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

In the Matter of	)	
	)	
The Verizon Telephone Companies	)	WC Docket No. 02-317
Tariff F.C.C. Nos. 1, 11, 14 and 16	)	
Transmittal No. 226	)	

SPRINT CORPORATION OPPOSITION TO DIRECT CASE

REDACTED PUBLIC VERSION

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November 12,2002

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OPPOSITION TO DIRECT CASE

Sprint Corporation hereby respectfully submits its opposition to the Direct Case filed by the Verizon Telephone Companies on October 29,2002, in response to the Order (DA 02-2522) of the Pricing Policy Division ("Division"), released October 7, 2002, in the above-captioned docket.

I. INTRODUCTION AND SUMMARY

Verizon's proposed tariff revisions modifying its criteria for security deposits, filed on July 25,2002 in Transmittal No. 226, would significantly expand the bases on which it would be able to require deposits from its existing customers. Verizon's currently effective tariff language, which was prescribed by the Commission in its 1984 decision in CC Docket No. 83-1145 (Phase I),' requires that a deposit be made only by "a customer which has a proven history of late payments to the Telephone Company or does

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

not have established credit." Verizon Tariff F.C.C. No. 1, Section 2.4.1(A), Original Page 2-26. Verizon's proposed revisions would afford it the right to require an existing customer to provide a security deposit if it "has fallen in arrears in its account balances in any two (2) months out **of** any consecutive twelve (12) month period"; owes Verizon "$250,000 or more.. .that is thirty (30) days or more past due"; announces that "it is unable to pay its debts as such debts become due"; is in receivership or bankruptcy (either voluntarily or involuntarily); has "senior debt securities **...** [that] are rated below investment grade"; or has "senior debt securities.. **.** [that] are rated the lowest investment grade rating category by a nationally recognized statistical rating organization and are put on review by the rating organization for a possible downgrade." ***Id.,*** 1st Revised Page 2.26.

By attempting to introduce these alternatives ***in*** its tariffs, Verizon **is** seeking unfettered discretion over which customers will be required to transfer to Verizon millions **of** dollars in deposits. Such discretion would enable Verizon to violate the Section 202(a) proscription against unjust discrimination with impunity, as it will be able to pick and choose among its customers for the imposition of deposit requirements. Verizon is proposing these onerous deposit requirements as it has gained Section 271 authorization to provide long distance service to nearly 90 percent of its subscriber lines. Its long distance affiliate is now competing vigorously against the interexchange carriers that are its access customers; and, as the dominant provider of access services, it has an incentive to raise barriers and costs to its affiliate's competitors.

To examine the lawfulness of the proposed provisions, the Division designated four issues for investigation and directed Verizon to provide information related to each. As discussed below, Verizon's Direct Case 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. (Issue 1) Verizon's argument that long distance competitors have similar language ignores the facts that it is a dominant access provider and that the imposition of new deposit requirements on its competitors could result in a substantial, unwarranted cost to them. Verizon's arguments that the requirement are objectively defined and that it has disincentives to require deposits are unconvincing, and its claims that increased uncollectibles reflect a structural change are unavailing, particularly in light of Verizon's continued low percentage of uncollectibles. Further, Verizon has failed to demonstrate that its currently effective tariff provisions would not have substantially mitigated its uncollectible issue had such provisions been exercised in a timely manner. Verizon, in fact, concedes that "a customer's past payment history is still a good predictor of future payments." Direct Case, A-30.

Verizon has not shown that its proposals to reduce significantly the notice periods for termination of service and the provision of deposits or advance payments are just and reasonable. (Issue 2) The risk to Verizon's competitors/customers is far greater than any benefit Verizon might derive from them. Verizon's provisions for refunding deposits are unreasonable because they do not provide a periodic review or the return of a deposit after a year of timely payments. (Issue *3)*

And, despite Verizon's claims to the contrary, nothing in the proposed revisions would exclude Verizon's long-term pricing plans from their scope. (Issue **4)** Thus, Verizon must demonstrate that it has substantial cause to change these long-term plans. It has not done so.

II. ANALYSIS **OF** THE ISSUES DESIGNATED **FOR** INVESTIGATION

A. Issue 1: Basis for Requiring a Deposit or Advance Payments From a Customer

The Division first questions Verizon 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 Verizon to discriminate unreasonably among its interstate access customers, whether they be interexchange carriers, competitive LECs, or business end-user subscribers." Order, ¶11. In its Direct Case (at **A-I),** Verizon responds by claiming that "[b]ecause other carriers already routinely have such provisions in their tariffs, this is strong evidence of their reasonableness." The other carriers to which Verizon refers are non-dominant interexchange carriers ("IXCs") that provide service in a highly competitive market comprised of hundreds of long distance providers. In such an environment, if an IXC seeks to impose an unfairly stringent deposit requirement on its customer, the customer can switch to another carrier that does not require a deposit. For access services, however, Verizon is the dominant carrier, and it is not constrained by competition. While many CLECs compete in the local exchange market, the FCC recently reported that the incumbent local exchange carriers' ("LECs") share of end-user switched access lines as of December **31,2001** was 90 percent.[2] Access customers have little alternative but to take most of their interstate access services from Verizon; unlike the long distance market, they generally do not have the option to move to a competitor which might have different deposit requirements. Therefore, any attempt to rely on the deposit requirements of competitive IXCs to justify a dominant carrier's requirements, as Verizon has done here, is inappropriate.

In Transmittal No. **226,** Verizon proposed to retain the Commission-presubscribed criteria for determining when to require a security deposit from a customer while adding many new ones, which Verizon claims "are simply specific iterations of ***existing*** tariff provisions which ***already*** allow Verizon to require a security deposit from a customer 'which has a proven history of late payments to the Telephone Company."' Direct Case, **A-2.** For example, Verizon would require a deposit if the "customer owes more than **$250,000** that is **30** days or more past due." Establishment of a **$250,000** threshold is more than a simple "iteration" of its current tariff provisions, as it would permit Verizon to require deposits from a customer without **"a** proven history of late payments." Further, this amount is a fraction of the amount paid monthly by the large IXCs. Yet, the late payment of this small amount could result in a deposit of potentially tens of millions of dollars. Clearly, this unreasonable provision is precisely the **type** of overly burdensome requirement that the Commission sought to eliminate in its ***1984 Access Tariff Order***, 97 F.C.C. 2d at **1155.**

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

Other thresholds proposed by Verizon that would link the deposit requirement to the ratings of senior debt securities are vague and will allow Verizon to unreasonably discriminate against its customers. For example, Verizon's proposed provision would permit it to require a deposit if the customer's senior debt securities arc rated below investment grade or "at the lowest investment grade and a rating organization places it on review for a downgrade." Verizon claims that "investment grade" is "objectively defined, and even used in federal securities regulations. ***See,*** *e.g.,* 17 CFR § 240.3a1-1(b)(3)(v)." The definition of "investment grade" to which Verizon refers is as follows:

> Investment grade corporate debt securities, which shall mean any security that:
> **(A)** Evidences a liability of the issuer of such security;
> (B) Has a fixed maturity date that is at least one year following the date of issuance;
> (C) Is rated in one of the four highest ratings categories by at least one Nationally Recognized Statistical Ratings Organization; and
> **(D)** Is not an exempted security, as defined in section 3(a)(12) of the Act ***(15*** U.S.C. 78c(a)(12).

Rather than providing specific criteria to define "investment grades" for purposes of standardizing the rating of debt securities, the above simply refers to the rating of "Nationally Recognized Statistical Ratings Organizations," which arc hardly objective. BellSouth provided the credit scoring tools of two such organizations which make it abundantly clear that tools arc customized by the user, rely on the inputs selected by the user, and produce different results based on the weightings set by the user. ***See*** BellSouth's Direct Case in WC Docket No. 02-304, filed on October 10,2002. Thus, contrary to Verizon's claim, "investment grade" is not objectively defined in Title 17, Commodity and Securities Exchanges.

Sprint pointed out in its Petition to Reject Verizon's Transmittal No. 226 (at 6-7) that "Verizon's criteria would also give undue credence to bond rating agencies at a time when they have been much quicker than they historically were to downgrade or put on review a company's bond ratings." Downgrades can occur for any number of reasons – because the company did not meet analysts' earnings expectations **or** because of a negative news item. The Financial Times recently reported that "investors perceive [rating agencies] have been too hasty with recent downgrades."[3] Verizon seeks to capitalize on the low ratings in the telecommunications industry to demand significant deposits from its captive competitors/customers.

Also troubling is the discretion the tariff language would give Verizon to rely – or not to rely – on the ratings of "nationally recognized statistical rating organizations" to impose a deposit on a customer. Under the proposed tariff language, it could impose a deposit requirement on Carrier A but not on Carrier B, even though each might have been rated "below investment grade" by one organization; alternatively, it could choose among rating organizations to find the lowest rating **for** each carrier. Plainly, Verizon could use the proposed deposit language to discriminate among its customers.

Verizon's response to the Division's question about why Verizon's proposed criteria 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 than the customer's past payment history" (Order, ¶ 21) fails to demonstrate that such criteria are

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[3] Aline van Duyn, "Aggressive Downgrades Under Question: Bond Investors Are Concerned By The Apparent Changes in Rating Agencies Assessments." Financial Times, July 12,2002.

better than the customer's payment history. Verizon provides an exhibit (Exhibit A-1 1) which purports to show that there is a correlation between below-investment-grade ratings and the percent of billable revenues outstanding for 90 days or more. This correlation analysis is seriously flawed because it is based only on customers that have outstanding balances and excludes all customers with ratings below investment grade that pay their bills in a timely manner! In order to determine whether a correlation exists between customers' investment grade and unpaid bills, all (or a valid random sample of) customers should be selected and their investment grade rating compared to their percentage of billable revenues outstanding 90 days or more. Any such analysis should include statistics to demonstrate that the investment grade rating is related to, and will be a good predictor of, outstanding billable revenues.

Investment grade ratings should not be relied upon as a predictor of a customer's ability to pay its bills because the ratings are not based on concrete objective criteria. Indeed, Verizon's reliance on statements made by the rating organizations themselves concerning the value of their ratings is hardly dispositive. Similarly, Moody's statement 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, A-37) simply raises questions as to what percentage were such companies of the total receiving the Ba3 rating, and how many companies that received the Ba3 rating did not default. This information would help determine whether such low

[4] It is also unclear why a customer having a 0 % of its billable revenues outstanding was included on the chart, and whether the customers with 5% or less were in disputes with Verizon, since the amounts not paid are so small. Elimination of these points will flatten the slope of the line.

ratings have any correlation with whether or not a company is likely to default.[5] Verizon argues that the high interest rates that it pays on its deposits serve as a disincentive to requiring deposits from customers. The fact that for one of its companies "Verizon must pay significant interest of 18.25% to the customer on security deposits" simply does not mitigate the potential for *discrimination.*[6] Nor does Verizon's statement that it "will look at a combination of factors, including the size of the outstanding balance due and average monthly billings for future services, whether the customer has outstanding balances that are past due (and, if ***so,*** how much past due those balances are), and an assessment **of** the probability **of** future default" (Direct Case, A-29) allay discrimination concerns. It is abundantly clear that Verizon reserves to itself the discretion to consider whatever information it chooses and weigh these various factors however it wants to decide whether or not to require a deposit from a customer under the proposed language.

Verizon's statement that if it "is compelled to wait until a carrier has stopped paying its bills before instituting protective measures, it may be that much more difficult for the defaulting carrier to provide adequate assurances of payment" (Direct Case, A-30) seems to imply that Verizon believes it must wait for its customers to stop payment totally before it can impose a deposit requirement. This is not the case. The current tariff language permits the imposition **of** a deposit requirement on "a customer which has a

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[5] Verizon also claims that "[p]rivate contracts often use downgrades in investment ratings as triggers for requiring adequate assurance." Direct Case, A **37,** footnote omitted. Sprint, however, recently negotiated an unsecured credit facility with major banks that does not include any triggers based on Sprint's bond ratings for securing any credit extended pursuant to such facility.

[6] Direct Case, A-28. Verizon's interest payments are lower in other tariffs, including 0.00024657 per day (Tariff F.C.C. No. 1, Original page 2-29) and 12% annually (Tariff F.C.C. No. 16, Original Page 2-14.1).

proven history of late payments to the Telephone Company." If a customer pays less than the amount of its bills (less any disputed amounts) and therefore has a history of late payments, Verizon may immediately send out a letter requesting a deposit.

The Division requests information concerning "the total dollar amount of security deposits it holds that are attributable to interstate access services and the percentage relationship of that amount to average monthly interstate access billings." Order, ¶ 12. Verizon's information shows that the deposits it currently requires of its customers are negligible, **{BEGIN PROPRIETARY}** **{END PROPRIETARY}** of its access billings. Direct Case, A-13. Verizon fails to explain this extremely low percentage. It suggests either that Verizon's customers pay on time – and hence there is no real problem to be solved – or that Verizon fails to require deposits from those who do not do *so.*

In response to the Division's request for information about Verizon's total amount uncollected (Order, ¶ 12), Verizon calculates its total uncollectibles (state and interstate) for the period January 2000 through July 31,2002 to be **{BEGIN PROPRIETARY}**

{END

PROPRIETARY} Indeed, carrier uncollectibles pale in comparison to end user uncollectibles.

The Division directs Verizon 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, ¶12 In addressing the first issue, Verizon claims that "current costs due **to** extraordinary carrier uncollectibles are ***not*** already included in the price cap rates" and that "the uncollectible figures used to set initial rates are extremely out of date." Direct Case, **A-6.** The data, however, show that Verizon's uncollectibles have remained a fairly constant percentage of its interstate access revenues since **1990;** this is the appropriate measure, not the actual dollar level. **As** shown below, Verizon East's uncollectibles are at an <u>extremely</u> low level, ranging from 0.25 % to **1.34 %.**[7]

	Uncollectibles	**Interstate Revenue**	**% Uncollectible**
1990	$22,540	$5,892,997	0.38%
1991	$14,463	$5,873,648	0.25%
1992	$19,749	$5,966,204	0.33%
1993	$31,029	$6,057,164	0.51%
1994	$41,608	$6,257,735	0.66%
1995	$36,750	$6,388,581	0.58%
1996	$32,410	$6,473,809	0.50%
1997	$26,249	$6,582,346	0.40%
1998	$23,883	$6,940,198	0.34%
1999	$25,274	$7,286,072	0.35%
2000	$37,777	$7,751,628	0.49%
2001	$110,286	$8,202,313	1.34%

[7] Source: **ARMIS 43-01** report ($ thousands).

Similarly, the uncollectible amounts as a percent of total interstate revenue for Verizon West are also extremely small, as shown below.[8]

	Uncollectibles	Interstate Revenue	% Uncollectible
1990	$4,751	$1,511,502	**0.31%**
1991	$13,070	$1,466,649	0.89%
1992	$13,508	$1,475,128	0.92%
1993	$8,812	$1,435,438	0.61%
1994	$7,677	$1,571,709	0.49%
1995	$13,847	$1,648,203	0.84%
1996	$9,824	$1,757,819	0.56%
1997	$11,412	$1,890,402	0.60%
1998	$8,747	$2,070,362	0.42%
1999	$22,839	$2,171,806	1.05%
2000	$16,010	$2,329,005	0.69%
2001	$18,964	$2,498,221	0.76%

The increase in Verizon East's uncollectible percentage in 2001 may be attributed to many factors. In particular, an increase in bankruptcies and uncollectibles is normal when the economy experiences a significant downturn, such as the economic recession that began in March 2001 and continued through the third quarter of 2001.[9] That year also witnessed the bursting of the Internet bubble and the demise of many Internet-related firms and their suppliers. The burden of proof is on Verizon to demonstrate that this increase reflects a structural change in the market, which it has not done. Indeed, the lack of a comparable increase for Verizon West indicates that the increase for Verizon East is an anomaly.

[8] Source: ARMIS 43-01 report ($ thousands). Sprint's uncollectible numbers are slightly different from Verizon's numbers in Exhibit A-1. This is due to the difficulty Sprint encountered in excluding the GTE properties which have been sold.

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

Unlike rate-of-return LECs which are permitted to earn an 11.25 percent rate **of** return, price cap LECs are afforded the opportunity to retain the profits they make in return for their assumption of risks associated with business fluctuations. Verizon has done well under the price cap regime, earning 17.18% in 2001. Assuming that the recession and other one-time business events caused many of the telecommunications bankruptcies and associated uncollectibles, the rise in uncollectibles in 2001 must be considered a business risk that should be absorbed by price cap companies.

The Division questions what changes should be made to Verizon's "price cap indexes and service band indexes to account for these changes to the capital and risk parameters of price caps." Order, ¶ 12. Verizon responds that "no modifications [are] required.. .as there is no substantive change in the capital and risk parameters of price caps." Direct Case, A-14. However, the proposed tariff changes impact Verizon's access customers in much the same way as an exogenous increase in access rates would because the proposed provisions require them to incur the additional costs. Here the cost is associated with posting the security deposits, which must be "a cash security deposit or an irrevocable standby letter of credit naming the Telephone Company as the beneficiary thereof and otherwise in form and substance satisfactory to the Telephone Company from a financial institution acceptable to the Telephone Company." Verizon Tariff F.C.C. No. 1, Section 2.4.1(A)(4), Original Page 2-26.2. 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 directly increase a company's expense associated with access charges."

The impact on Verizon 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 Verizon'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 Verizon's rate of return, which has increased from 12.37% in 1990 to 17.18% in 2001. Thus, despite increases in uncollectibles, Verizon's earnings have risen substantially under price caps.

In response to the Division's request for information about Verizon's billing and collection procedures and any changes in its treatment in the last two year (Order, ¶ 13), Verizon provides documents describing its standards and procedures and flow charts. It also states that in November 2001 it split its functions into three groups: bankruptcies, collections and claims and that "[b]ecause there now is a separate entity devoted to collections, Verizon has been able to increase the focus on attempting to collect from non-paying customers." Direct Case, A-16. Although Verizon omits any information regarding the impact of this increased focus on collections, its statement would imply that its uncollectibles are being reduced.

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[10] Verizon avers that it has provided alternatives to a cash security deposit, such as letters of credit or one-month advance payments. Direct Case at A-26. These alternatives, while perhaps somewhat less onerous than cash, will impose constraints on companies by restricting their ability to obtain funding for other purposes.

To further understand the increase in uncollectibles, the Division asks Verizon to provide information about its notices to customers regarding non-payment and discontinuance of service. Order, ¶ 13. Verizon sent "treatment" letters to **{BEGIN PROPRIETARY}** **{END PROPRIETARY}** customers in the past year. Letters sent to arrange payment were sent "within thirty to sixty days of a balance becoming overdue." Direct Case, A-17. Verizon does not indicate how effective such letters were or how many of the customers actually paid or provided a deposit in response to such letters. Letters notifymg the customer of discontinuance of service, or embargo, are sent out after the balance is 90 days or more past due (or four months from the bill date). **{BEGIN PROPRIETARY}**

(END PROPRIETARY}. Verizon could have sent out these letters more promptly, and its delay may well have contributed to its increased level of uncollectibles. Verizon should not be allowed the additional flexibility it seeks to require deposits, when it apparently has failed to timely utilize the measures available under its existing tariffs.

In order to evaluate whether different treatment should be afforded customers whose services are billed in advance, the Division asked Verizon to provide the amount it bills in advance. Order, ¶ 14. Verizon's information shows a significant increase in its advance payments between 1999 and 2001. Direct Case at A-19. Verizon rejects the suggestion that services billed in advance should be treated differently than those billed in arrears because "even for services billed in advance it typically will have to provide two months or more of unpaid service before **it** takes any action on the default." 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, Verizon benefits 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.

In response to the Division's questions regarding the underlying cause of the increase in uncollectibles – "the general economic climate or some structural change in the market" (Order, ¶16) – Verizon acknowledges that "[t]he current period probably reflects an accelerated shakeout of unsuccessful competitors, due in part to recent bad investment and business decisions by these companies and a general economic downturn." Direct Case, A-25. 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 Corporation. The impact of these scandals should be considered an aberration, not a paradigm shift. Nevertheless, Verizon concludes, without offering any support, that businesses will continue to fail and that the problem reflects a structural market change. Id. Certainly businesses have failed in the past and will continue to fail in the future, but this is inadequate support for the conclusion that there has been a structural change in the market and that therefore Verizon should be permitted to radically revise its deposit requirements from carriers that compete with it in the long distance market.

Thus, Verizon's response to the first issue designated for investigation, whether the revised provisions are reasonable and would not afford Verizon the ability to discriminate among access customers with whom it competes, fails to justify the proposed modifications. Given Verizon's concession that "a customer's past payment history is still a good predictor of future payments" (Direct Case, A-30), the Division should find the proposed tariff revisions unlawful.

B. Issue 2: Notice for Deposit and Shortened Termination Period

Verizon's proposals to reduce the time in which it may terminate access service from 30 days to 7 days and the time for a customer to provide a security deposit and advance payments to 10 days of written notice are unreasonable. Verizon claims that the shortened notice periods are necessary to "limit its prospective exposure to customers who have not paid for services already received" and that "even if Verizon were to send out a notice the first day after a customer failed to pay, Verizon likely will have provided one or two months of unpaid service to the customer before a termination or embargo notice can even be *sent*." Direct Case, B-1 – B-2. Verizon notes that "[i]n 1987, the Commission allowed BellSouth to revise its tariff to provide for discontinuance of service 15 days after nonpayment, if it made certain other modifications to the tariff. ***See Annual 1987 Access Tariff Filings,*** Memorandum Opinion and Order, 2 FCC Rcd 280,290 (1986)." **Id.**, B-3. The Commission's "modifications" consisted of a single requirement: that customers had to receive their bills within 3 days after the billing date. ***Annual 1987 Access Tariff Filing*** at 305. BellSouth never implemented its proposed 15 day notice period, and Verizon cannot because its paper bills are not sent out until 10 days after the bill date. The Commission also found that BellSouth's proposed tariff revisions were "too broad" because they could reach customers that have needed additional time to review their bills and that do not pose a "risk." **Id.** at 304. In addition, the Commission found the risk to the interexchange carriers of termination of service "in circumstances in which they have not had an opportunity to review their bills properly" outweighed the advantage to BellSouth of being able to terminate service a few days earlier. Similar conclusions should be drawn here.

Verizon claims that it "never sends notice of termination or embargo to a customer on the first day that it is entitled to send such a notice" because it usually negotiates with the customer and the notice is not sent out until "an outstanding balance is ninety days or more past due." Direct Case, B-2. Its proposed tariff language, however, does not account for such delays, and, if permitted to become effective, the provision would permit Verizon to send out a notice to any customer, whether or not the the customer has been negotiating with Verizon or its payments are ninety days past due, when the payment is only a few days late. Further, the possibility of Verizon terminating service within a few days of a bill being due poses a significant threat to Verizon's carrier-customers. **As** a rival, Verizon has the incentive and could easily utilize this provision in an anti-competitive manner.

C. Issue 3: Refund of Deposits

Verizon argues against a provision that would require it to review periodically the need for a security deposit and to make refunds after **12** months of timely payments, stating that the high interest rates it pays on deposits gives it incentive to require deposits only when necessary and to return them when they are no longer required. The interest rate it cites, which is found in Tariff F.C.C. No. 11, is the highest interest rate it pays on access service deposits; the rates in its other access tariffs are much lower and provide less of a disincentive to Verizon. Even the highest interest rate does not help carriers that may be required to post deposits of millions of dollars and that therefore have huge amounts of money tied up for long periods of time. Verizon also claims that it should not be required to refund the deposit after 12 months of timely payments because it may continue to have concerns about the customer's creditworthiness. However. if Verizon is permitted to require the deposit based on the vague and unreasonable criteria it proposes and also is allowed to continue to evaluate such deposit requirements based on these same criteria, the customers will have no way to predict when their deposits will be returned and will be available for revenue-generating projects. Verizon's competitors, having no alternative for most of their access services, will be severely disadvantaged. Absent a sound justification, which Verizon has not provided, the Division should not permit Verizon to retain deposits indefinitely.

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

Verizon acknowledges that the terms and conditions of the tariffs apply to the term plans found in the tariffs, and therefore any change to the terms and conditions will apply to the term plans. Direct Case, p. 26. Despite their application, Verizon claims that "the tariff revisions in this filing do not alter the operative conditions of the term plans – the rates, volumes or length of the term plans." **Id.** This argument is without merit. Unless a particular term plan or service specifically excludes the application of a term and condition of service, such as the deposit provision, the terms and conditions apply to, and must he considered part of, 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.

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. According to Verizon, "the revisions still would not be of the type the Commission has considered to be 'material."'& **p.** 26, footnote omitted. Verizon argues that the proposed changes merely clarify its provisions and "offer opportunities for assurance that are ***more*** favorable to the customer than existing provisions." **Id.** Although the change is not an increase to a particular rate element, it could cause customers to post tens of millions of dollars in cash or bonds and will increase the cost of obtaining access services because the customers' cost of capital will increase. Thus, despite Verizon's rationalizations, the change must be considered "material."

Verizon 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."" Verizon claims that "the current economic climate – which has shown **an** explosive growth in carrier uncollectibles – makes these changes absolutely essential." Direct Case, D-2. Verizon has not demonstrated that the "explosive growth in carrier uncollectibles" is not due primarily **to** general economic conditions and the accounting scandals of the past year; nor has Verizon shown that it will suffer "significant harm." Further, as discussed above, Verizon's uncollectibles are

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

less than 1.34 percent of its interstate access revenues, and it is earning a 17.18 rate of return. Such statistics cannot be found to substantiate a claim of "significant harm" to Verizon.

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. Verizon's assertion that its proposed tariff revisions are "only the ***same*** protections the Commission ***already*** has found to be reasonable and permitted in Verizon's existing tariffs" (Direct Case, D-3) is unavailing. Verizon seeks to expand the application of its two-month deposit provision under the proposed criteria (e.g., insolvency, credit ratings below investment grade) without disclosing an estimate of the number of customers who would be required to post deposits. But for any customer, deposits equivalent to two-months of interstate access charges are hardly ***de minimis,*** with little financial impact on the customer. Given Verizon'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, which will be both unexpected and costly. Because Verizon has not shown that the impact on it is so severe as to warrant the imposition of substantial deposits on its term plan customers, it has failed to justify this material change to its term plan customers.

III. CONCLUSION

For the above reasons, Sprint urges the Commission to find that Verizon 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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November 12,2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition to Direct Case (Redacted Public Version) was hand-delivered on this 12th day of November 2002 to the parties listed below.

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