff publications must contain clear and explicit explanatory statements regarding the rates and regulations." SBC's proposed tariff revisions do not contain "clear and explicit explanatory statements" regarding billing disputes as required under the FCC's rules. SBC proposes to amend its F.C.C. Tariffs to include a new Section 2.5.3(B)(4) regarding billing disputes. That section provides, in relevant part, that "[i]f the dispute is decided

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<sup>1</sup> Ameritech Operating Companies, Tariff FCC No. 2, Order, 19 FCC Rcd 24932 (2004) ("Investigation Order").

<sup>2</sup> Id.

to be in favor of the Telephone company, then the resolution date will be the date upon which a written decision on this dispute is sent to the customer.”<sup>3</sup>

The proposed tariff language does not provide any explanation regarding the standards that must be satisfied before SBC can send a written decision stating that the dispute has been resolved by SBC in favor of SBC. The lack of such standards would permit SBC to be completely arbitrary in resolving billing disputes. It could disadvantage a competitor, like VarTec, by resolving billing disputes in a discriminatory manner in violation of 47 U.S.C. § 202, by applying preferential criteria when resolving disputes with its large retail customers that purchase interstate access service.

Permitting SBC to unilaterally declare that a billing dispute has been resolved, with absolutely no standards for due diligence or accuracy, when a customer has demonstrated that there exists a good faith dispute, would constitute an unjust and unreasonable practice in violation of 47 U.S.C. § 201. Furthermore, other than the suggestion that a written decision will be sent to the customer, the proposed language does not provide for any procedures or deadlines that must be followed by SBC when processing such disputes. While SBC's earlier tariff revisions would have at least required the customer to have "received" the SBC decision before SBC could declare the billing dispute resolved, this most recent proposal treats the billing dispute as resolved when SBC has "sent" its decision,<sup>4</sup> with no explanation of whether the decision will be sent by overnight mail and to whom it will be delivered.

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<sup>3</sup> See, e.g., Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, proposed 7th Revised Page 2-65, Section 2.5.3(B)(4).

<sup>4</sup> Compare, Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Transmittal No. 3022, proposed 5<sup>th</sup> Revised Page 2-65, Section 2.5.3(b)(2).

Once SBC's written decision is received by its customer, the proposed tariff would permit SBC to demand deposits,<sup>5</sup> collect interest on amounts that SBC's customer considers to be in dispute,<sup>6</sup> disconnect the customer for non-payment,<sup>7</sup> refuse additional orders and refuse to comply with pending orders for service orders,<sup>8</sup> and/or refuse to honor a consumer's selection of VarTec as the consumer's preferred carrier.<sup>9</sup> Customers would have no recourse as the resolution of a billing dispute lies solely within SBC's discretion.

### III. Unreasonable Shift in Burden of Proof.

The Commission has held that "it is incumbent upon the LECs to charge properly and therefore to demonstrate to their customers that these charges are accurate."<sup>10</sup> Moreover, the Commission concluded that shifting the burden of proof in a billing dispute to the customer is an unreasonable practice that violates 47 U.S.C. § 201(b).<sup>11</sup> SBC has a responsibility to record information accurately and then prepare and submit bills in a timely manner.

SBC has generated a significant amount of billing disputes due to its poor billing performance. Many disputes are the result of SBC's provision of inaccurate and inconsistent information. Instead of requiring SBC to demonstrate that its bills are accurate, when presented with a good faith dispute by a customer, SBC's proposed tariff pages unlawfully shift the burden

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<sup>5</sup> See, e.g., Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, proposed 4<sup>th</sup> Revised Page 2-55.1, Section 2.5.2.

<sup>6</sup> See, e.g., Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, proposed 4<sup>th</sup> Revised Page 2-65.1, Section 2.5.3(C).

<sup>7</sup> See, e.g., Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, proposed 10<sup>th</sup> Revised Page 2-21, Section 2.1.6(A)(2).

<sup>8</sup> See, e.g., Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, proposed 10<sup>th</sup> Revised Page 2-20, Section 2.1.6(A)(1).

<sup>9</sup> Id.

<sup>10</sup> Annual 1987 Access Tariff Filings, Memorandum Opinion and Order, 2 FCC Rcd 280, 1986 FCC LEXIS 2134 \*\*107 (1986).

<sup>11</sup> Id.

of proof to the customer. The customer is required to provide information to SBC "in detail".<sup>12</sup> The proposed tariff revisions also require the customer to call a telephone number for additional instructions.<sup>13</sup> When a customer calls this number, SBC is likely to demand information not specified in the tariff. This mechanism could be used by SBC to burden a customer with additional demands for potentially unlimited information. This cross-reference violates Section 61.74 of the Commission's rules and renders the proposed tariff regulations impermissibly vague in violation of Section 61.2 of the Commission's rules.

#### IV. Unlawful Deadlines.

SBC proposes to reduce the late payment date from 30 days to only 3 business days after the payment due date.<sup>14</sup> SBC also proposes to reduce the notice period for discontinuance of service to a customer from 30 days to only 15 days.<sup>15</sup> These SBC proposals would unreasonably burden customers and pose a serious risk of being applied by SBC in a discriminatory and anticompetitive manner.

The proposed SBC tariff revisions are contrary to the Commission's Policy Statement, which concluded that "any shortened notice period should be tied to timely arrival of the bill, and that disputed amounts should be excluded from any amount considered by the incumbent LEC to be overdue".<sup>16</sup> The shortened time periods proposed by SBC are not tied to when the customer receives its bill. Under its proposal, SBC could discontinue service to a customer regardless of

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<sup>12</sup> See, e.g., Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, proposed 7<sup>th</sup> Revised Page 2-65, Section 2.5.3(B)(1).

<sup>13</sup> Id.

<sup>14</sup> See, e.g., Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, proposed 4<sup>th</sup> Revised Page 2-55.1, Section 2.5.2(A)(1).

<sup>15</sup> See, e.g., Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, proposed 10<sup>th</sup> Revised Page 2-20, Section 2.1.6(A).

<sup>16</sup> Verizon Petition for Emergency Declaratory and Other Relief, Policy Statement, 17 FCC Rcd 26884, 26896 (2002).

when it received its bill, and even though that customer continues to dispute the accuracy of the bill in good faith (following an SBC unilateral declaration that the dispute has been resolved).

The shorter time periods proposed by SBC could result in payments being treated as late for customers that have not had sufficient time to review and verify their bills because they did not receive them sufficiently in advance of the late payment date. Interstate access billing is a complex and time-consuming process, and bills often arrive several days after the bill date that starts the clock on the time allowed to pay the bill.<sup>17</sup> This leaves customers only a few days to review and verify the bills for accuracy. Customers often find numerous inaccuracies after reviewing bills due to the many months it takes for bills to reflect rate changes and changes in number of circuits ordered.<sup>18</sup>

The Commission has held that a shorter late payment date "should not reach customers who have not paid their bills by the late payment date if such failure occurred 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>19</sup> SBC, however, proposes to declare a payment late only 3 business days after the due date, regardless of when the customer received the bill and how many errors it contains.<sup>20</sup> SBC's proposed tariff revisions would, therefore, impose an undue burden on customers, and expose them to unwarranted demands for deposits, late payment penalties, and service discontinuance.

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<sup>17</sup> Policy Statement, 17 FCC Rcd at 26895.

<sup>18</sup> Id.

<sup>19</sup> Annual 1987 Access Tariff Filings, Memorandum Opinion and Order, 2 FCC Rcd 280, 1986 FCC LEXIS 2134 \*\*137.

<sup>20</sup> SBC also erroneously contends that its shortened notice period for discontinuance of service is consistent with Commission precedent. SBC Description and Justification, p. 2. The Commission only permitted BellSouth to discontinue service with shorter customer notice "in those cases in which the customer receives its bill within 3 days after the billing date". Annual 1987 Access Tariff Filings, Memorandum Opinion and Order, 2 FCC Rcd 280, 1986 FCC LEXIS 2134 \*\*138. SBC's proposal is not tied to when the customer receives its bill.

The proposed tariff provisions also pose a serious risk of being applied by SBC in a discriminatory and anticompetitive manner, as they grant SBC unfettered discretion to pick and choose from which customers it will demand deposits and which customers it disconnects. SBC proposed revisions state that it "may" require a deposit from a customer,<sup>21</sup> "may" send a notice stating that service will be discontinued if a deposit is not paid,<sup>22</sup> and "may" discontinue service for non-payment.<sup>23</sup>

V. Unlawful Deposit Requirements.

The additional deposit requirements proposed by SBC are inconsistent with the federal bankruptcy laws. It is common for a bankruptcy court to adjudicate and establish deposit requirements. In failing to recognize the deposit requirements that are established by the bankruptcy courts, and imposing deposit requirements that may differ from those ordered by the bankruptcy courts, SBC's proposed tariff revisions violate the federal bankruptcy laws.

In its Policy Statement, the Commission determined that additional deposit requirements are unwarranted.<sup>24</sup> It reached this conclusion based on its recognition that demands for deposits on short notice, such as the 15 days proposed in SBC's tariff revisions,<sup>25</sup> would be "daunting if not overwhelming" for many carriers.<sup>26</sup> To avoid subjecting customers to such unreasonable and unduly burdensome deposit requirements, the Commission should affirm its Policy Statement and reject SBC's new deposit requirements.

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<sup>21</sup> See, e.g., Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, proposed 4<sup>th</sup> Revised Page 2-55.1, Section 2.5.2.

<sup>22</sup> See, e.g., Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, proposed 4<sup>th</sup> Revised Page 2-55.2, Section 2.5.2(A).

<sup>23</sup> See, e.g., Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, proposed 10<sup>th</sup> Revised Page 2-20, Section 2.1.6(A).

<sup>24</sup> Policy Statement, 17 FCC Rcd at 26891.

<sup>25</sup> See, e.g., Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, proposed 4<sup>th</sup> Revised Page 2-55.2, Section 2.5.2(A).

<sup>26</sup> Policy Statement, 17 FCC Rcd at 26894-26895.

## CONCLUSION

Wherefore, for the foregoing reasons, the Commission should reject, or in the alternative, suspend and investigate SBC's tariff filing.

Respectfully submitted,

By: 


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Date: March 11, 2005

**CERTIFICATE OF SERVICE**

I, Melissa Drennan, hereby certify that on this 11<sup>th</sup> day of March, 2005, a true and correct copy of the foregoing Petition was served via facsimile and U.S. first class mail, postage prepaid, on the following:

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Melissa Drennan