competitors") Thus, as in the past, Verizon's level of uncollectibles expense ratio will almost certainly continue to ebb and flow, but cannot be expected, on average, to rise materially

The only fact that Verizon points to as evidence of any long-term trend or change in its uncollectibles is its claim that "regulatory and political decisions to move to a model that encourages new competitors to enter the market" have created a "permanent" increase in risk." However. nothing in the Act or the Commission's decisions implementing the Act necessarily makes it more likely that Verizon and other incumbent LECs will have higher levels of bad debt. The Act did not change the regulation of access services through the price cap system, which means that today, as in the years prior to the Act, Verizon is properly compensated for the risk of uncollectibles. And the Act – which was designed largely to open *local* markets to competition – did not create any change in the risks of nonpayment by access purchasers. The long distance industry has been subject to intense competition for many years, and well before the passage of the Act.

In all events, even if Verizon could show that some long-term trend had occurred that changed the degree of its risk of nonpayment, and thus justified additional security deposits, Verizon fails to address the request in the *Investigation **Order*** (¶ 12) that it "address modifications" to its price caps to account for the decreased payment risks that would accompany the increased security deposits. If the Commission were to adopt any change to the tariff provisions regarding security deposits, that change (along with the

[32] Direct Case at 15

fact that Verizon is already earning exorbitant returns) would demand that the Commission also reduce Verizon's price caps

For all these reasons, the price cap regime ensures that Verizon and other LECs are already properly compensated for the risk of uncollectibles

C. Verizon Is Adequately Protected By The Commission's Longstanding Prescription Allowing Security Deposits From Customers With Unusual Risks of Non-Payment.

Verizon's existing tariffs contain longstanding, Commission-prescribed language that allows Verizon and other incumbent LECs to collect security deposits from customers with a poor payment history or with no established credit.[33] Those provisions have protected Verizon and other incumbent LECs for over 15 years – in both good and bad economic times -- and they remain more than sufficient today. Given that the level of its interstate uncollectibles was less than 1 25 percent in 2001 (and, in most years, is less than 1 percent), there is no conceivable need to allow Verizon the flexibility to secure even more of its revenues with deposits

Moreover, in response to the *Investigation Order's* request (¶ *14)* to address "the percentage *of* interstate billings that are billed in advance" and how that percentage affects the risk faced by Verizon, Verizon has revealed that fully [begin proprietary]

[end proprietary] of its access services are already billed in advance[34] – which should significantly mitigate the need for any security deposit by providing for an effective one month security deposit. Because the overwhelming percentage of Verizon's

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[33] **See** Memorandum Opinion & Order, ***Investigation of Access and Divestiture** Related Tariffs*, 97 F C C 2d 1082, 1168-70 (1984) ("*1984 Access Order*")

[34] Direct Case, Exh **A,** at **A-**19

access services are billed in advance, the amount at risk due to nonpayment is smaller – a further reason why there is no need to change the existing security deposit prescription.[35]

The unfortunate reality is that Verizon's proposed tariff changes are not aimed at deadbeat or bankrupt customers. but rather at healthy customers – which also happen to be Verizon's competitors. And therein lies a fatal flaw in Verizon's claims – it has not even attempted to show that radical changes to the Commission's prescribed tariff language are required to protect it from the possibility that its credit worthy customers will not pay, or that those customers are not likely to pay their bills in the future

Verizon contends that its tariff revisions would allow it to "obtain the same types of commercially reasonable protections that companies in other industries have."[36] However, as Professor Cornell explains, the critical distinction here is that credit practices in other industries (and in other markets in the telecommunications industry) are disciplined by market forces, whereas Verizon's dominance in providing access leaves its customers with no realistic alternatives from which to choose. Cornell Dec ¶¶ 9, 30-31 Thus, in other industries, **if** a company demands a substantial security deposit from a large customer, the company risks losing the customer to another supplier who determines to offer better credit conditions. ***Id*** That marketplace dynamic provides a powerful incentive for companies to evaluate properly a customer's true creditworthiness, and not to request security deposits unless the harm from a default and the risk of default outweigh the potential revenues ***Id.*** For Verizon, in contrast, there are rarely any market

[35] Verizon claims that advanced billing does not equate to advance payment, but advanced billing certainly allows Verizon to begin the process of collecting past due amounts 30 days earlier, which means that any amounts past due before any termination will be reduced

[36] Direct Case at I, *id.* at 5-8, Exh **A,** at A-IO to **A-11**

forces that discipline its credit decisions, and thus Verizon has every incentive to abuse its authority to demand security deposits. *Id.*[37]

Verizon's reaction to its modest recent increases in uncollectibles is also not at all prevalent in other industries Rather, when the customers of companies in competitive industries uniformly experience hard times, those competitive companies themselves often suffer as well – and they certainly are *not* able to request relief from a regulatory agency to avoid slight increases in bad debt expense. In its request to change its credit practices in response to a downturn in the business cycle, therefore, Verizon seeks not equal treatment, but special treatment to which it is not entitled and that would seriously harm competition and consumers

III. THE SPECIFIC REVISIONS THAT VERIZON PROPOSES ARE UNLAWFULLY VAGUE AND WOULD PROVIDE VERIZON WITH UNFETTERED DISCRETION TO DEMAND SECURITY DEPOSITS FROM ITS COMPETITORS.

A. Verizon Has Not Demonstrated That Its Proposed Security Deposit Triggers Are Sufficiently Correlated With Non-Payment Risks.

The Act requires that a tariff be "just and reasonable," and not "unreasonab[ly] discriminat[ory]," and the Commission's rules further mandate that tariff provisions "contain clear and explicit" statements in order "to remove all doubt" as to the proper

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[37] Despite Verizon's repeated claims that it is only seeking to implement credit practices similar those in competitive industries, it provides virtually ***no*** evidence that companies in competitive industries in fact "would demand additional assurance of payment at the *earliest* signs of customer financial trouble," (Direct Case at 7), let alone that these companies would be able to demand the enormous security deposits/advance payments that Verizon seeks. The most that Verizon could cobble together are a few scattered news articles indicating that some suppliers of Kmart or WorldCom – companies that have tiled for bankruptcy – have demanded advance payment. *E.g.*, Direct Case at 7 n 12. This falls far short of demonstrating that competitive market forces, if they existed in access markets, would allow Verizon to impose the unreasonable credit terms it is proposing here.

application of the tariff.[38] Verizon's initial tariff filing plainly violated all of these criteria. **As** explained by the *Investigation* ***Order,*** Verizon's initial tariff tiling raised serious "concerns about whether the tariff language clearly and unambiguously sets forth a standard that can be objectively administered in a nondiscriminatory manner."[39] Verizon likewise "has not shown that [Verizon's new criteria for demanding a security deposit] . . . are valid predictors of the likelihood of a customer paying its access bill, or that they are better predictors of whether a customer will pay its bills in the future that the customer's past payment history."[40] Accordingly, the Cornmission ordered Verizon to "explain how [Verizon's proposed criteria] . . . is a valid predictor of whether the carrier will pay its interstate access bill"[41] and "how such varied data can be applied in a manner that will not produce arbitrary and/or discriminatory results."[42] The Commission emphasized that a satisfactory response to these critical issues "is especially important here because in most cases the entity upon which Verizon would impose the security deposit would also be a competitor of Verizon itself, or of its long-distance affiliate."[43]

Verizon's Direct Case barely addresses these serious concerns. In fact, it fully admits that a "customer's past payment history is still a good predictor of future payment."[44] It nonetheless speculates that, if it is limited to requiring deposits based on

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[38] *See* **47** U.S.C.§§ 201, 202; **47** C F.R.§ 61 **2**

[39] *Investigation* ***Order*** ¶ 11

[40] *Id.* ¶ 21.

[41] *Id.*

[42] *Id.*

[43] *Id*

[44] Direct Case at ***6***

past payment history, it "*could* be left carrying months of bad debt,'' resulting in an exposure that ***"can* he** substantial"[45] Based largely on this speculation, Verizon attempts to defend four of its six proposed security deposit/advanced payment triggers[46] But it utterly fails to show that any of these triggers is necessary or a better predictor than those set forth in its existing tariffs

As an initial matter, Verizon makes no effort whatsoever to defend the two triggers that it contends "merely clarify" its existing tariff language, *i.e.*, the tariffs new provisions allowing Verizon to collect a security deposit (1) if a customer's account balance has fallen in arrears in any two months out of any consecutive twelve month period or (2) the customer owes $250,000 or more to Verizon that is 30 days or more past due.[47] But as AT&T has already explained,[48] those provisions are not at all clarifications of existing provisions allowing Verizon to collect deposits from carriers with a proven history of nonpayment, but rather are new and onerous terms that unlawfully "impose significant sanctions" for very "insignificant violations" of a tariff.[49] These two triggers simply do not "prove[]" that a particular carrier has exhibited a "history of late payments," as the existing tariffs require.

These provisions could apply, for example, to an IXC that twice in a year had paid less than its full access bills by only ***de** minimus* amounts. Especially given the

[45] *Id.* at 6-7 (emphasis added).

[46] *Id.* at S-II

[47] Direct Case at 5 n.7; ***see* Exh. A** at **A-**I *to* **A-2.**

[48] Petition of AT&T Corp., ***Verizon Tariffs** FCC Nos.* ***1, 11, 14 and 16, Transmittal No.*** 226, at 9-10 (filed Aug I, 2002).

[49] ***1984 Access Tariff Order***, 97 F C C.2d at 1155

complexity of the intercarrier billing process, such minor discrepancies are hardly unexpected, and do not provide any justification for Verizon to demand advance payments or deposits that necessarily would be grossly disproportionate to these access bill payment discrepancies. Alternatively, an IXC that was even a single day late (for any reason) with a relatively insubstantial access payment for a given month could be required to forfeit cash – for an entire year – equal to two months of access charges. Again, it is not at all unusual for AT&T to pay a bill late, due to billing problems that are not at all indicative of an inability to pay. For example, an access supplier's bills may have problems that require the bill or bills to be resent – usually with the original bill date – that may cause payment to be made late. The Commission has refused to permit dominant LECs impose such disproportionate penalties on captive customers for insignificant tariff violations (like those here), which in no way establish a "proven history of late payments " *1984 Access Tariff Order*, **97** F.C.C 2d at 1155.

Further, where dominant LECs have the ability to decide to include disputed amounts as past due and thus eligible to trigger a security deposit, Verizon's so-called clarifications are even more unreasonable.[50] That would in fact provide these LECs with a perverse and anticompetitive incentive to bill less accurately or even engage in intentional over-billing and other efforts that set traps for IXCs to be unable to pay their access bills on a timely basis – a problem that is already significant even when Verizon's

[50] Although Verizon claims that it currently "deduct[s] disputed amounts from amounts billed for purposes of determining whether a carrier has complied with a deadline, Exh. **A** at **A-19**, nothing apparently binds Verizon to that policy. **And** at least one other BOC has stated that disputed amounts are counted for purposes of security deposit triggers. *See* SBC Direct Case, WC Docket No 02-319.

current incentives are to collect payment as rapidly as possible[51] **As** Verizon's data show, [begin proprietary),

[end proprietary].

The two other primary security deposit triggers proposed by Verizon – which are based on long-term bond ratings issued by certain credit rating agencies – are also overbroad, subjective, and not correlated with an inability to pay for access charges.[52] Verizon proposes to demand a security deposit where "the senior debt securities of a customer or its parent are below investment grade" or "the senior debt securities of a customer or its parent are rated at the lowest investment grade rating category by a nationally recognized statistical rating organization, and are **put** on review for a possible downgrade."[53] For customers falling within such criteria (or the other triggers discussed

[51] **An** IXC faced with an inaccurate of clearly overstated access bill would be confronted with the "Hobson's choice" of either paying the excessive charges or laying itself open that Verizon would use the refusal to pay an erroneous access bill as the basis for a substantial security deposit that dwarfs the amount in dispute.

[52] Verizon's other two triggers call for deposits where a carrier files for bankruptcy and where it "publicly states" it cannot pay its debts. The latter trigger, in particular, is unreasonable to the extent it allows Verizon to collect a security deposit based on ambiguous, off-the-cuff remarks made by low or mid-level managers that Verizon could pounce upon as a basis to trigger a substantial security deposit. Such unofficial pronouncements are not significant predictors of an inability to pay access bills

[53] Direct Case at 3-4 n 4 & Verizon FCC Tariff Nos. 1, 11, 14, and 16, § 2.4.1(A)(2)

above). Verizon has "discretion" that it "built into the tariffs" to demand either a security deposit or a advance payment, which Verizon will determine "at its discretion" after it "work[s] with the customer to determine whether such assurances were needed "[54] Verizon claims that these measures are "objective" and "reasonable predictors of whether a customer will pay its bills in the future." Direct Case at 10 These claims are demonstrably without merit

First, Verizon's long-term bond rating triggers are hopelessly overbroad, and encompass virtually all carriers in the industry, regardless of their ability to meet their access payments on a month-to-month basis. Verizon claims these provisions are reasonable because Moody's, one of the three credit rating agencies upon which Verizon seeks to rely, has claimed that "over 90% of all rated companies that have defaulted since 1983 were rated Ba3 [one of the highest 'junk' grade ratings] or lower at the beginning of the year in which they defaulted." Direct Case at 10. But that retrospective data does not support Verizon's effort here to use the long-term bond ratings as a *predictive* measure of short-term nonpayment of access bills. The more relevant measure for ***that*** inquiry is the number of companies that fall within the Verizon's triggers that will default in a given time period. As Professor Cornell sets forth, those measures – which Verizon does not directly provide – show that, over the last 30 years, about *96 percent* of companies that are below investment grade ***do not** default* in a given year.[55] Thus, a below-investment

[54] Verizon Exh **A.** at **A-4** to **A-5,** Verizon D&J at 3.

[55] **See** Cornell Decl ¶ 25 (citing Moody's Investor Service, Special Comment "Default & Recovery Rates of Corporate Bond Issuers: **A** Statistical Review of Moody's Ratings Performance 1970-2001," at **33** (Exh. 27) (February 2002)) (available at http://www moodys.com/moodys/cust/research/venus/Publication/Special%20Comment/ noncategorized_number/74 171 pdf)

grade long-term bond rating is not at all correlated with a customer's inability to pay monthly access hills, and the overwhelming majority of companies with such ratings continue to pay all of their obligations Yet Verizon seeks the authority to demand security deposits or advanced payments from *all* such companies – and even some that are rated above investment grade With only 4 percent of below-investment grade rated companies likely to default in a given year, it is plain that Verizon's proposal to allow it to demand security deposits or advance payments from every one of these companies is overbroad, and not at all consistent with how the market judges these companies' risk of default

The overbroad and widespread impact of Verizon's long-term bond rating triggers can also he seen by examining a list the long-term bond ratings of some of the largest long distance carriers – data that, again, Verizon did not provide AT&T has compiled the long-term bond ratings of the nation's largest IXCs (or a parent company) issued by the three credit rating agencies that Verizon proposes to use (Moody's, S&P, and Fitch).[56] The results of this compilation are striking: virtually *a//* of the long distance carriers that are not affiliated with BOCs are very close to or already fall within Verizon's proposed long term bond rating triggers. Of the top ten carriers, only two, AT&T and Verizon's long distance affiliate, have long term bond ratings that do *not* fall within the Verizon-defined triggers.[57] For those two carriers, AT&T could fall within the triggers if the

[56] *See* Exhibit 2, attached hereto

[57] The list of carriers was compiled by examining the Commission's data listing long distance carriers by revenue. Sprint maintains investment grade ratings, but **is** at the lowest level of investment grade, and is on review for downgrade by two of the three credit rating agencies. WorldCom. Qwest, LCI (a Qwest subsidiary), IDT Corp, and Broadwing Communications Services all have below investment grade ratings. A few of the top carriers do not carry long term bond ratings.

rating agencies make relatively modest changes to its ratings, and it seems obvious (as described below) that Verizon's affiliate would he eligible for a deposit except for its close connection with Verizon (which maintains **A+** ratings – another sign that it has grossly exaggerated any bad debt crisis). Moreover, of the top 40 carriers, only *five* additional carriers (apart from BOC-affiliated companies) maintain investment grade ratings [58] With about three-quarters of the long distance companies failing to meet Verizon's investment grade criteria, it is evident that Verizon's long-term bond ratings are overbroad, and are simply a pretext that Verizon can use to demand hundreds of millions of dollars in security deposits or advance payments, even though the bond rating agencies' own statistics show that the annual default rate for below-investment grade companies is only **4** percent.

Second, even if the long-term bond ratings did not in fact apply so broadly to virtually all of Verizon's customers, Verizon has not shown that these long-term bond ratings are an accurate measure of a customer's inability to pay access charges on a monthly basis. Indeed, as the bond rating agencies fully admit, the very purpose of these long-term bond ratings is *not* to measure a carrier's immediate ability to pay its month-to-month obligations like access charges.[59] Rather, these agencies consider a wide variety of factors about a company's long-term financial condition to assess the chances it will be

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[58] The five are Cable and Wireless, Touch America, Inc , Electric Lightwave, Equant Operations (a subsidiary of France Telecom), and ALLTEL Communications. Many carriers are not rated by any of the three credit rating agencies. It is not clear how Verizon intends to treat such carriers.

[59] Statement of Robert Konefal, Managing Director, Moody's Investors Service, FCC En Banc Hearing, (Oct. 7, 2002) ("our ratings reflect Moody's *opinion* on the relative creditworthiness of a *fixed income security*") (emphasis added); Standard & Poor's, *Standard & Pour's Corporate Ratings Criteria,* at **5** (1996) (the intent of the bond ratings is to measure creditworthiness of "a particular debt security").

unable to pay off its bonds and other debt securities over a long term horizon[60] Thus, a company can have low long-term bond ratings, yet still maintain an unquestioned ability to pay any short-term obligations. The long-term bond rating measures proposed by Verizon – unlike the Commission's existing tariff prescription that examines a proven history of nonpayment – are simply not aimed to measure the risk of non-payment of access charges

Third, Verizon's claims that these long-term bond ratings are "objective" and worthy of deference are exaggerated. The three bond rating agencies are simply offering their opinion as to the risk presented by a certain company – and, like all opinions, they are based on subjective judgments that often turn out to be spectacularly wrong. Indeed, the three bond rating agencies relied upon by Verizon have recently come under fire for their inadequate processes and methodologies used in issuing their ratings.[61] Moreover, as the bond rating agencies admit, they rely extensively on financial information that is publicly available (or provided by the rated company), and do not engage in any independent effort to verify the accuracy of that information.[62] Because Verizon's proposal is largely prompted by the bankruptcies of WorldCom and Global Crossing, it is

[60] To determine long term debt ratings, bond rating agencies will examine factors like the specific characteristics of a company's debt instruments (*e.g.* standard / plain vanilla bond, coupon, zero-coupon, convertibility provisions), the maturity date of the instruments, the expected corporate cash flow over the life of the debt instruments, the capital structure of the issuer (*e.g.*, debt-to-equity ratios), and the expected business environment over the life of the debt instruments Many of these items have little to do with an issuer's ability to pay immediate obligations.

[61] *E.g.* Report of the Staff to the Senate Committee on Governmental Affairs, *Financial Oversight of Enron: The SEC and Private Sector Watchdogs*, (Oct. 8, 2002) ("rating agency reform is needed if the actual performance of these organizations is to live up to public expectations").

[62] Konefal Statement at 2 ("we do not audit the financial information provided to us")

certainly significant that Verizon's proposed solution would not have addressed either of these bankruptcies

To be sure, long-term bond ratings are not totally irrelevant to a credit analysis of whether a customer should be required to pay a security deposit, but as AT&T explained in its opposition to BellSouth's Direct Case, neither AT&T nor any other company would rely solely on a single piece of data like a long-term bond rating as the basis for demanding a security deposit from a customer – particularly from its largest customers that have demonstrated their ability to pay and that may respond to any requests for a deposit by taking their business to a supplier with less onerous credit requirements.[63]

Thus, there is no question that Verizon's amended tariff proposal suffers from the same problems as its initial tariff filing Verizon's amended tariff proposal does not remotely "remove all doubt" as to the proper application of its tariff – to the contrary, if there is anything certain about its proposal, it is that Verizon has defined its security deposit and advanced payment triggers so broadly that it can effectively require a security deposit from most any carrier in the industry

B. Verizon's Proposed Tariff Revisions Would Provide It With Enormous Discretion In Requiring Security Deposits, Which It Could, And Would, Use To Discriminate Against Competitors By Raising Their Costs.

The triggers selected by Verizon and its discretion to demand security deposits or advanced payments provide Verizon with the discretion to saddle virtually every carrier-customer with massive deposit requirements. As a result, neither the Commission nor interested parties can, based on the record in this proceeding, predict which carriers will be subject to such deposit requirements. Verizon's tariff is therefore unlawfully vague,

[63] **See** AT&T Opp. To BellSouth Direct Case, Blatz Decl

and because Verizon could use – and has a substantial incentive to use – that discretion to impose large costs on its competitors, Verizon's tariffs also are unlawfully discriminatory

This is especially troubling, "because in most cases the entity upon which Verizon would impose the security deposit would also be a competitor of Verizon itself, or of its long-distance affiliate."[64] Absent sufficient safeguards, Verizon could, for example, rely on tariffs to demand that virtually all unaffiliated IXCs provide substantial security deposits, but then determine, that Verizon's long distance affiliates are deemed sufficiently creditworthy to be excused from such a requirement.

Significantly, under the methods that Verizon proposes to use, its new long distance affiliates (like those of SBC and BellSouth, the other BOCs proposing to revise their access tariffs) are sufficiently creditworthy that no deposit would be required.[65] That is because Verizon proposes to examine the long-term bond ratings of the customer *or* its parent. For BOC long distance affiliates, therefore, they will be excused from any deposit requirement so long as the BOC is itself creditworthy. ***See*** AT&T Exh. 2 (SBC, BellSouth, and Verizon all creditworthy). However, under the Act, the long distance affiliate is intended to be separate from the BOC, and in particular is not permitted to obtain credit under any arrangement that allows the affiliate's creditors to have recourse to the BOC's assets. 47 U.S.C § 272(b)(4). Thus, under the Act, the affiliate must be creditworthy based on its own financial condition, not that of its parent. And given that the Verizon long distance affiliates are new companies, they likely should be deemed

[64] *Investigation Order* ¶ 21

[65] ***See*** Cornell Dec ¶¶ 10, 27-29 & AT&T Exh. 2; Verizon Direct Case at A-30 ("At present, there are no security deposits from any long distance affiliates").

under Verizon's existing tariffs to have "no established credit." and thus to qualify for a security deposit Yet Verizon apparently intends to exclude them, largely based on the long-term bond ratings that have been developed for Verizon as a whole.

Because of this feature of Verizon's proposals, Verizon will be able to exempt its own affiliate from any security deposit or advance payment costs, and yet impose substantial costs on Verizon's affiliates' rivals – a classic instance of a LEC acting anticompetitively by raising its rivals' costs.[66] This discriminatory conduct would be all the more troubling because these long distance affiliates, if treated consistent with the requirements of the Act, would be precisely the types of companies for which a security deposit could be appropriate Cornell Decl. ¶¶ 10, 27-29. That result is unlawful under section 272, unreasonably discriminatory, and flatly anticompetitive.

Moreover, even if Verizon required its affiliates to post a deposit – in an amount similar to those posted by competing IXCs – there would still be little hardship on Verizon, because such deposits would constitute a classic "left-pocket, right-pocket'' transfer that inflicts no real costs on the Verizon entity as a whole. In both cases, the unfettered right to demand a security deposit from any IXC would, as the Commission recognized in 1984, be a powerful anti-competitive and discriminatory weapon,[67] and one that result directly in increased costs for Verizon's long distance rivals. To prevent Verizon from obtaining this addition method of harming interLATA competition, it is

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66 *See* Cornell Decl ¶¶ 9, 26, 29; Salop & Krattenmaker, *Anticompetitive Exclusion: Raising Rivals' Costs To Achieve Power Over Price*, 96 Yale L.J. *209* (1 *986).*

67 ***See 1984 Access Order,*** 97 F.C.C.2d at 1168-70 (LEC proposals to expand security deposit provisions were "unreasonably onerous" in scope and had "anticompetitive effects" where proposals applied so broadly and could be applied selectively to carriers chosen unilaterally by the LEC)

critical that Verizon be precluded from arbitrarily assessing large deposits on its competitors

Verizon incorrectly suggests that the Commission can look past these fatal flaws in its tariff because firms in competitive industries sometimes use the same credit agencies to assess credit risk of potential creditors. But, as discussed above, firms generally do not use the long-term bond ratings proposed by Verizon as the *sole* means for assessing credit risk. Rather, competitive firms, including **AT&T**, use long-term bond ratings as one among many factors, and not as a bright-line test.

But even if Verizon's proposals were consistent with the practices of firms in competitive industries (which they are not), that would not mean that Verizon, a monopoly firm, should be permitted to implement them. **As** described above and in Professor's Cornell's Declaration, firms in competitive markets have substantial incentives accurately to ascertain credit risk, and to impose deposit requirements only where a substantial credit risks actually exists. **A** competitive firm that attempts to impose large deposit requirements on a customer that is not likely to default on future payments will lose the business of that customer to competitors that do not impose such unnecessary deposits requirements.

Verizon, however, faces none of those competitive pressures – Verizon is a near monopoly that does not face any serious risk of losing a substantial number of access customers as a result of imposing unnecessary deposit requirements on those customers. Because Verizon does not face any measurable competitive pressures, it has every incentive to minimize *any* risk of non-payment by maximizing deposits – as this proposal makes self-evident. Verizon also has incentive to favor its **own** affiliates that do operate in competitive markets by imposing large deposit requirements on companies that pose the greatest threat to those affiliates. And that is precisely why Verizon is seeking regulatory approval to impose deposit requirements based on triggers using long term bond ratings that apply *to* most of its competitors.

The bottom line is this Verizon's tariff provides Verizon with significant discretion *to* impose hundreds of millions of dollars of deposit requirements on its customers. Such discretion is unlawful because it violates the Commission's rule that a tariff "must contain clear and explicit" statements in order "to remove all doubt" as to the proper application of the tariff and because it is unreasonably discriminatory in violation of the Act.[68] Accordingly, Verizon's tariff must be rejected

IV. VERIZON'S PROPOSED PROVISIONS TO SHORTEN THE TERMINATION PERIOD ARE UNREASONABLE.

Verizon's proposal to reduce the time in which it may terminate access services from 30 days to just 7 is equally unreasonable. Verizon claims that the current 30 days is "not necessary to protect the [IXC's] customers," in part because Verizon asserts that the 30 days specified in the tariff often occurs "in addition to other mandatory wait periods" or after "negotiations" with the IXC. Verizon D&J at 9. Even assuming that is true, however, Verizon's tariff revisions would not merely apply in those circumstances, but would apply whenever *any* **IXC** – even those that present no payment risks – fails to pay an access bill in full (or to meet one of the other conditions specified in the tariff). The Commission has recognized for many years that such accelerated termination provisions are not reasonable when they apply generally *to* IXCs that pose no risk. ***See*** 1987 ***Access Tariff Order*** at 304. Such provisions give the dominant LECs far too much leverage in

[68] *See* 47 C.F.R. § 61.2; 47 U.S.C. §§ 201, 202

negotiating billing or other disputes with IXCs The ability to so promptly terminate access services – which would disrupt the long distance services of an IXC's customers – is a powerful threat in the hands of dominant LECs, which could and would be used in a discriminatory fashion

V. VERIZON'S PROPOSAL TO RETAIN SECURITY DEPOSITS FOR A YEAR AFTER THE CONDITIONS TRIGGERING A DEPOSIT END IS PATENTLY UNREASONABLE.

Verizon also proposes to *retain* security deposits for up to a *year* after a customer no longer meets the conditions for a security deposit. There can be no valid basis for such a provision, and Verizon provides none. Even if the conditions triggering the deposits were reasonable (which they are not), there is no possible justification for Verizon to keep any deposits for so long – particularly in light of the fact that its proposal would in many cases allow it to retain almost indefinitely a deposit or advance payment once tendered, or at a minimum to immediately demand another deposit if an IXC once again met one of the six specified conditions.[69] But the provisions are particularly draconian because Verizon is in fact able to demand deposits even from carriers that pose no serious financial risk of non-payment. In that circumstance, Verizon's proposal would require healthy carriers to tie up tens or even hundreds of millions of dollars for no valid reason at all – at a time when such moneys are needed. ***See*** Cornell Decl. **¶¶ 32-34.**

[69] For example, under the tariff revisions Verizon could retain an IXC's deposit or advance payment so long as that access customer's senior debt securities are classified as below investment grade, regardless of how long the IXC makes timely payment of Verizon's access bills in full.

VI. CONCLUSION

For the foregoing reasons, the Commission should find that Verizon's Transmittal No 226 is unjust, unreasonable, and discriminatory Accordingly. the Cornmission should reject the proposed tariff revisions

Respectfully submitted,

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November 12, 2002

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Opposition to Verizon Direct Case was served the 12th day of November, 2002, on the following

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EXHIBIT 1

Verizon West Interstate Uncollectibles Data As A Percentage of Interstate Revenues 1990-2001 Table 2			
Year	**Interstate Access Uncollectibles (000s)**	**Interstate Revenues (000s)**	**Uncollectible Ratio**
1990	8,557	2,423,551	0.35%
1991	20,476	2,433,809	0.84%
1992	23,063	2,534,401	0.91%
1993	14,142	2,609,432	0.54%
1994	13,673	2,644,301	0.52%
1995	21,500	2,777,690	0.77%
1996	15,037	2,950,420	0.51%
1997	16,105	3,126,549	0.52%
1998	18,357	3,392,344	0.54%
1999	36,731	3,497,159	1.05%
2000	27,613	3,543,005	0.78%
2001	28,355	3,671,712	0.77%

Year	**Interstate Access Uncollectibles (000s)**	**Interstate Revenues (000s)**	**Uncollectible Ratio**
1990	22,540	5,878,011	0.38%
1991	14,463	5,865,289	0.25%
1992	19,749	5,956,966	0.33%
1993	31,029	6,039,492	0.51%
1994	41,608	6,227,192	0.67%
1995	36,750	6,363,645	0.58%
1996	32,410	6,455,381	0.50%
1997	26,249	6,565,135	0.40%
1998	23,885	6,920,584	0.35%
1999	25,277	7,263,513	0.35%
2000	37,790	7,774,310	0.49%
2001	110,350	8,142,706	1.36%

EXHIBIT 2

Table of Lonp Term Debt Rating For Selected Telecommunications Companies (November 2002) by Nationally Recognized Statistical Rating Organizations (NRSROs)

(Non-BOC Companies Falling Outside Verizon Criteria Shown In Bold)

COMPANY	S&P			Moody's			Fitch		
	Rating	Investment Grade	Watch	Rating	Investment Grade	Watch	Rating	Investment Grade	Watch
RBOCs									
BellSouth	A+	YES	Negative	Aa3	YES	Negative	A+	YES	Negative
Qwest (US West)	B-	NO	Negative	Caa1	NO	Negative	B	NO	Negative
SBC	AA-	YES	Negative	Aa3	YES	Negative	AA-	YES	Negative
Verizon	A+	YES	Negative	A1	YES	Negative	AA	YES	Negative
Interexchange Carriers									
AT&T Corp	**BBB+**	**YES**	**Negative**	**Baa2**	**YES**	**negative**	**BBB+**	**YES**	**Stable**
WorldCom Inc	**D**	NO		Ca	NO	negative	D	NO	
Sprint Corp	BBB-	YES		Baa3	YES	negative	BBB	YES	Stable
Qwest Corp [ratings shown for parent, Qwest Comm Int'l]	– B	NO		Caa1	NO		N/A		
Concert Global Networks **USA,** LLC	NIA			N/A			N/A		
DT Corp	NIA			B2	NO		NIA		
Global Crossing Corp	NIA			NIA			N/A		
VarTec Telecom, Inc	**N/A**			NIA			N/A		
LCI Int'l Telecom Corp (Qwest Corp Subsidiary)	B-	NO		Caa I	NO		CCC+	NO	Negative Negative
Verizon Long Distance [ratings shown for parent; Verizon]	A+	YES	negative	A I	YES	negative	AA	YES	negative negative

Table of Lonp Term Debt Rating For Selected Telecommunications Companies (November 2002) by Nationally Recognized Statistical Rating Orpanizations (NRSROs)

(Non-BOC Companies Falling Outside Verizon Criteria Shown In Bold)

Global Crossing Telecommunications, Inc.	NIA			NIA			N/A		
Broadwing Communications Services, Inc	BB	NO	Negative	B1	NO	Negative	BB	NO	Negative
Teleport Communications Group Inc [ratings shown for parent, AT&T Corp]	**BBB+**	**YES**	**Negative**	**Baa2**	**YES**		**BBB+**	**YES**	**Negative**
Excel Telecommunications [ratings shown for parent, Teleglobe Group]	NIA			C	NO		**D**	NO	
Cable & Wireless Plc	**A**	**YES**		A3	**YES**	**Negative**	**A-l**	**YES**	**Negative**
Williams Communications, LLC	N/A			NIA			NIA		
Verizon Select Services, Inc. [ratings shown for parent; Verizon]	A+	YES	negative	AI	YES	negative	AA	YES	negative
Touch America, Inc.	**BBB+**	**YES**		Baal	**YES**		**N/A**		
McLeodUSA Telecommunications Service:	NIA			N/A			NIA		
Southwestern Bell Communications Services [ratings shown for parent SBC]	AA	YES	**Negative**	**Aa3**	Yes	Negative	AA-	YES	Negative
Broadwing Telecommunications Inc. [ratings shown for Parent; Broadwing (Cincinnati **Bell**))	BB	NO		B1	NO		**BB**	NO	
Network Plus, Inc.	N/A			N/A			NIA		
BellSouth Long Distance. Inc [ratings shown-for parent; Bellsouth]	A t	YES	Negative	**Aa3**	YES	Negative	A+	YES	negative