

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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AUG 22 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)	
)	
Petition for)	WC Docket No. 02-202
Emergency Declaratory and)	
Other Relief)	

REPLY COMMENTS

The Independent Alliance, an informal association comprised of several small, rural Local Exchange Carriers ("LECs") furnishing originating and terminating access to interexchange carriers, hereby provides, by its attorneys, its reply comments responsive to both support and opposition filings made by numerous parties. In its Petition, Verizon asserts, among other things, that it is essential that carriers be able to obtain payment for services they are required to provide to financially troubled telecom companies, and it asks the Commission to be receptive to tariff revisions that would better protect it against nonpayment by those entities.

Verizon's proposal is supported by carriers whose recent attempts to effectuate more protective tariff provisions have been frustrated, and it is opposed by those to whom any revised payment provisions would apply.¹ As the Independent Alliance indicated in

¹ This proceeding appears to have as participants virtually all those who have a stake in the outcome of this issue, including those involved in pending tariff investigations recently initiated by the Commission to address the legality of proposed security revisions proposed by exchange access providers. With that the case, the Commission should give serious consideration to resolving the common, over-lapping issues before it in this proceeding rather than in the several individual tariff investigations underway. In that way, the views of all interested parties could be more expeditiously considered. Furthermore, the approach would result in a single and more complete decisional record and would impose less of a burden on the resources of the Commission and interested parties. The Commission has ample statutory authority to conduct its proceedings in a manner that best serves the public interest and, therefore, it should investigate

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its Comments, when the interexchange industry was “healthy,” as it once was, non-payment was not a serious problem. With that the case, tariff provisions addressing “security” and “discontinuance” requirements were little changed over the past eighteen years. Thus, these provisions exist today much as they did in 1984.² The telecom environment, however, has changed dramatically, whether as a result of an “industry downturn,” corporate misfeasance or a combination of both. It really doesn’t matter so much why the industry is different so long as there is due recognition of the fact it is. The simple facts today are that suppliers of essential services stand a much greater risk of not being paid for their services and thus far have been rebuffed in their efforts to implement commercially reasonable approaches to protect themselves against nonpayment.

The Commission should evaluate the problem from this perspective only and disregard irrelevancies, such as allegations that exchange access provider motivations are anti-competitive in intent or otherwise inappropriate because access charges are “excessive.” These charges only serve to mask the real issue, namely, whether entities

the legality of proposed security provisions in this proceeding rather than in the context of individual tariff investigations. To assure a prompt and fair resolution of the issues, this proceeding should be completed as expeditiously as possible -- an outcome made possible by the record already constructed herein.

² Some argue that the current provisions are “prescribed” by the Commission and that any carrier-initiated modifications of those provisions may not occur unless the prescription is lifted. A review of the decision that led to the current language, however, reveals that no prescription exists, such that exchange access providers are not under any prior constraint to propose tariff modifications pertaining to payment security matters. In fact, the Commission could have prescribed the tariff language currently in widespread use, but it chose not to do so. See *Investigation of Access and Divestiture-Related Tariffs*, 97 FCC2d 1082, 1145 (1984). Instead of prescribing tariff language, the Commission merely directed “clarification and justification” of the then-proposed tariff deposit provisions. In this regard, it indicated that a tariff proposal viewed as deficient could be dealt with “from a number of options to remedy the defects” including either prescription, a “directive” to carriers to correct the unlawfulness – which it did then, or taking such other action as deemed to be necessary under Section 4 (i) of the Communications Act. *Id.*, at 1110.

legally obligated to furnish service are entitled to implement reasonable measures to better protect themselves against potential nonpayment.

Every party in this proceeding understands fully that when bills are not paid for goods or services, there are consequences. These range from late-payment fees, deposit or prepayment requirements, guarantees, and diminished credit ratings to, ultimately, service discontinuances or product reclamations. These results should follow business failings in telecom, just as they do in other industries. There simply are no legitimate bases to conclude that exchange access providers have a unique or special duty to endure financial risk and exposure to keep their interexchange carrier customers afloat for as long as possible.³

As the Independent Alliance emphasized in its Comments, proposed tariff modifications involving payment provisions must satisfy the tariff-filing requirements contained in Sections 201 (b), 202 (a) and Section 203 of the Communications Act of 1934, as amended, as well as the Commission's tariffing rules. Specifically, any proposed revision must satisfy, among others, Sections 61.2 and 61.54 (j) of the Commission's Rules and Regulations as to clarity and specificity. These provisions not only apply to the substance of exchange access provider tariffs but they apply equally to the tariffs of interexchange and competitive local exchange carriers, many of which oppose the now-suspended security provisions filed by several exchange access providers.⁴

³ As indicated by the Independent Alliance in its Comments, nonpayment impacts them more than it does larger carriers because, as to them, exchange access revenues represent a larger percentage of their overall revenues.

⁴ It should be noted there is no "dominant/non-dominant" carrier issue here because the Commission's tariffing rules make no such distinctions regarding tariff substance and integrity. Thus, for example, AT&T's tariff needs to be as substantively "clean" as any LEC tariff. Its suggestion that it lawfully could

It is instructive to examine the payment and security provisions contained in the current contracts of the three largest interexchange carriers opposing the Verizon Petition.⁵ Relevant AT&T, WorldCom and Sprint payment provision language is reflected in Attachments A, B and C, respectively. Presumably, these carriers would argue that the sweeping breadth, lack of specificity and overall vagueness in their own provisions are legally acceptable for interexchange carriers but not for exchange access providers. Yet, as noted, the same *substantive* tariffing requirements apply to *all* carriers. Under the circumstances, positions taken by these interexchange carriers against proposed LEC tariff revisions are at odds with their own approach toward tariff and contract payment provisions, reflecting an unabashedly self-serving “don’t do as I do but do as I say” attitude that could not pass muster under the Commission’s tariffing requirements.

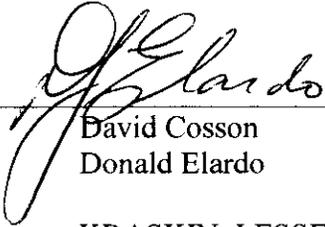
Finally, as suggested above, the Commission should use this proceeding – as it used another in 1984 in connection with initial LEC tariffing efforts -- to address the common, over-lapping tariff payment and security issues arising in the several now-suspended LEC tariff proposals with a view toward allowing LECs, given the changed

tariff what Verizon may not tariff because affected customers had competitive alternatives to AT&T available to them is irrelevant in the context of the Commission’s *substantive tariffing requirements*. See Opposition of AT&T Corp. at 13.

⁵ On July 31, 2001, all interexchange carriers were required to “detariff” their services and provide them under contract to existing and new customers. On information and belief, the payment provisions contained in current AT&T, WorldCom and Sprint “contracts” substantively mirror the provisions previously contained in their federal tariffs.

state of the telecom industry today, to better protect their legitimate business interests.

Respectfully submitted,



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COUNSEL FOR
THE INDEPENDENT ALLIANCE

Dated: August 22, 2002

ATTACHMENT A

AT&T

4. Charges/Payments.

a. Generally. You agree to pay AT&T for your and Users' use of the Services at the charges specified in the AT&T Service Guide, as amended from time to time, without deduction, setoff or delay for any reason. At any time, AT&T may require you to pay a deposit or increase an existing deposit as a condition of providing Services. You authorize AT&T to investigate your credit history at any time and to share credit information about you with credit reporting agencies. . . .

c. Payment. Payment of all charges is due within thirty (30) days after the date of invoice, in U.S. currency. . . . If AT&T does not receive payment by the due date, you may be charged interest on any unpaid balances at the rate of up to 1 1/2% per month or the maximum rate allowed by law. . . .

5. Default/Termination.

. . . . You will be responsible for payment of all charges due under this Agreement through the effective date of termination. Additionally, AT&T may immediately terminate, restrict or suspend your Services without notice to you if: . . . you become insolvent or are subject to any proceeding under bankruptcy or similar laws.

AT&T, General Terms and Conditions, August 19, 2002

WorldCom

Section 4.A:

- .03 **Payment Period:** Invoices are due and payable in U.S. dollars within thirty (30) days of the invoice date If the Company becomes concerned at any time about the ability of a Customer to satisfy its payment obligation, the Company, in its sole discretion, may require that the Customer pay its invoices within a specified number of lesser days and to make such payments in cash or the equivalent of cash. A late payment charge equal to the lesser of: (i) one and one-half percent (1.5 %) per month, compounded, or (ii) the maximum amount allowed by applicable law will be applied against past due amounts.
- .04 **Security Deposits:** Customers or prospective Customers whose financial condition either is not known or not acceptable to the Company may be requested and required at any time to provide the Company with a security deposit. Such deposit must be paid in cash or the equivalent of cash in an amount equal to the applicable installation charges, if any, and/or up to three month's actual or estimated usage charges for the service to be provided. Any Customer or prospective Customer may also be required at any time, whether before or after the commencement of service, to provide such other assurances of, or security for, the payment of charges for its services as the Company may deem necessary including, without limitation, advance payments for service, third party guarantees of payment, pledges or other grants of security interests in the customer's assets, and other similar arrangements. The Company also may establish toll usage limits for Customers or prospective Customers, or it may require from the Customer a commercial credit card account number against which future usage can be charged. Any required deposit or toll usage limits may be increased or reduced by the Company as a result of its experiences with the Customer. In the case of a cash deposit, simple interest at the rate of six percent (6%) annually will be paid for the period during which the deposit is held by the Company, unless a different rate has been established by the appropriate legal authority in the jurisdiction in which service is being provided. At the Company's election, a deposit may be refunded by crediting it against the Customer's account at any time.
- .05 **Security Compliance:** The Company may refuse to accept or process service orders between the time of its request for a security deposit or commercial credit card account number against which service charges can be applied and the time of a Customer's compliance with the request.
- .06 **Past Due Accounts:** The Company may refuse to furnish service if any Customer account with the Company is past due.

ATTACHMENT C

Sprint

2.8 Deposits

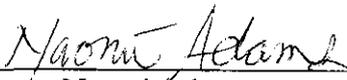
Each applicant for service will be required to establish credit. Any applicant whose credit has not been duly established to the sole and exclusive satisfaction of the Carrier may be required to make a deposit to be held as a guarantee of payment of charges at the time of application. In addition, any existing subscriber may be required to make a deposit or increase a deposit presently held.

A deposit is not to exceed the estimated charges for six (6) months plus installation.

Sprint Schedule No. 8, Original Page 27, effective August 1, 2001

CERTIFICATE OF SERVICE

I, Naomi Adams do hereby certify that a copy of the foregoing "Reply Comments of the Independent Alliance" was served on this 22nd day of August 2002, via hand delivery or first class, U.S. Mail, postage prepaid to the following parties:



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