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November 14, 2002

RECEIVED

NOV 14 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TWB-204
Washington, DC 20554

Re: In the Matter of Ameritec Operating Companies, Tariff FCC No. 2, Transmittal No. 1312; Nevada Bell Telephone Companies Tariff FCC No. 1, Transmittal No. 20; Pacific Bell Telephone Company, FCC Tariff No. 1, Transmittal No. 77; Southern New England Telephone Companies, Tariff FCC No. 39, Transmittal No. 772; Southwestern Bell Telephone Company, FCC Tariff No. 73, Transmittal No. 2906, WC Docket No. 02-319.

Opposition to the Direct Case of SBC

Dear Ms Dortch:

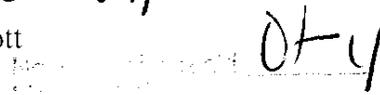
Attached please find an original and four (4) copy of the Opposition to the Direct Case of SBC of Allegiance Telecom, Inc., Cable & Wireless, Grande Communications Networks, Inc., KMC Telecom Holdings, Inc., NuVox Inc., Talk America Inc., and XO Communications, Inc., to be filed with the Commission in the above-captioned docket. A copy of the attached document was provided today, November 14, 2002, via electronic mail, to Julie Saulnier, of the Wireline Competition Bureau.

If you have any questions regarding this filing, please do not hesitate to contact me at (202) 055-9766.

Respectfully submitted,



Erin W. Emmott



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NOV 14 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20054

In the Matter of)
)
Ameritech Operating Companies)
Tariff FCC No. 2)
Transmittal No. 1312)
)
Nevada Bell Telephone Companies)
Tariff FCC No. 1)
Transmittal No. 20)
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Pacific Bell Telephone Company)
FCC Tariff No. 1)
Transmittal No. 77)
)
Southern New England Telephone Companies)
Tariff FCC No. 39)
Transmittal No. 772)
)
Southwestern Bell Telephone Company)
FCC Tariff No. 73)
Transmittal No. 2906)

WC Docket No. 02-319

OPPOSITION TO DIRECT CASE

ALLEGIANCE TELECOM, INC.,
CABLE & WIRELESS,
GRANDE COMMUNICATIONS NETWORKS, INC.
KMC TELECOM HOLDINGS, INC.,
NUVOX INC.,
TALK AMERICA INC.,
XO COMMUNICATIONS, INC.

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Their Attorneys

Date: November 14, 2002

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Before the
 Federal Communications Commission
 Washington, D.C. 20054

In the Matter of)	
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Ameritech Operating Companies)	WC Docket No. 02-319
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Tariff FCC No. 39)	
Transmittal No. 772)	
)	
Southwestern Bell Telephone Company)	
FCC Tariff No. 73)	
Transmittal No. 2906)	

OPPOSITION TO DIRECT CASE

Allegiance Telecom, Inc., Cable & Wireless, Grande Communications Networks, Inc., KMC Telccom Holdings, Inc., NuVox Inc., Talk America Inc., and *XO* Communications, Inc. (hereinafter the "Joint Commenters"), by their attorneys, hereby submit to the Federal Communications Commission ("FCC" or the "Commission") their Opposition to the Direct Case of Ameritech Operating Companies, Nevada Bell Telephone Companies, Pacific Bell Telephone Company, Southern New England Telephone Companies, and Southwestern Bell Telephone Company, (collectively, "SBC") submitted to the Commission on October 31, 2002 ("**Direct**

Case”), pursuant to the Commission’s Order released October 10, 2002,¹ in connection with Ameritech Operating Companies Transmittal No. 1312, Nevada Bell Telephone Companies Transmittal No. 20, Pacific Bell Telephone Company Transmittal No. 77, Southern New England Telephone Companies Transmittal No. 772 and Southwestern Bell Telephone Company Transmittal No. 2906 (collectively, the “SBC Transmittals”).’ The Joint Commenters respectfully request that the Commission deny SBC’s request to modify Ameritech Operating Companies Tariff FCC No. 2, Nevada Bell Telephone Companies Tariff FCC No. 1, Pacific Bell Telephone Company Tariff FCC No. 1, Southern New England Telephone Companies Tariff FCC No. 39, and Southwestern Bell Telephone Company Tariff FCC No. 7 (collectively the “SBC Tariffs”), submitted in the SBC Transmittals.

As a matter of administrative economy, the Joint Commenters hereby requests that the Commission incorporate into the record of this proceeding the “Petition to Reject or, Alternatively, to Suspend and Investigate,” filed with the Commission on August 9, 2002, attached hereto as *Exhibit A*.³ In addition, the Joint Commenters request that the written *ex*

¹ Ameritech Operating Companies, Tariff FCC No. 2, Transmittal No. 1312; Nevada Bell Telephone Companies Tariff FCC No. 1, Transmittal No. 20; Pacific Bell Telephone Company, FCC Tariff No. 1, Transmittal No. 77; Southern New England Telephone Companies, Tariff FCC No. 39, Transmittal No. 772; Southwestern Bell Telephone Company, FCC Tariff No. 73, Transmittal No. 2906, DA No. 02-2577, WC Docket No. 02-319; (rel. October 10, 2002) (“Designation Order”).

² On August 16, 2002, the Commission suspended SBC’s proposed tariff revisions for a five (5) month investigation period. *Ameritech Operating Companies, Tariff FCC No. 2, Transmittal No. 1312; Nevada Bell Telephone Companies Tariff FCC No. 1, Transmittal No. 20; Pacific Bell Telephone Company, FCC Tariff No. 1, Transmittal No. 77; Southern New England Telephone Companies, Tariff FCC No. 39, Transmittal No. 772; Southwestern Bell Telephone Company, FCC Tariff No. 73, Transmittal No. 2906*, Order, DA 02-2039, (rel Aug. 16, 2002) (“SBC Suspension Order.”).

Petition to Reject, or Alternatively, to Suspend and Investigate of ALTS, CompTel, Grande Communications Networks, Inc., Ionex Telecommunications, KMC Telecom Holdings, Inc., NuVox, Inc., Sage Telecom, Inc., Talk America, Inc., and XO Communications, Inc., (filed August 9, 2002) (“August 9, 2002 Petition to Reject”).

parte comments filed in WC Docket No. 02-202,⁴ which was opened to address Verizon's "Petition for Emergency Declaratory and Other Relief,"⁵ attached hereto as **Exhibit B**, also be incorporated into the above-captioned docket. Further, the Joint Commenters request that the "Opposition to Direct Case of Verizon Telephone Companies"⁶ filed with the Commission on November 12, 2002 in response to the Direct Case filed by the Verizon Telephone Companies,⁷ attached hereto as **Exhibit C**, and the "Opposition to Direct Case of BellSouth Telecommunications, Inc.,"⁸ filed with the Commission on October 24, 2002 in response to the Direct Case filed by BellSouth Telecommunications, Inc.,⁹ attached hereto as **Exhibit D**, also be incorporated into the record of the above-captioned docket.

SBC's tariff filing must be rejected because it imposes enormous and anticompetitive burdens on the competitive telecommunications industry to address a "problem" which SBC's own numbers show does not exist. SBC claims that its total interstate uncollectibles from carrier-cuslomcrs in 2001 was a **mere \$48 million**,¹⁰ and this amount, by SBC's own admission,

⁴ Letter to Molleire H. Dortch, *Ex Parte* written comments of Broadview Networks, Inc., Grande Communications Networks, Inc., Ionex Telecommunications, Inc., ITC^DeltaCom Communications, Inc., KMC Telecom Holdings, Inc., NewSouth Communications Corp., NuVox, Inc., NuVox Communications, Inc., Sage Telecom, Inc., Talk America, Inc., and XO Communications, Inc., filed in WC Docket No. 02-202 on August 23, 2002 ("August 23, 2002 *Ex Parte*").

The Verizon Telephone Companies Petition for Emergency Declaratory and Other Relief, Public Notice, DA 02-1859, WC Docker No. 02-202 (rel. July 31, 2002).

⁶ Opposition to Direct Case of Verizon Telephone Companies of Allegiance Telecom, Inc., Broadview Networks, Inc., Cable & Wireless, KMC Telecom Holdings, Inc., Talk America Inc., and XO Communications, Inc. (filed Nov. 12, 2002) ("*Verizon Opposition*").

⁷ *The Verizon Telephone Companies, Tariff FCC Nos 1, 11, 14 and 16, Transmittal No. 226*, Order, WC Docket No. 02-317, Direct Case, (filed Oct. 29, 2002).

⁸ Opposition to Direct Case of Allegiance Telecom, Inc., Cable & Wireless, ITC^DeltaCom Communications, Inc., KMC Telecom Holdings, Inc., NewSouth Communications Corp., NuVox Communications, Inc., Talk America Inc., and XO Communications, Inc. (filed Oct. 24, 2002) ("*BellSouth Opposition*").

⁹ *BellSouth Telecommunications, Inc Tariff FCC No 1. Transmittal No. 657*, WC Docket No. 02-304, Direct Case (filed Oct. 10, 2002).

¹⁰ *Direct Case* at 6.

includes uncollectibles for its wholesale operations (which include, among other things, unbundled network elements and other services provided pursuant to interconnection agreements)” and not just interstate exchange access services under the tariffs it here seeks to revise. At the same time, SBC earned more than **\$4.3 billion** on interstate Special Access services in 2001, and it achieved **a nearly 55% rate of return** for those services in 2001.¹² SBC’s 2001 interstate exchange access earnings increase significantly when interstate Switched Access services are taken into account.” Simply put, SBC’s tariff filing does not pass the “laugh” test – it has failed abysmally to show that it faces any significant problem with uncollectibles under its interstate exchange access tariffs, or that its current deposit provisions do not provide adequate protection against unreasonable exposure to bad debt losses.

I. INTRODUCTION AND SUMMARY

1. Through its proposed tariff revisions, SBC is seeking to expand dramatically the scope of its security deposit requirements as well as its ability to refuse or discontinue service to competing carriers. On August 16, 2002, the Commission suspended the proposed tariff revisions for a period of five (5) months and commenced investigation into the proposed revisions,

¹¹ *Id.* at 9.

¹² See Declaration of Stephen Friedlander, *In the Matter of AT&T Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM No. 10593, Petition of AT&T (filed Oct. 15, 2002) (Friedlander Declaration, AT&T Petition), ¶¶ 3-7, Exhibit 1 (citing to the 1996-2001 Automated Report Management Information System (“ARMIS”) 43-01, Table I. Costs and Revenue Table, Special Access, Column (s), Average New Investment, Row 1910 and Net Return, **Kow** 1915) and Exhibit 2 (“RBOC Special Access Revenues,” source ARMIS 43-01, Row 1090, Column (s)).

¹³ SBC earned approximately \$1.2 billion in Switched Access Revenues for the year 2001. See **ARMIS** data 43-04: Table I. Separations and Access Table, (totaling the Network Access Service Revenue for Switched Access for all SBC entities for 2001) available at <http://gullfoss2.fcc.gov/cgi-bin/websql/prod/ccb/armis1/forms/output.htm>.

2. Among other things, the proposed revisions would permit SBC to impose security deposit requirements on existing interstate access customers who have a history of timely paying their access bills based solely on overbroad and arbitrary standards established and administered by SBC. **As** the Commission properly noted in its *Designation Order*, “[t]he proposed revisions to the security deposit terms significantly alter the balance between SBC and its intrastate access customers with respect to the risks of nonpayment of interstate access bills” that has remained in place for roughly the last twenty (20) years.¹⁴

3. If permitted to be implemented, these tariff revisions would result in the shifting of many tens of millions of dollars of scarce working capital from SBC’s carrier-customers to their direct competitor, SBC. SBC does not dispute that the amounts it could collect from its access customers under these tariff revisions would exceed, probably by many tens of millions of dollars, the loss from uncollectibles that SBC experienced under these tariffs in 2001.

4. Furthermore, the proposed these tariff revisions would give SBC virtually unfettered discretion to refuse to provide service, or to discontinue actual or pending service, with almost no advance notice to its carrier-customers and virtually no time for its carrier-customers to resolve payment issues, dispute improper billings, find alternative suppliers (in the limited situations where any exist), or notify end users before losing access to service from SBC.

5. SBC claims that these changes are necessary in light of “the current financial crisis in the telecommunications industry”¹⁵ and as a result of the impact of the “financial

¹⁴ *Designation Order* ¶ 14.

¹⁵ *Direct Case* at 2.

downturn”¹⁶ of the telecommunications sector on SBC, particularly in the wake of the WorldCom bankruptcy. However, SBC has not demonstrated that its current tariff provisions provide insufficient protection, or even that it has sought to fully utilize those provisions to guard against bad debt losses. Nowhere does SBC offer any concrete data showing that the current provisions -- which permit SBC to impose security deposits on existing customers who do not have a timely payment history -- do not provide adequate protection against significant losses in most cases. With its proposed tariff revisions, SBC is seeking to use the frenzy surrounding the WorldCom bankruptcy proceeding, which may largely be attributable to fraud and hence is not characteristic of the industry as a whole, as a pretext for insulating itself from all business **risk** and for shifting that risk squarely onto its direct competitors at a time when many of them simply cannot bear the burden.

6. The capital transfer contemplated by SBC’s proposed tariff revisions (which surely will total in the many tens of millions of dollars) is simply not accounted for in the business plans of its remaining local competitors, and the extent to which such a capital shift could be supported by individual carriers at any point in the near future is highly doubtful. There simply is no compelling policy reason why the Commission should allow SBC to use its FCC tariffs as a weapon to drain scarce capital from its competitors while insulating itself from virtually any business risk resulting from the sale of enormously profitable interstate access services.

7. SBC’s Direct Case is, in large part, unresponsive to the issues set out for investigation by the Commission in its *Designation Order*. SBC fails to provide any substantial

¹⁶ *Id.*

justification or reasonable support as to why the proposed tariff revisions are reasonable or justified. SBC has provided no justification for the substantial changes it seeks the Commission to approve. General references to market instability and the bankruptcy of one carrier cannot suffice to justify adopting a tariff provision that would require almost every carrier-customer to pay burdensome security deposits to its principal rival, SBC.

8. In particular, the Joint Commenters demonstrate below that (1) SBC has failed to provide a legitimate basis for expanding the scope of its ability to demand a security deposit and prepayments from existing interstate access customers in order to shift the normal business risks associated with the sale of its highly profitable access services onto its direct competitors;¹⁷ (2) SBC has failed to explain the reasonableness of reducing the notice requirement from thirty days to ten-to-fifteen days before service may be terminated or why a twenty-one day billing cycle is just and reasonable for certain SBC customers; (3) SBC has failed to explain the reasonableness of its security deposit refund provision; and (4) SBC has failed to explain how the proposed tariff changes are not material changes to SBC's term contracts, or that such revisions satisfy the substantial cause test

9. As explained in the *August 9, 2002 Petition to Reject*, and further reiterated in the *August 23, 2002 Ex Parte*, the *BellSouth Opposition*, and the *Verizon Opposition*, permitting these revisions to take effect would cause significant and irreparable harm to SBC's remaining direct competitors. Further, as noted by Kim N. Wallace, Managing Director, Lehman Bros., Inc., at Chairman Powell's recent en banc hearing, "[t]he danger of attempting to adapt

¹⁷ To the extent risk associated with the WorldCom bankruptcy could be characterized as extraordinary, it is inappropriate for SBC's competitors to bear the burden, as they did not share in the massive profits SBC has reaped and continues to reap from WorldCom.

microeconomic policy to current conditions is that such policies always lag real-world events and invite high risks of unintended consequences.”¹⁸

II. ISSUES DESIGNATED FOR INVESTIGATION

A. **Basis for Requiring a Deposit or Advance Payments from a Customer**

10. **As** raised often by the Joint Commenters in the *August 9, 2002 Petition to Reject*,¹⁹ and acknowledged by the Commission in the *Designation Order*,²⁰ the proposed tariff revisions will enable SBC to stifle local competition by requiring cash-strapped competitors to pay SBC many tens of millions of dollars in scarce (if not irreplaceable) working capital. The payments SBC will be able to extract from its competitors will far exceed any bad debt losses that SBC has actually experienced under its interstate access tariffs. Further, SBC's proposed tariff revisions will permit it to discriminate unreasonably among its interstate access customers, whether they are interexchange carriers, competitive LECs, or business end user subscribers. SBC will be able to selectively punish a successful competitor by maximizing its security deposits, while rewarding end user subscribers by reducing or removing any such requirements. These tariff revisions are inherently anticompetitive, and the negative impact of such provisions would only be magnified in the current industry environment.

11. SBC asserts that the proposed revisions are necessary because “[w]ithout the additional protection [of the proposed tariff revisions], SBC soon could find itself before the

¹⁸ *Telecommunications Reports*, Vol. 68, No. 38, Oct. 15, 2002.

¹⁹ *See e.g., August 9, 2002 Petition to Reject* at 18-20 (demonstrating that SBC's proposed tariff revisions are nothing more than an anticompetitive attempt by SBC to drain its competitors of scarce working capital while insulating itself from virtually all risk).

²⁰ *Designation Order* ¶ 14.

bankruptcy court.”²¹ Yet SBC has offered no concrete evidence that the current tariff provisions offer an insufficient level of protection, or that it has sought to employ those provisions to their full effect to minimize its exposure. Certainly, SBC has offered no reason for permitting it to insist that its entire customer base should be forced to act as guarantors of the payments that SBC may be owed by individual carriers

12. In its *Designation Order*, the Commission wisely acknowledges that, with respect to the risks of nonpayment, if permitted to implement the proposed tariff revisions, SBC will dramatically alter the balance between it and its interstate customers that was struck approximately twenty (20) years ago.²² In fact, with these tariff revisions, SBC is simply shifting the risk of nonpayment associated with the sale of its highly profitable access services away from itself and its investors and placing the entire risk on its interstate access customers. SBC states that if the tariff revisions are necessary because it “must be in a position to protect itself from such losses [resulting from the levels of uncollectibles] and from the volatility of the highly competitive telecommunications market.”²³ This explanation does not justify the implementation of tariff revisions that would permit SBC to selectively punish its carrier-customers.

13. SBC offers no evidence that this balance has become unfairly skewed by recent developments. SBC claims that roughly 40%²⁴ of its interstate collectibles in 2001 – or approximately \$48 million²⁵ – can be attributed to its carrier-customers. By SBC’s own

²¹ *Direct Case* at 3.

²² *Designation Order* ¶ 14.

²³ *Direct Case* at 7.

²⁴ *Id.*

²⁵ *Id.* at 6.

admission, this amount includes uncollectibles for its wholesale operations (which include unbundled network elements and other services provided pursuant to interconnection agreements)²⁶ and not just interstate exchange access services under the tariffs it here seeks to revise. However, according to the ARMIS reports tiled with the Commission, for the years 2000 and 2001, SBC reported revenues of approximately eighteen billion dollars (\$18,000,000,000) with uncollected debt accounting for approximately seventy-nine million dollars (\$79,000,000) or roughly .4%.²⁷ Notably, this figure includes disputed charge amounts, so even these figures significantly inflate SBC's alleged losses.²⁸ This figure shows that any bad debt "problem" experienced by SBC is in fact insignificant so that the anticompetitive effect of SBC's proposed tariff revisions easily outweighs the alleged need to further insulate SBC from the relatively minimal risks it faces. These figures conclusively prove that there is no "problem" with uncollectibles under SBC's interstate access tariffs today. At a minimum, SBC has failed to meet its burden to show that these tariff revisions are necessary to address a serious "problem" that affects SBC's financial health.

14. Interestingly, as indicated in the *August 9, 2002 Petition to Reject*,²⁹ for approximately the same time period," SBC was subject to approximately four hundred million dollars (\$400,000,000) in fines," of which only approximately sixty-three million (\$63,000,000)

²⁶ *Id.* at 9.

²⁷ See ARMIS report 43-04, available from the FCC's Industry Analysis and Technology Division of the Wireline Competition Bureau at <http://gullfoss2.fcc.gov/cgi-bin/websql/prod/ccb/armis1/forms/output.htm>.

²⁸ *Direct Case* at 13.

²⁹ *August 9, 2002 Petition to Reject* at 19-20.

³⁰ Because the time periods in the ARMIS reports and the payment of fines schedule not directly sync up, the figures are close comparisons.

³¹ See "RBOC Fines and Penalties – SBC, Pacific Bell, Ameritech." Voice For Choices. <http://www.voicesforchoices.com/1091/wrapper.jsp?PID=1091-42> (data used to calculate figures: January 2000 through July 2002).

were the result of violations of merger conditions.³² In 2002 alone, SBC has been subjected to or has pending against it, fines totaling approximately six hundred million dollars (\$600,000,000). These figures are far more substantial than the figures provided by SBC in its *Direct Case* regarding the putative amount of uncollectibles. Yet, SBC appears to have proposed no radical changes in its own practices and patterns of noncompliance to address this financial threat, thereby confirming that its bad debt losses are immaterial from a financial perspective

15. The undeniable anticompetitive effect of SBC's tariff revisions is that they would permit SBC to extract many tens of millions of dollars in scarce and irreplaceable working capital from its competitors, while upending fixed budgets and business plans in the process. Indeed, it is not likely that many carriers have the means to devote the amounts of capital required for the deposits or prepayments SBC seeks. Even if they did, the encumbrance of scarce working capital would make it difficult, if not impossible, for many carriers to meet conditions and covenants of preexisting financial arrangements. The hardship that SBC's proposed revisions would create should not be underestimated.³³ To permit SBC to demand deposits that could easily total in the hundreds of millions of dollars would serve little other purpose than to allow SBC to intentionally inflict harm on its competitors

16. Furthermore, the "dramatic and unprecedented increase in the past two years"³⁴ regarding SBC's uncollectibles ignores the increase in demand for SBC's interstate access

³² See *Notice of SBC Voluntary Payments Pursuant to Merger Conditions*, CC Docket No. 98-141 rel. Aug. 1, 2002. Payment figures are for August 2000 through February 2002. Since its payment in April 2002, SBC has made an additional three million dollars (\$3,000,000) in payments as a result of violations of the merger conditions in January 2002 through May 2002.

³³ See Remarks of Senator Fritz Hollings before the Senate Committee on Commerce, Science and Technology, July 30, 2002 (characterizing the ILECs' current campaign regarding security deposits as just another gimmick used to take down their competitors and extend their monopolies).

services and the unprecedented increase in direct competitors vying for a share of the interstate market. Clearly, with an increase in the number of customers ordering services out of SBC's interstate access tariff and the increase of interstate revenues being attributed to access service, so too will the percentage of uncollectibles associated with the service increase. SBC cannot now claim harm and demand that the Commission protect it from loss from its highly profitable interstate access service. SBC does not now need to implement the proposed tariff revisions.

17. There can be little doubt that SBC is handsomely compensated and insulated from the risks of nonpayment by the rates it assesses on carriers under price caps.” Indeed, SBC's only suggested change to the current regime of price caps is to be permitted to impose an exogenous adjustment to reflect the increase in collectibles.³⁶ SBC has been operating under the current price caps regime for nearly twenty years and has generated tens of billions of dollars in profits. SBC's own reluctance to change the system, except to seek a self-serving adjustment, makes it clear that SBC is simply seeking to enhance its extraordinary profits by asking the Commission to reimburse it for past losses, and then to place all future risk associated with its operations on SBC's direct competitors. SBC offers no objective basis to believe that the volatility experienced during the past several years will continue on a permanent basis. Indeed, it would seem almost impossible for that to be the case. The rash of bankruptcies that plagued the industry has eliminated the weakest competitors, and there is no legitimate basis to believe that the remaining competitors present the same level of bad debt risk that SBC may have faced

³⁴ *Direct Case* at 7.

³⁵ *Designation Order* ¶ 15.

³⁶ *Direct Case* at 10-11.

in the past two years. The irony of SBC's tariff revisions is that they have been filed just as the alleged "problem" they are supposed to redress has begun to dissipate

18. SBC's assertion that the "exponential rise in uncollectibles does not constitute a normal fluctuation, but rather an unprecedented trend in the telecommunications industry"³⁷ is misplaced. While the figures provided by SBC do indicate that the height of the alleged problems associated with uncollectibles has been in 2002,³⁸ what the figures fail to take into account is that this increase directly corresponds with the filing of bankruptcy by WorldCom and Global Crossing, two bankruptcies shrouded in mismanagement and fraud. SBC cannot be permitted to punish the entire industry and impose burdensome security deposit requirements simply because a few carriers have experienced unanticipated bankruptcies that have resulted in large amounts claimed by SBC

19. When asked by the Commission to describe its billing and collection processes to help the Commission's understanding of the increase in the level of uncollectibles, particularly the length of time to render bills,³⁹ SBC admits that it can take up to six (6) days after the bill date for a paper bill to be issued.⁴⁰ SBC offers no justification for this delay. Nor does SBC acknowledge that its bills are typically riddled with errors and review of these bills has become a complex time and resource consuming process (in fact, it has become an industry). If SBC is concerned about timely receipt of payments from its customers, SBC should strive to issue bills

³⁷ *Id.* at 7.

³⁸ *Id.* at 6, Table 2.

³⁹ *Designation Order* ¶ 16

⁴⁰ *Direct Case* at 12.

faster and more accurately, thus providing is customers with more time to review, make payments, and if necessary, dispute charges contained therein.

20. In addition to its current security deposit requirements, SBC has other protections to ameliorate the risks associated with delayed payments from customers when SBC bills its services in advance. These protections come in the form of past due charges levied at “either the highest interest rate which may be levied by law for commercial transactions” or “.0005% per day” or approximately 18% per annum.⁴¹ Contrary to SBC’s assertion,⁴² interest on late payments provides SBC with some additional protection in cases where services are billed in advance.

21. In the *Designation Order*, the Commission inquired about possible changes in customer behavior and requested that SBC provide it with the percentage of carrier bills disputed, billed revenue disputed, and disputed amounts adjusted.⁴³ SBC admitted that it “does not track disputed amount information”⁴⁴ and that it “includes disputed amounts in the amounts billed to a customer for purposes of determining a customer’s outstanding balance and late payments charges.”⁴⁵ These admissions, particularly the inclusion of disputed amounts in outstanding balances, demonstrate the unreasonableness of SBC’s current policies and illustrate why SBC should not be permitted to implement new security deposit requirements and prepayment obligations that would allow SBC to continue its policy of unreasonableness.

⁴¹ SWBT Tariff F.C.C. No. 73, Section 2.5.3(A)(1)-(2) (eff. May 1, 1997)

⁴² *Direct Case* at 13.

⁴³ *Designation Order* ¶ 16.

⁴⁴ *Direct Case* at 12.

⁴⁵ *Id.* at 13.

22. Under the terms of the tariff, customers are permitted to dispute charges on their bills and it is not unusual for a customer to dispute ten-to-twenty percent or more of the charges each month. SBC's billing system typically generates enormous amounts in monthly disputes. SBC does not seem to have figured out a reliable method for setting aside the amounts in dispute from undisputed amounts due – nor have they devoted the resources needed to effectively address chronic over-billing. Indeed, chronic misbilling is a lucrative revenue generator for SBC and the other ILECs. SBC's own dispute resolution process (or lack thereof) further allows the SBC to profit handsomely from resource-strapped carrier-customers who are unable to devote the necessary manpower to audit and dispute the voluminous and complex monthly bills issued by SBC. The result of SBC's failure to distinguish disputed and undisputed amounts is the unjust and unreasonable incorporation of disputed amounts in SBC payment records (making it seem as though the carrier-customer is taking too long to pay and overstating SBC's risk). Nevertheless, the frequency and level of billing dispute challenges is not an indicator of an increase in SBC uncollectibles. Rather, it is likely a strong indicator that SBC's billing systems, as discussed above, may be contributing to a significant overstatement of the levels of uncollectibles by SBC.

23. The Commission also inquired into SBC's billing of services in advance or in arrears.⁴⁶ SBC's response provides evidence that SBC, by billing nearly all of its services in advance (highest being Ameritech with 89%, lowest being SNET and Nevada Bell with 85%),⁴⁷ already has adequate protections to reduce substantially the risk of nonpayment. Despite SBC's

⁴⁶ *Designation Order* ¶ 17

⁴⁷ *Direct Case* at 13.

claim to the contrary,⁴⁸ Joint Commenters assert that there is inherently less risk associated with billing in advance than there is associated with billing in arrears. Certainly, there is no legitimate basis for imposing the same size of deposit requirement without regard to whether the service is billed in arrears or in advance. Although SBC notes that bills sent in advance are not due until 30 days later,⁴⁹ which may be just after the service has been provided, SBC cannot deny that its exposure to uncollectibles is significantly reduced when it bills in advance rather than in arrears. The fact that an increasing portion of all ILECs' services are billed in advance shows that the original "balance" between customers and the ILECs struck 20 years ago continues to be appropriate today.

24. The Commission appropriately inquires into the actual cause of SBC's alleged increase in risk in uncollectible debts.⁵⁰ Notably, SBC seeks to blame the increase of competition in the telecommunications industry, coupled with the downturn in the economy, to explain the increased risk in uncollectibles and the need to implement the proposed tariff revisions.⁵¹ Ironically, SBC fails to acknowledge that with the increase in competition in the telecommunications industry, so too do the number of carrier-customers purchasing interstate access service from SBC increase, and thus, SBC's profits. The increased profitability of SBC's interstate access services more than compensates SBC for any increase in carrier uncollectibles.

25. While SBC contends that its proposed tariff revisions do not conflict with Section 366(b) of the Bankruptcy Code,⁵² the Joint Commenters contend that permitting SBC to establish

⁴⁸ *Id.* at 14 (asserting "advanced billing does not equate to advanced payments")

⁴⁹ *Id.* at 11.

⁵⁰ *Designation Order* ¶ 19.

⁵¹ *Direct Case* at 17-18.

⁵² 11 U.S.C. § 366(b); *Direct Case* at 16.

additional protections outside the bankruptcy process, such as the imposition of a security deposit or a prepayment, undermines the established bankruptcy code and process. SBC deserves neither pity nor special treatment in addition to that already provided by the bankruptcy courts. Simply put, the Commission should not be duped into interfering with the jurisdiction of the bankruptcy courts by implementing these provisions.

26. **As** indicated by the Joint Commenters in the *August 9, 2002 Petition to Reject*,⁵³ SBC fails to provide justification as to why these proposed changes are necessary, other than to blame the industry as a whole for the perceived wrongs of a few carriers. SBC has not demonstrated that its current security deposit provisions do not provide it with sufficient protection or that they would not do so in the future. When asked by the Commission about the feasibility of phasing-in the proposed tariff revisions after a carrier-customer reaches a creditworthiness trigger,⁵⁴ SBC contends that phasing-in “would not mitigate SBC’s risk of significant unpaid debt where a customer defaults shortly after an impaired creditworthiness trigger is reached.”⁵⁵ As stated previously, with its proposed tariff revisions, SBC is improperly seeking to use the frenzy surrounding the WorldCom bankruptcy to justify insulating itself from all business risk and for shifting that risk squarely onto its direct competitors.

27. **As** emphasized by the Joint Commenters in the *August 9, 2002 Petition to Reject*⁵⁶ and commented upon by the Commission, SBC has not demonstrated that the criteria included in its proposed tariff revisions are “valid predictors of the likelihood of a customer paying its access

⁵³ *August 9, 2002 Petition to Reject* at 3-4.

⁵⁴ *Designation Order* ¶ 19.

⁵⁵ *Direct Case* at 20.

⁵⁶ *August 9, 2002 Petition to Reject* at 3-4.

bill, or that they are better predictors of whether a customer will pay its bills in the further than the customer's past payment history."⁵⁷ According to SBC, the risk of default increases as a company's credit rating falls below investment grade," thus validating its belief that there is some correlation between "below investment grade" and the risk of default. However, SBC does not demonstrate that this criterion is a more accurate predictor of default than a carrier's historical payment record. Nor does SBC demonstrate that the extent of the increased risk of default justifies the anticompetitive impact of effectively imposing a burdensome security deposit upon the entire competitive telecommunications industry. Regardless of SBC's statements to the contrary, the inclusion of this criteria would permit SBC to unjustly apply its security deposit requirement to virtually all competitive carriers, regardless of their payment history with SBC. In fact, the Joint Commenters believe that based on this requirement alone, SBC should be imposing security deposits on its own affiliates," however, presently SBC is not doing so.⁶⁰ The creditworthiness criteria are designed to ensure that all of SBC's competitors pay hefty deposits. SBC has failed to set forth any plausible rationale for imposing them on any and all carrier-customers

28. According to SBC, "only" thirty-five carrier-customers would satisfy its \$1 million threshold to have the security deposit imposed upon them." The Joint Commenters do not have sufficient data to accept or disprove this assertion. However, all this criterion

⁵⁷ *Designation Order* ¶ 20.

⁵⁸ *Direct Case* at 21

⁵⁹ SBC, along with Verizon and BellSouth, currently are under such review and their own officials no doubt believe such reviews are unwarranted. See Moody's Cuts BellSouth Outlook; Eyes Other Bell Debt Ratings," *TR Daily*, August 8, 2002; see also "BellSouth, SBC, Verizon Under 'Close Study'. Moody's, *New York Times*, August 8, 2002, <http://www.nytimes.com/reuters/technology/tech-telecoms-moodys.html>.

⁶⁰ *Direct Case* at 22.

demonstrates is that SBC is willing to draft its criteria to discriminate against the largest, and possibly strongest, local competitors. Further, this threshold would serve to penalize those carriers who grow past the threshold level based on their competitive success in the marketplace. Nor has SBC successfully tied this threshold to any reasonable assessment of the level of risk presented by a specific carrier-customer. The threshold should be substantially increased (and modified to exclude disputed amounts) if SBC intends to require deposits only from those carrier-customers whose default would constitute a material financial event for SBC.

29. SBC does not provide sufficient justification to explain why it needs to impose a deposit when a customer has failed to "pay two monthly bills by the bill due date within a 12-month period of time," and thus has a history of late payments, as requested by the Commission.⁶² As the tariff revisions are currently drafted, there is no minimum threshold of time or amount requirement to qualify as a history of late payments. SBC could demand a deposit of millions of dollars on a carrier that was in arrearage less than fifty dollars (\$50) in February and then again for a few more dollars in October. As written, there is little if any nexus between a payment pattern that would trigger a deposit and a payment pattern that may indicate an extraordinary risk of nonpayment. Furthermore, SBC makes no distinction with regard to disputed amounts and undisputed amounts and admits to this in its *Direct Case*.⁶³ Certainly, SBC should not be permitted to consider disputed amounts to constitute a history of late payments and thus providing the impetus for a deposit request on amounts that include those in dispute. Permitting SBC to consider disputed amounts would give it an incentive to avoid

⁶¹ *Id.* at 23.

⁶² *Designation Order* ¶ 21

⁶³ *Direct Case* at 13, 25.

correcting, and indeed to make worse, its current billing system. Because carrier-customers frequently dispute significant percentages of their billings and typically experience a high success rate in doing so. SBC should not be permitted to consider such amounts for deposit purposes.

30. **As** the Commission correctly indicated, no justification exists for the different interest rate structure proposed by SBC in its tariff revisions.⁶⁴ The Joint Commenters agree that fairness dictates that SBC impose the same interest rate for deposits as it does for payments. Otherwise, allowing SBC to impose a lower rate on the security deposit, particularly one that comes nowhere close to the rate most carrier-customers will have pay to strand their scarce capital with SBC in a deposit or prepayment, is unreasonable and highly anticompetitive. SBC's contention that the distinction is warranted because security deposits are not punitive⁶⁵ does not justify this regime. The payment of a security deposit ties up capital, the same as if the carrier-customer had failed to meet the payment deadline set by SBC. Instead, interest on deposits and prepayments held by SBC should be paid at a rate at least equal to the interest rate SBC subjects its carrier-customers to for late payments. In a time where working capital is scarce and the availability of additional investment capital is nearly impossible for carriers to secure, it is unreasonable for SBC not to impose less rigorous interest conditions on monies it holds as it does on the monies it charges.

⁶⁴ *Designation Order* ¶ 23.

⁶⁵ *Direct Case* at 26-27.

B. Shortened Notice Period and Bill Payment Interval

31. In response to the Commission's inquiry into the need to shorten the notice period from thirty days to 10-15 days prior to termination of service,⁶⁶ SBC stated that the change is necessary "to ensure that SBC can take prompt action to minimize its losses to 30 days, or close thereto, of unpaid debt." This justification is not reasonable, particularly since the reduction in time, if permitted to be implemented, threatens substantial harms to customers by permitting SBC to, on its own volition, discontinue service to carrier-customers who are providing service directly to the public. To permit SBC to reduce the minimum notice period prior to termination would cause tremendous harm both to its competitors and to consumers whose service could easily be disrupted on short notice. In addition, the proposed shortened period that SBC alleges is necessary to protect it from the risks of doing business in the telecommunications sector would not allow for a reasonable amount of time in which the customer can cure the defects or reconcile disputes.

32. Further, shortening the billing interval" for customers with impaired credit is neither just nor reasonable, particularly in light of the fact that SBC's billing system is notorious for being plagued with errors. Instead of having an approximately twenty-one day minimum period to review SBC's bill as currently available to SBC customers (assuming that the bill is sent on the 6th day and received on the 9th day during a 30-day billing cycle, resulting in 21 days to review the bill), SBC is now proposing that a customer have closer to eighteen days to review SBC's Jengtliy bills and make a timely payment, or face the assessment of late payment

⁶⁶ *Designation Order* ¶ 28.

⁶⁷ *Direct Case* at 29.

⁶⁸ *Designation Order* ¶ 28.

penalties. (Under SBC's proposed shortened billing interval is 21 days, assuming the bill is received, via mail, within three days of being sent from SBC, the customer would be left with 18 days to review the bill.) What SBC fails to acknowledge is what the proposed tariff revisions really do is shortening the time for a customer to receive and review its bills even more because SBC has neglected to consider the delay caused by the mail. Under the current billing system customers are only getting about twenty-one days to review their bills. The proposed tariff revisions would provide customers with only about eighteen days to review SBC's bills and make timely payments or face the assessment of late payment penalties or even discontinuance of service. Eighteen days is not enough time for a customer to evaluate and dispute the accuracy of SBC's bills.

33. Furthermore, requiring carrier-customers to pay a security deposit within twenty-one days of receipt of notice (once again, probably closer to eighteen days if the notice is sent by mail instead of electronically) as proposed in the tariff revisions, is both unreasonable and anticompetitive. It is not sufficient time to "assess SBC's determination that a deposit is required." SBC can base the need for a security deposit on many criteria, any one of which are subject to different interpretations and may require separate verification. To give a carrier-customer less than twenty-one days to dispute the notice, and then, if still necessary, to secure a security deposit is unreasonable and serves no other purpose than to selectively punish SBC's direct competitors. **As** stated above, in a time where working capital is scarce and the *availability* of additional investment capital is nearly *impossible for carriers to obtain, it is*

⁶⁹ *Direct Case* at 30.