Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of	)	
	)	
BellSouth Telecommunications, Inc.	)	**WC Docket No. 02-304**
Tariff F.C.C. No. 1, Transmittal No. 657	)	

SPRINT CORPORATION
OPPOSITION TO DIRECT CASE

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Sprint Corporation opposes the Direct Case filed by BellSouth Telecommunications, Inc. on October 10, 2002, in response to the Order (DA 02-2318) of the Pricing Policy Division ("Division"), released September 18, 2002, in the above-captioned docket.

I. INTRODUCTION AND SUMMARY

BellSouth's proposed tariff revisions modifying its provisions for security deposits filed on July 19, 2002 in Transmittal No. 657 would significantly expand the bases on which it would be able to require deposits from its existing customers. BellSouth's currently effective tariff language, which was prescribed by the Commission in its 1984 decision in CC Docket No. 83-1145 (Phase I),[1] requires that a deposit be made only by "a customer which has a proven history of late payments to the Telephone Company or does not have established credit." BellSouth Tariff F.C.C. No. 1, Section 2.4.1(A), 5th Revised Page 2-21. BellSouth's proposed revisions would give itself the

[1] *Investigation of Access and Divestiture Related Tariffs,* 97 FCC 2d 1082, 1169 (1984) (*1984 Access Tariff Decision*).

right to require an existing customer to provide a security deposit if its "credit worthiness decreases to a commercially significant extent as compared to the level of credit worthiness determined by BellSouth when that Customer's service was established." *Id.*, 2nd Revised Page 2.21.1.

The Division designated five issues for investigation and directed BellSouth to provide information related to each issue. As discussed below, BellSouth's Direct Case omits information specifically requested by the Division and fails to demonstrate that its proposed revisions to its provisions for security deposits are not unjust and unreasonable in violation of Section 201(b) of the Act or unreasonably discriminatory in violation of Section 202(a) of the Act. For example, the Division has asked BellSouth for information as to whether the telecommunications market has changed so dramatically as to warrant its proposed deposit requirements. BellSouth presents no convincing evidence in this regard. Although BellSouth says that it will use risk assessment models to evaluate a customer's risk of default and require security deposits from its customers that score less than 5 on the basis of such models, it does not establish a correlation between such score and their risk of default. Moreover, BellSouth provides nothing to allay concerns that its use of these models will give it so much discretion as to enable it to unjustly discriminate among its customers. BellSouth's provisions for refunding deposits are unreasonable because they do not provide for a periodic review or the return of a deposit after a year of timely payments. (Issues 1 and 2)

Other provisions in BellSouth's now suspended revisions do not – and can not – meet the test for lawfulness under the Act. Its arbitration provisions are unreasonable because, under such provisions, customers would not have sufficient time to conduct discovery and because BellSouth insists that the losing party pay "any and all costs associated with the arbitration,"[2] rather than the standard procedure of each party paying the costs of its own attorneys and the arbitrator assigning the cost of the arbitration to the parties. (Issue 3) And, despite BellSouth's claims to the contrary, there is nothing in the proposed revisions that would exclude BellSouth's long-term pricing plans from their scope. Thus, BellSouth must demonstrate that it has substantial cause to change these long-term plans, as well as its Contract Tariffs. It has not done so. (Issue 4) As Sprint is not a new customer, it will not address the fifth issue concerning service applications for new customers.

II. ANALYSIS OF THE ISSUES DESIGNATED FOR INVESTIGATION

A. Issue 1: Basis for Requiring a Deposit from a Customer

The Division first questions BellSouth as to "whether the revised security deposit provisions applicable to interstate access customers, both new and existing, are reasonable and not so vague as to permit BellSouth to discriminate unreasonably among its interstate access customers, whether they be interexchange carriers, competitive LECs, or business end-user subscribers." Order, ¶10. To address this issue, the Division directs BellSouth to "explain why it believes its rates under price caps do not adequately compensate it for the risk of uncollectibles" and to "address whether the variation in uncollectible levels for 2000 and 2001 is merely a normal fluctuation in uncollectibles...or whether it reflects some long term trend that warrants expanded security deposits..." Order, ¶11.

In its Direct Case, BellSouth responds by claiming that "[t]he market and the telecommunications industry have been substantially altered since the 1980's," and that

[2] BellSouth Tariff F.C.C. No. 1, Original Page 2-21.2.

implementation of the Telecommunications Act of 1996 has brought "a tide of new telecommunications carriers...[and a] new competitive paradigm...with market volatility." Direct Case at 7. BellSouth ignores completely the fact that an economic recession began in March 2001 and the GDP contracted for the first three quarters of 2001.[3] An increase in bankruptcies and uncollectibles is normal when the economy experiences a significant downturn, and therefore a portion of the increase in uncollectibles reasonably should be attributed to the negative economic environment.

Also rocking the telecommunications industry in the past year have been the massive accounting scandals at WorldCom, Qwest Communications International Inc., Global Crossing Ltd and Adelphia Communications Corp. The impact of these scandals should be excluded as well as an aberration, not a "paradigm" shift. Indeed, acceptance of BellSouth's argument here would suggest that accounting scandals are now the norm, not the exception, in the telecommunications market. Presumably, this is false. In any case, the claims of three of these companies, MCI/WorldCom, Global Crossing and Adelphia Business Solutions, account for 92.1 percent of the claims of companies in bankruptcy listed for 2002 by BellSouth in its Direct Case.[4] Eliminating those three companies, BellSouth reports only $12 million in claims from fourteen other bankrupt carriers for this year thus far. This amount of uncollectibles is hardly evidence of a new

[3] Simon Wilkie, Chief Economist, Federal Communications Commission, Macroeconomic Perspective, Presentation at the FCC's *en banc* hearing, October 7, 2002, Slide 2, "Sizing the Recession."

[4] *See,* Exhibit 2, "Bankruptcies Filed in 2002."

Company	Claim Amount
Global Crossing	$ 20,979,642
Adelphia Business Solutions Inc.	$ 2,641,858
MCI/Worldcom	$117,000,000
Total	$140,621,500
% of Total Claims of $152,649,293	92.1%

"paradigm" that warrants the imposition of significant changes in deposits. Moreover, it is not a foregone conclusion that BellSouth will not recover some, or even all, of the claimed amounts at the conclusion of the bankruptcy process. Thus, BellSouth's actual losses may be far less than those shown in its Exhibit 2.[5]

Sprint, both in its role as an ILEC providing access services, unbundled network elements and local service resale, and as an IXC that provides wholesale long distance services to other carriers, is faced with pre-petition debt from other carriers that are now in bankruptcy proceedings or have gone out of business. As an ILEC, Sprint would naturally like to minimize any future exposure by changing the provisions of its interstate access tariff and indeed reserves the right to do so if the RBOCs are permitted to revise their tariffs. However, existing access tariffs (including those of Sprint) allow for security deposits where customers fall behind in their payments. Thus, despite its natural desire to be free of any uncollectible risk at all, Sprint does not believe that the financial exposure the ILEC industry has from potential future insolvencies presents a serious business risk that requires alteration of the existing provisions regarding customer deposits.

The Division asks what changes should be made to BellSouth's "price cap indexes and service band indexes to account for these changes to the capital and risk parameters of price caps." Order, ¶ 11. BellSouth responds that it is not seeking exogenous treatment of its uncollectibles. Direct Case at 9. However, the impact of the proposed tariff changes on BellSouth's access customers is nearly identical to an

[5] When Mpower filed for bankruptcy, it promised Sprint's incumbent local exchange subsidiary that it would pay the monies it owed Sprint before the bankruptcy filing. It has fulfilled that promise. Mpower is one of the carriers BellSouth identifies as bankrupt in 2002 against which it has claims. The Commission should be informed as to the status of this claim, as well as any others for which payment may have been promised.

exogenous increase in access rates because the proposed provisions will require them to incur the cost of posting security deposits, which must be in "the form of cash or, alternatively, the form of a surety bond or an irrevocable letter of credit." BellSouth Tariff F.C.C. No. 1, Section 2.4.1(A), 2nd Revised Page 2-21.1. Companies face limits on the amount that financial institutions are willing to lend to them; and the more debt a company requires, the higher the cost will be. Thus, the posting of either cash or a bond equivalent to two months' access charges will increase a company's expense associated with access charges.

The impact on BellSouth is also similar to an exogenous rate change. Although the proposed deposit requirement is not an overt increase in a particular access charge, it ensures that BellSouth's cost of uncollectibles, which is spread across all rate elements, will be reduced significantly. Any increase to date in uncollectibles has not significantly impacted BellSouth's rate of return, which has increased from 13.18% in 1990 to 19.41% in 2001. Thus, despite increases in uncollectibles, BellSouth's earnings have risen substantially under price caps.

Without supporting evidence, BellSouth claims that its proposed revisions will not eliminate uncollectibles. Direct Case at 8. While this may be the case, its uncollectibles will be reduced significantly. Under the flexibility it proposes to afford itself to require deposits, BellSouth could impose the deposit requirement on nearly all of its customers if it requires a score of 5 from the risk assessment models it plans to use. Direct Case at 14. Consider the fact that BellSouth Corporation has one of the highest credit ratings in the telecommunications industry, an A+/Stable/A-1 rating by Standard and Poor's, and that the score attributed to it by Dun & Bradstreet's Risk Assessment

Manager ("RAM") is 5.3, only slightly above its threshold of 5. It seems highly unlikely that any access customer, except perhaps SBC Communications Inc. or Verizon Communications Inc., which have bond ratings comparable to BellSouth, would not be required to post a deposit.

The Division directs BellSouth to provide "the level of uncollectible debts from interstate access services for the years 1990 to the present." Order at 11. In order to put this information into context, the percent that these interstate access uncollectibles represent of BellSouth total interstate access revenues is provided below.[6]

Year	Uncollectible Amount	Total Interstate Revenues	Percent of Total
1990	$7,229	$2,671,132	0.3%
1991	$8,992	$2,669,963	0.3%
1992	$8,541	$2,710,417	0.3%
1993	$4,574	$2,816,450	0.2%
1994	$12,689	$3,032,259	0.4%
1995	$13,472	$3,073,636	0.4%
1996	$28,405	$3,203,868	0.9%
1997	$38,295	$3,414,019	1.1%
1998	$16,628	$3,615,751	0.5%
1999	$14,361	$3,772,734	0.4%
2000	$31,189	$3,953,629	0.8%
2001	$67,982	$4,316,832	1.6%

Although the amount of uncollectibles has fluctuated over the decade, uncollectibles still represent an extremely small percentage of total interstate access revenues.[7] Further, in the past, the percent of uncollectibles has increased (*e.g.*, in 1996-97) and then returned to

[6] Source of Total Interstate Access Revenues: ARMIS 43-01 reports ($ thousands).
[7] Uncollectibles for access revenues are the only relevant uncollectible amount, as the provisions of BellSouth Tariff F.C.C. No. 1 apply to access services only. Uncollectibles from BellSouth's wholesale carrier customers would be even more appropriate, as the impact on such customers is at issue here.

lower levels (*e.g.*, in 1998-99). Absent information to the contrary, this pattern should be expected to repeat itself.

In order to evaluate whether different treatment should be afforded customers whose services are billed in advance, the Division asked BellSouth to provide amounts that it billed in advance. Order, ¶ 13. BellSouth's response indicates that in the last three years the percentage of service that is billed in advance has increased from 63% in 2000 to 89% in 2002. BellSouth rejects the suggestion that services billed in advance should be treated differently than those billed in arrears, stating that a defaulting customer could receive 2 months of service before disconnection. Direct Case at 10, fn. 11. However, it is undeniable that for services billed in advance of service, the lag between nonpayment and discontinuance of service is a month shorter than for services billed in arrears. Thus, BellSouth benefits significantly from the growing percentage of its billings that are rendered in advance of service, further cushioning it from occasional increases in exposure to bad debt and rendering a change in the deposit provisions unnecessary.

The Division notes that questions were raised concerning whether the proposed revisions "are sufficiently clear and unambiguous to preclude discriminatory or anticompetitive application." Order, ¶ 15. BellSouth has done nothing to allay the fears of its customers in this regard. Its claim that its "tariff would apply standard credit measurement tools that are used throughout American industry, including the telecommunications industry" (Direct Case at 12) affords little comfort. In its attached exhibits, BellSouth provides the documentation for Moody's RiskCalc and Dun & Bradstreet's Risk Assessment Manager ("RAM"). It is clear from the manuals that many decisions must be made on the customer-specific data input into the model and the assumptions which are to be used to run the model (e.g., interest rates, growth projection types). The flexibility the models afford BellSouth is highlighted in the Section 10 of the RAM documentation regarding customizing the credit score. Direct Case, Exhibit 5. Table 10-1 provides default weightings for 10 elements of the scorecard used to produce the customer's score, which include "Percent of Slow or Negative Payment Experiences" and "Number of Negative Payment Experiences." BellSouth could give these factors a very low weighting, while giving a heavy weighting to the "D&B Rating Code," which is certain to be very low for most of the telecommunications industry. BellSouth could thereby ensure a low rating for even those customers that have maintained a perfect payment history for many years. Clearly, these weightings, as well as other inputs and assumptions, afford the user of the models a great deal of discretion, which could lead very easily to discrimination among BellSouth's customers.

BellSouth is proposing these onerous deposit requirements just as it has gained Section 271 authorization to provide long distance service to over 60 percent of its lines and as it is about to become the first RBOC to have 271 authorization throughout its region. It is now competing against the interexchange carriers that are its access customers, as well as competitive local exchange carriers and wireless carriers; and, as the dominant provider of access services, it has an incentive to raise barriers and costs to its competitors. Vaguely defined terms that may be applied in an anticompetitive manner and costly deposit requirements that tie up huge amounts of its customers' cash will allow BellSouth to discriminate against its competitors.

BellSouth fails to respond to the Division's request that it "explain how each of these factors is a valid predictor of whether the carrier will pay its interstate access bill."

Order, ¶ 15. Rather, BellSouth simply provides documentation for two commercial risk assessment products. To demonstrate its validity, BellSouth should have provided information showing a correlation between the scores of a random sample of its customers and whether or not they defaulted on their access bills. As discussed above, if the threshold is set high enough – which it appears to be – all customers will have to post deposits, and BellSouth definitely will recover from those few that eventually default.[8] In addition, BellSouth has made no attempt to justify its proposed threshold score of 5 or to demonstrate that this score is not so high as to capture nearly all of its customers.

There are many other issues raised by the Division which BellSouth does not address in its Direct Case. In particular, the Division asks if a subset of carriers can be identified that are the major cause of the risk. Order, ¶ 14. This is an important question in light of the information provided by BellSouth on the limited number of customers that went into bankruptcy and defaulted in 2000, 2001 and 2002: 12, 22 and 17, respectively.[9] These defaulting customers represent only 2 to 3 percent of BellSouth's wholesale customer base.[10] BellSouth could have reported on the type of service provided, any characteristics of late payments, etc. that might provide an alternative method of identifying customers that are at risk of defaulting. It would be far more reasonable to identify customers through alternative characteristics or payment patterns, rather than

[8] BellSouth states that its "experience has been that customers who score at least five in both models are sufficiently creditworthy so as not to require a deposit." Direct Case at 14. Such "experience," as well as that for customers who score less than five, should have been shared with the Division and interested parties in its Direct Case. At a minimum, BellSouth should provide the number of access customers (excluding incumbent local exchange carriers) that scored five or above.

[9] See Direct Case, Exhibit 2.

[10] BellSouth states that it has 663 wholesale customers. See Exhibit 1.

applying the proposed draconian deposit requirements on most, if not all, of BellSouth's access customers.

BellSouth has also failed to provide "data on the payment characteristics of defaulting interstate access customers during the year prior to the time the account was 90 days overdue." Order, ¶ 16. Given the limited number of defaulting customers, this request is not unreasonable. And finally, BellSouth does not provide information on the uncollectibles of other regulated utilities or how their risk of default is managed. Order, ¶ 17. Such information would be helpful to the Division in evaluating that reasonableness of the proposed revisions.

B. Issue 2: Refund of Deposits

BellSouth rejects any reliance on a customer's payment history as the basis for determining whether a deposit should be required, stating that "[p]ayment history with BellSouth as the sole determiner of whether security ought to be refunded to the customer is the product of a bygone era where the environment was dominated by rate of return and monopoly provision of local exchange services." In the "environment...dominated by rate of return," local exchange carriers theoretically were limited to an 11.25 percent rate of return. BellSouth, which is currently earning 19.41 percent,[11] has obviously benefited from the switch from "rate of return" to price caps. BellSouth also refers to the "monopoly provision of local exchange services" as "bygone." While there are now many CLEC competitors, the FCC recently reported that the incumbent local exchange carriers' share of end-user switched access lines as of December 31, 2001 was 90

[11] ARMIS, Holding Company Interstate Rates of Return, BellSouth Corporation for the year 2001.

percent.[12] Thus, BellSouth and the incumbent local exchange carriers remain the dominant carriers in their local markets.

BellSouth does not specifically address the Division's request that it "explain why it should not make refunds after timely payments had been received for twelve months." Order, ¶ 20. Sprint believes that deposits of customers that have a history of timely payments should be refunded after 12 months and that such refund should not be tied to any new creditworthiness check. Absent a sound justification, which BellSouth has not provided, the Division should not permit BellSouth to retain deposits indefinitely.[13]

If it is permitted to implement a creditworthiness check, BellSouth should be required to initiate a periodic review of its customers and to lower its threshold each year for customers with a perfect payment history. It should not rely on the customer to initiate the request because of some "positive change" because the risk assessment model may be modified or updated within the year in such a way as to give a company a higher rating. Over the course of a year, the algorithms may be changed or updated due to changes in the economy and developments in the industry. Thus, a customer with an unchanged profile may receive a higher rating due to changes in the model rather than "positive changes" in its profile.

C. Issue 3: Dispute Resolution

According to BellSouth, the proposal for an expedited third party arbitration of a dispute over the appropriateness of a deposit demand was arrived at during discussions with petitioners. Sprint did not participate in these discussions, and Sprint objects to

[12] Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, Local Telephone Competition: Status as of December 31, 2001, July 2002, Table 6.

[13] Although BellSouth assures the Division that it is "ready, willing and able to respond to a customer's request to review its credit standing," (Direct Case at 15), it seems very unlikely that a customer's score will be above 5.

BellSouth's conclusion that the proposed language is just and reasonable because it was agreed to by some parties.

Sprint does not believe that dispute resolution on an "expedited" basis is just and reasonable because the shorter timeframe would not afford the plaintiff adequate time for discovery and review of BellSouth's inputs into the risk assessment models. Based on the hundreds of pages of manuals provided by BellSouth in its Direct Case, it is clear that the models contain many algorithms and require a substantial number of assumptions and inputs in order to obtain a numerical rating. The models themselves, as well as the inputs and assumptions made by BellSouth to run the models, must be reviewed and their validity evaluated. It is unreasonable to expect that this can be done within the short timeframe of expedited arbitration.

Concerning the allocation of costs, typically each party pays the cost of its own attorneys. This should be the standard here as well. There is no reason to treat disputes with BellSouth any differently than other disputes which are resolved through arbitration, and therefore standard arbitration procedures should be followed. Further, the arbitrator generally assigns the cost of the arbitration to the parties. Typically, the cost of the arbitration is split equally, unless the arbitrator decides otherwise. Here again, the arbitrator should be the one to determine the allocation of costs. If the case is a "close call," it is unreasonable to place the full burden of the costs on the losing party. It would also be inequitable to have one party bear the full cost if the arbitrator decides some issues in favor of one party and some in favor of the other.

BellSouth has failed here again to respond fully to the Division's order, which directed BellSouth "to submit as part of its direct case an estimate of the costs it would incur and what the shared costs would be in an arbitration proceeding to resolve a credit worthiness determination." Order, ¶ 25. BellSouth was also directed to discuss the possible costs vis-à-vis the amount of the deposit, "how its tariff language provides an unambiguous standard by which the arbitrator could render a decision," and how the costs would be distributed if the arbitrator did not decide "entirely in favor of one party." *Id.* Such information would shed valuable light on the impact of arbitration on BellSouth's customers. Thus, Sprint believes BellSouth's proposals are unreasonable and have not been justified in the Direct Case.

D. Issue 4: Application of Revised Deposit Requirement to Term Plan Customers

BellSouth claims that "neither the deposit provision nor any other general regulation are part of the long-term pricing plans that BellSouth has in effect in its interstate access tariff." Direct Case at 21. However, as BellSouth acknowledges, the long-term pricing plans are contained in the same access tariff as the deposit provision. The application of all regulations to services in the tariff is specified in Section 1 of BellSouth Tariff F.C.C. No. 1:

> This tariff contains regulations, rates and charges applicable to the provision of Carrier Common Line, End User Access, BellSouth SWA and Special Access (a.k.a. BellSouth SPA) Services, BellSouth Virtual Expanded Interconnection Service, Lifeline Assistance, Universal Service Fund and other miscellaneous services, herein referred to collectively as service(s), provided by the BellSouth Telecommunications, Inc., hereinafter referred to as the Telephone Company, to customers.

4th Revised Page 1-1. Unless a particular service specifically excludes the application of a "regulation" or "regulations," all "regulations" – including the deposit provision – apply to all services in the tariff, including the long-term pricing plans. Because the proposed deposit requirement will apply to such plans, any change in the regulation must pass the "substantial cause" test.

With respect to its Contract Tariffs which are also found in BellSouth Tariff F.C.C. No. 1, BellSouth specifically states that "[t]he regulations, terms, conditions and incentives provided herein shall apply to customers subscribing to [the] Contract Tariff."[14] It then attempts to demonstrate that its proposed modifications meet the Commission's substantial cause test. In considering whether or not a carrier has "substantial cause" to make revisions to its long term commitments, the Commission evaluates whether the modification is a material change to the agreement. BellSouth argues that its proposed deposit requirement, which could cause customers to post tens of millions of dollars in cash or bonds "does not constitute a material change." Although the change is not an increase in a particular rate element, it will increase the cost of obtaining access services because there is a cost to BellSouth's customer to post the bonds or cash.

BellSouth's customers will not know whether they will be required to post a deposit until BellSouth scores the customer using its risk assessment models. Customers cannot anticipate their scores because BellSouth's assumptions and inputs are not known. A deposit request will certainly be unexpected and may create a hardship for many customers that must divert funds from revenue-producing initiatives in order to post the deposit. BellSouth asserts that it is merely "making a minor revision to 'fix a seller's standard credit terms' to ensure that it receives payment for services rendered." Direct

[14] *See, e.g.,* Original Page 25-1.

Case at 25. As discussed above, this modification cannot be considered "a minor revision."

BellSouth proceeds to argue that it has substantial cause to modify its tariff even if the modification is found to be material. The first part of the substantial cause test requires the examination of "the carrier's explanation of the factors necessitating the desired changes at that particular time."[15] BellSouth has not met this part of the test. BellSouth argues that "[s]ome of BellSouth's existing carrier customers are facing financial difficulties, some are unable to pay their liabilities and debts and are on the verge of bankruptcy, and many no longer have the credit rating they did when BellSouth's [sic] entered into the long-term contract." Direct Case at 28. BellSouth refers to this change in the financial stability of "some" customers as a "dramatic change" that requires protection because "[o]therwise, BellSouth faces the concrete risk that it will suffer significant harm." Id. BellSouth has not demonstrated that the "dramatic change" is not due primarily to general economic conditions and the accounting scandals of the past year; nor has BellSouth shown that it will suffer "significant harm." Indeed, excluding the companies involved in the accounting scandals, BellSouth is owed only $12 million by the defaulting companies that have entered bankruptcy in 2002.[16] Further, as discussed above, BellSouth uncollectibles are less than 2 percent of its interstate access revenues, and it is earning a 19.41 rate of return. Such statistics cannot be found to substantiate a claim of "significant harm" to BellSouth.

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[15] *In the Matter of RCA American Communications, Inc.*, 86 FCC 2d 1197, 1201-02 (1981) *(RCA American Order).*

[16]

Total Claim Amount for 2002 Bankruptcies:	$152,649,293
Claim Amounts of Adelphia, Global Crossing And WorldCom	$140,621,500
Difference	$ 12,027,793

The second part of the substantial cause test requires an evaluation of "the position of the relying customer in evaluating the reasonableness of the change." *RCA American Order*, 1201-02. In *Hi-Tech Furnace Systems v. Sprint Co.*, the Commission found that "the circumstances of this case do not implicate any of the fairness concerns that may be present when a carrier changes a contract in the middle of the term while binding the customer to all tariff provisions until its expiration." [17] Because Sprint offered customers the option of terminating their agreements without penalty and because Hi-Tech had not relied on the Fridays Free promotion to place calls to the countries deleted by Sprint's tariff revision or called Sprint to complain, "subscribers were no worse off than if they had never enrolled in Sprint's Fridays Free promotion." Id.

Although BellSouth asserts that "there will be little, if any, impact on customers" (Direct Case at 30), this is far from the truth. Contract tariff customers required to post 2 months' deposit must post one-sixth of their annual commitment. BellSouth's Contract Tariff – No. 001 requires, for example, an Annual Minimum Billed Revenue for Year 1 of $305,859,000. BellSouth Tariff F.C.C. No. 1, Section 25.1.2, Original Page 25-9, effective August 25, 2001. A two-month deposit for customers of this Contract Tariff would be approximately $51 million. Such a sum is hardly *de minimis*, with little impact on the customer. Given BellSouth's dominant position in the provision of access services, the customer cannot simply switch to another service provider. The customer has no alternative but to immediately post a substantial deposit if it scores below five, which will probably be the case. If the customer has maintained a perfect payment history, a deposit will be unexpected and costly. BellSouth has not shown that the impact

[17] *Hi-Tech Furnace Systems, Inc. and Robert E. Kornfeld v. Sprint Communications Company, L.P.*, File No. E-98-36, *Memorandum Opinion and Order*, 14 FCC Rcd. 8040, 8050 (1999). Citing *RCA American 1983 Order,* 94 FCC 2d at 1339.

on it is so severe as to warrant the imposition of substantial deposits on its Contract Tariff customers. It has therefore failed to justify this material change to its term plan customers.

III. CONCLUSION

For the above reasons, Sprint urges the Commission to find that BellSouth has failed to demonstrate in its Direct Case that its proposed deposit requirements are not unjust and unreasonable, in violation of Section 201(b) of the Act; are not unjustly discriminatory, in violation of 202(a) of the Act; and are not impermissibly vague, in violation of Section 61.2 and 61.54(j) of the Commission's Rules.

Respectfully submitted,

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October 24, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition to Direct Case was sent by United States First Class Mail, postage prepaid, or hand delivery on this 24th day of October 2002.

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