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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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

US LEC CORP.,
LEVEL 3 COMMUNICATIONS, LLC,
FOCAL COMMUNICATIONS CORPORATION,
PAC-WEST TELECOMM, INC.,
BUSINESS TELECOM, INC.,
ATX COMMUNICATIONS, INC.,
DSLnet COMMUNICATIONS, LLC,
U.S. TELEPACIFIC CORP. d/b/a TELEPACIFIC COMMUNICATIONS, AND
FREEDOM RING COMMUNICATIONS, LLC d/b/a BAYRING COMMUNICATIONS

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SUMMARY

SBC's proposed revisions to its interstate access tariff would impose onerous, unjust and unreasonable requirements on its carrier customers and should be rejected. Under the price cap plan adopted in 1990, SBC is adequately protected from losses from non-payment. In addition, SBC has agreed to assume additional risk in exchange for obtaining pricing flexibility for special access and dedicated transport services. Moreover, ARMIS data indicates that the risk of losses from non-payment has not increased substantially since passage of the Telecommunications Act of 1996. The Bell operating companies' uncollectibles as a percentage of total operating revenues have remained nearly constant, and SBC's figures are actually lower than those of other carriers. In addition, SBC has seen steady increases in its rate-of-return so any increases in uncollectibles have been matched by increases in profitability. Where price caps do not apply to SBC, SBC already charges grossly excessive rates for special access, and additional security is unnecessary.

SBC's losses that have prompted its tariff proposal are isolated to a handful of large cases. SBC is adequately protected already from losses from non-payment by the remaining carriers. New security deposit requirements would have an enormously disparate impact on CLECs for the marginal benefit of putting SBC in a position to protect a very small portion of its revenues. The anticompetitive implications of imposing additional burdens on CLECs are significant.

SBC is also unable to defend its deposit refund proposal. If SBC is permitted to adopt its security deposit provisions, SBC should be required to refund any security deposits as soon as its periodic risk review indicates a carrier is credit worthy. Moreover, the existing criteria of

timeliness of customer payments for undisputed amounts are reliable indicators of a carrier's creditworthiness.

With regard to SBC's proposal to shorten the notice periods for terminating service, paying bills and demanding payment of a security deposit or advance payment, SBC fails to respond to even the most basic Commission inquiry. It is clear from reviewing SBC's Direct Case that SBC has no basis for requesting shortened notice periods. SBC appears to be requesting shortened notice periods for the sole purpose to harass and to harm its competitors. The proposed shortened notice periods are clearly unjust and unreasonable and, therefore, unlawful.

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OPPOSITION TO DIRECT CASE

US LEC Corp.; Level **3** Communications, LLC; Focal Communications Corporation; Pac-West Telecomm, Inc.; Business Telecom, Inc.; ATX Communications, Inc.; DSLnet Communications, LLC; U.S. TelePacific Corp. d/b/a TelePacific Communications, and Freedom Ring Communications, LLC d/b/a BayRing Communications (collectively "CLEC Commenters"), hereby oppose the Direct Case filed by the SBC Telephone Companies ("SBC") on October 31, 2002.[1] SBC seeks to change the criteria under which it may demand security deposits from carriers that purchase interstate services to protect SBC from loss in the event that the money owed for such services becomes uncollectible. SBC's request should be denied because SBC is adequately protected and already has authority to demand deposits, the risk of

[1] CLEC Commenters also oppose the substantially similar tariff revisions proposed by BellSouth and Verizon, and have commented in those proceedings accordingly. ***See BellSouth Telecommunications, Inc. Tariff***

loss has not significantly changed, and the price cap regime established by the Commission in 1990, for the benefit of SBC, addresses the risk of loss from non-payment for services. Notwithstanding SBC's hyperbole, nothing in the Direct Case provides evidence to the contrary.

I. THE PRICE CAP REGIME COVERS SBC'S RISK OF UNCOLLECTIBLES

In the Designation Order, the Commission instructed SBC to "explain why it believes its rates under price caps do not adequately compensate it for the risk of uncollectibles."[2] SBC was also asked to explain "whether the variation in uncollectible levels for 2000 and 2001 is merely a normal fluctuation in uncollectibles, which would be covered by the business risks anticipated to be endogenous to price caps[.]"[3] SBC has not adequately explained either point.

The price cap regulatory regime established by the Commission in 1990 was intended to move away from cost-based rate-of-return regulation and provide incumbent local exchange carriers ("ILECs") with incentives to reduce costs and increase efficiencies.[4] The federal price cap regime began with the interstate rates effective in 1990 that were based on the approved rate base, and applied a "productivity factor" to ratchet interstate rates down over time. These initial interstate rates reflected both uncollectibles and security deposits from customers. Uncollectibles are also included within a carrier's reported revenue in order to determine

FCC No. 1, ***Transmittal*** *No.* 657, Order, WC Docket No. 02-304 (rel. Sep. 18,2002); ***The Verizon Telephone Companies,*** *Tariff FCC Nos. 1, 11, 14,* ***and*** *16,* ***Transmittal*** *No.* 226, Order, DA 02-2522 (rel. Oct. 7, 2002)

2 ***Ameritech Operating Companies*** *Tariff FCC No. 2,* ***Transmittal No. 1312, et*** *al.,* Order, WC Docket No. 02-319, DA 02-2577 (rel. Oct. 10,2002) ("Designation Order") at ¶ 15.

3 *Id.*

4 "Previous orders in this docket have contained lengthy discussions of the tendency of rate of return regulation to produce inefficiencies, as documented by various scholars. . . Our own experience with administering a rate of return system convinces us that carriers in fact attribute unnecessary costs to their operations in an effort to generate more revenue." ***Policy and Rules Concerning Rates for Dominant Carriers,*** Second Report and Order, 5 FCC Rcd 6786 (1990) at ¶ 29 ***("Price Cap Order").***

whether a rate-of-return carrier is earning its prescribed rate of return.[5] SBC acknowledges that uncollectibles were included in its rate base that determined its initial price cap rates.[6] SBC bases its request on the level of risk of non-payment that it claims has increased since the Telecom Act of 1996.[7] SBC's request should be denied because risk of potential loss is included within the price cap regime and SBC has waived its rights to protection from risk under the price cap regime. Further, any increase in uncollectibles cannot be considered an exogenous cost warranting a change in the terms or rates of the SBC's price cap regime.

A. Risk of Potential Loss is Included Within the Price Cap Regime

The price cap regime recognizes that price cap ILECs may lose money that would put them at risk of under-earnings. Under the price cap regime as originally implemented, ILECs were given the opportunity to earn profits well above the prescribed rate of return, while also being protected from earning profits below a certain threshold, initially set at 10.25%.[8] The reason given by the Commission to protect a price cap ILEC from low earnings was that "[u]nusually low earnings over a prolonged period could threaten the LEC's ability to raise the capital necessary to provide modern, efficient services to customers."[9] While the Commission recognized in 1990 that its "lower end adjustment mechanism" protects LECs from management errors and misjudgments, it was intended to protect ILECs "from events beyond their control that are likely to affect earnings to an extraordinary degree, such as local or regional recessions."" In other words, relief from the price cap regime was available to price cap ILECs that experienced "extraordinary" reductions in earnings or "unusually low earnings over a prolonged

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5 *See* 47 C.F.R. § 32.4999(m) ("Uncollectible revenues shall include amounts originally credited to the revenue accounts which have proved impracticable of collection.").

6 Direct Case at 6.

7 *Id.* at 7.

8 ***Price** Cap **Order*** at ¶ 165.

period." **As** explained below, SBC has seen significant and sustained *increases* in earnings under price caps. SBC simply has no claim for relief under its price cap regime.

SBC asserts that the "forecast of uncollectibles embedded in its price caps more than a decade ago in no way accounts for the current state of the telecommunications industry."" Whether this statement is true or not, the overriding purpose of the price cap regime was to eliminate consideration of the carrier's costs.[12] Whether SBC's costs have increased significantly, or have decreased significantly, the Commission made the determination in 1990 that, absent compelling circumstances, such changes would not warrant Commission review. Instead, the Commission decided to look only at the carrier's rates, which would be adjusted annually to reflect both inflation and increases in productivity within the telecom sector. The Commission identified such compelling circumstances as extraordinary reductions in earnings or unusually low earnings over a prolonged period of time. Neither of those circumstances are present here. There simply is no basis for SBC to seek revisions under the price cap regime for an increase in one particular type of costs endogenous to the price caps.

SBC also asserts that it should be allowed an exogenous cost adjustment to recover the increase in uncollectible expense.[13] Clearly, such an adjustment is not warranted because the related costs do not fall within the types of costs that the Commission has identified as exogenous to the price cap regime.[14] SBC would have to expand the list of identified exogenous costs, but it has made no attempt to do so. In addition, the Commission should note that neither

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9 ***Id*** at ¶ 147.

10 ***Id.***

11 Direct Case at 7.

12 ***Price*** *Cup* ***Order*** at ¶¶ 34-35.

13 Direct Case at 10.

14 ***Price*** *Cup* ***Order*** at ¶¶ 166-190 ("Exogenous costs are in general those costs that are triggered by administrative, legislative or judicial action beyond the control of the carriers.")

Verizon nor BellSouth considered their uncollectible expenses to be exogenous to the price cap regime. Further, SBC proposes to re-adjust its rates to reflect uncollectibles, but proposes no other changes to its cost structure. Unless SBC is willing to have all of its expenses re-examined to determine more appropriate price cap rates, SBC should not be allowed to pick-and-choose which expenses it deems significant enough to warrant special treatment.

In fact, SBC had such an opportunity to re-initialize its price cap rates as recently as 2000, and SBC elected not to take advantage of the opportunity. In the ***CALLS Order,*** the Commission gave SBC the choice to submit the cost studies necessary to determine more accurate interstate rates, or base the rate changes under the *CALLS* ***Order*** regime on its existing price cap rates.[15] SBC chose the latter option. This was an important decision by SBC because, as demonstrated by Exhibit 2, SBC's uncollectibles in 2000 were a third higher than they were in 1990. Nonetheless, SBC's level of uncollectibles were not significant enough at that time to prompt SBC to seek to re-initialize its rates.

Moreover, there are much better ways for SBC "to take additional action to protect itself from significant risks of nonpayment."[16] Primarily, it could honor its obligations under the Telecom Act and actually consider taking a more cooperative position with CLECs. The Commission must consider how SBC's own conduct with respect to its wholesale customers has contributed to their financial difficulties. If, through its conduct in provisioning wholesale services, SBC has impaired a competitor's ability to compete, or provided services in such a manner that discourages customers from switching away from SBC, or engaged in other

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[15] ***Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers;*** Sixth Report and Order, ***Low-Volume Long-Disfance Users,*** Report and Order, ***Federal-Slate Joint Board on Universal Service,*** Eleventh Report and Order, 15 FCC Rcd 12962 (2000), ***affd inpart, rev'd inpart, and remanded inpart, Texas Office of Public Util. Counsel et al. v. FCC,*** 265 F.3d 313 *(5"* Cir. 2001) ***("CALLS Order")*** at ¶ ***57.***

[16] Direct Case at 3.

anticompetitive conduct, SBC has only itself to blame for a risk in the increase in uncollectibles. It should come as no surprise to SBC that its anticompetitive conduct could eventually render carriers insolvent or unable to pay their bills. SBC comes to the Commission as if these business failures were occurring in a vacuum and SBC had no involvement in the CLECs' troubles.

B. SBC Has Waived Its Right to An Adjustment Due to Reduced Earnings

SBC contends that "because the GDP-PI fails to measure the disproportionately negative state of the telecommunications sector as compared to other sectors of the economy, SBC's rates under price caps do not accurately reflect its risk of uncollectibles."[17] To the contrary, until recently, under the price cap regime SBC was ***protected*** from the business risks in the economy, including the telecommunications sector. Under the price cap regime, SBC was guaranteed a minimum rate of return in order to ensure that SBC would always be able to provide telephone service.

SBC waived its right to a guaranteed rate of return, however, and assumed additional risk of loss when it elected to receive pricing flexibility for its interstate access services. In the 1999 ***Pricing Flexibility Order***, the Commission required price cap LECs to waive the "lower end adjustment mechanism" that guaranteed a 10.25% rate-of-return if they were granted pricing flexibility under the Commission's new rules.[18] The waiver was holding-company-wide when an ILEC received pricing flexibility for even a single MSA.[19] SBC has been granted pricing flexibility for interstate exchange access services, and thus has waived its guaranteed rate-of-

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[17] *Id.* at 5.

[18] ***Access Charge Reform,*** Fifth Report and Order and Further Notice **of** Proposed Rulemaking, 14 FCC Rcd 14221 (1999) ***("Pricing Flexibility Order")*** at ¶¶ 160-168.

[19] *Id.* at ¶ 167.

return.[20] SBC assumed additional risk of loss in exchange for the opportunity to earn additional profits through pricing flexibility. By seeking permission to increase its customers' deposit requirements, SBC is effectively seeking a modification of its price cap regime to further reduce its risk of losses from non-payment. SBC has waived that right, and it should not be allowed to invoke it now.

Not only has SBC willingly assumed additional risk of loss, it has benefited by being granted additional opportunity for profit under price caps. The original price cap regime required SBC to "share" profits it earned in excess of a fixed rate of return with its ratepayers.[21] The sharing mechanism was implemented so that "consumers receive their fair share of productivity gains that occur, just as they would in an industry with keener competition."[22] The Commission, however, eliminated that sharing requirement in 1997 in order to increase ILEC incentives to reduce costs and improve efficiency, rather than game the system by misallocating costs from unregulated services.[23] SBC wants it both ways, of course. It wants the ability to earn increased profits on regulated interstate services, but it also wants additional protection from possible losses as well.

In denial of these obvious facts, SBC asserts that the financial impact to SBC of not being permitted its new security deposit terms "will be devastating."[24] In ridiculous overstatement, SBC claims that "without additional protection, SBC soon could find itself before the bankruptcy

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[20] ***Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services for Ameritech Operating Companies, Pacific Bell Telephone Company, Southern New England Telephone Company, and Southwestern Bell Telephone Company,*** Memorandum Opinion and Order, 17 FCC Rcd 6462 (2002).
[21] ***Price Cap Order*** at ¶¶ 124-125.
[22] *Id.* at ¶ 124.
[23] ***Price Cap Performance Review for Local Exchange Carriers; Access Charge Reform,*** Fourth Report and Order, 12 FCC Rcd 16642 (1997), ***rev'd in part, aff'd in part, United States Telecom Ass'n v. FCC,*** 188 F.3d 521 (D.C. Cir. 1999) at ¶ 148.
[24] Direct Case at 3.

court."[25] It would take monumental mismanagement for SBC's uncollectibles to drive the company into bankruptcy. Despite SBC's claims to the contrary, the Bell operating company ("BOC") level of non-payment has remained remarkably steady, even following the Telecom Act of 1996. ARMIS data available from the Commission indicates that, on average, uncollectibles as a percentage of total operating revenues for the BOCs have remained nearly constant at 0.52%.[26] **As** Exhibit 2 demonstrates, uncollectibles as a percentage of total operating revenues for SBC has been much lower, averaging 0.35% since 1990.[27] Over that period, this percentage has ***never*** exceeded 0.52%, the BOC average. Less than one-half of one percent of SBC's total interstate operating revenues are at issue in this proceeding. For SBC to suggest that such a small portion of its total operating expenses could bankrupt the company is nonsense.

Moreover, SBC cannot demonstrate that **an** increase in uncollectibles is part of **an** irreversible trend. The outlier data point for the year 2001 must be considered an anomaly, and certainly not a trend: the years 1996-2000 reflected percentages of 0.54%, 0.56%, 0.46%, 0.52%, and 0.52%, respectively, for all BOCs. SBC's figures are just as consistent: 0.39% in 1996, and 0.35% in 2000. Until SBC demonstrates a trend beyond those attributable to the recent downturn in the telecommunications industry, SBC's current concerns must be considered temporary

Further, whatever additional risk SBC is currently experiencing must be considered in the context of SBC's total financial position. Price cap regulation has been very, very good for the BOCs. The ARMIS data indicates that the SBC and the other BOCs have enjoyed almost steady increases in total operating revenues from interstate operations (net of uncollectibles) since price

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25 *Id.*
26 See Exhibits 1, 2

cap regulation began in 1991. In addition, the average rate-of-return for SBC and the BOCs for interstate services has increased steadily over the period. Even as uncollectibles rose, the BOC rate-of-return rose just as fast. The average rate-of-return for all BOCs for the period was 15.2%, and SBC's average rate of return for interstate services over the same period was 15.7%. As recently as 2001, when SBC experienced the anomalous increase in uncollectibles, SBC's rate-of-return reached a 12-year peak and exceeded 22%.

Even if the BOCs' uncollectibles have increased, it would be inappropriate for the Commission to consider uncollectibles independently of other pricing factors applicable to SBC under its price cap plan. The Commission has generally looked at a carrier's overall rate-of-return to determine the effectiveness of a price cap plan, and SBC is clearly doing very well in that regard. The evidence simply does not demonstrate any hardship imposed on the BOCs as a result of an increase in uncollectibles.

II. WHERE PRICE CAPS NO LONGER APPLY, SBC DOES NOT NEED SECURITY DEPOSITS

In service areas where SBC has obtained special access and dedicated transport pricing flexibility, price caps no longer apply for those services. In those areas, SBC may charge whatever it wants to charge, and may adjust its rates to include a premium to account for risk. As AT&T points out in its October 15, 2002 Petition for Rulemaking, SBC's special access rates in areas in which it has obtained pricing flexibility are grossly excessive, and SBC is gouging its captive special access customers.[28] According to AT&T's review of SBC's ARMIS data, SBC

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[27] Note that the total Uncollectibles for each year in Exhibit 2 equals the total amount of Uncollectibles identified by SBC by year in Table 2 of the Direct Case.

[28] *AT&T Corp. Petition for Rulemaking To Reform Regulation Of Incumbent Local Exchange Carrier Rates For Interstate Special Access Services,* filed October 15,2002, at 3.

is earning a whopping 54.60% rate of return on its special access products.[29] It is inconceivable that rates with a 54.60% rate of return do not adequately protect SBC from the risk of loss from non-payment

111. SBC'S LOSSES ARE ISOLATED, BUT ITS PROPOSED SOLUTION IS NOT

SBC proposes to impose increased security deposit requirements on carriers that have never established a record of failure to pay. The SBC proposal would almost certainly apply to many carriers that will never default on their payments to SBC. The SBC proposal will impose a burden on these carriers that is completely unjustified. SBC's own data demonstrates that a small handful of carriers are causing a disproportionate amount of the losses, yet SBC's proposal is a dragnet and over-inclusive. Based on the scanty amount of information provided by SBC regarding its claims in bankruptcy, it is clear that a few carriers—most likely WorldCom and Global Crossing—are responsible for SBC's largest claims. SBC admits that most of its uncollectibles are owed by its largest customers.[30] Moreover, because the data provided by SBC reflects only its claims in bankruptcy proceedings, it is possible that a significant amount of the sums owed will be paid to SBC eventually.

Obviously, this issue of possible non-payment or delayed payment is the consequence of a few enormous defaults, and it is not attributable to the CLEC or IXC industry generally. The solution proposed by SBC would not be focused on these isolated losses, but would be overextended to every carrier that was deemed to be a credit risk by SBC. Moreover, the fact that only a few carriers represent the great majority of SBC's uncollectibles casts considerable

29 Id. at 8.
30 Direct Case at 2.

doubt on the assumption that SBC is not adequately protected through its current security deposit system for the remaining defaulting carriers.

Moreover, all telecommunications carriers are experiencing an increase in uncollectibles. US LEC, for example, adjusted its doubtful-accounts reserve by $9.5 million to reflect potential losses from the WorldCom bankruptcy.[31] Interconnection of networks means that carriers are doing business with each other, in addition to doing business with the BOCs. Simply because SBC is much larger than the carriers with which it interconnects does not necessarily mean that SBC incurs greater risk of non-payment than those carriers. In fact, SBC has enjoyed added protection from risk of non-payment even though its level of non-payment is enviable compared to competitive firms.

Consider, for example, the fact that CLECs have no ability to demand security deposits from SBC, even though SBC frequently owes significant amounts of money to them, repeatedly refuses to make payment, and has an extremely poor record of making timely payments. Unless SBC can demonstrate that it would not be required to submit deposits to CLECs under its own timely payment standard, it should not be allowed to subject CLECs to a subjective assessment of creditworthiness. SBC's "unclean hands" in this matter alone warrants rejection of its proposed tariff revisions.

In addition, SBC proposes to obtain additional deposits from the same carrier customers that are trying to compete with SBC in the market and that depend on services provided by SBC to serve their own customers. By demanding additional deposits, SBC would be in the position to exacerbate the cash flow problems of its competitors that may also be experiencing an increase in uncollectibles. Given that uncollectibles represent about one-half of one percent of total

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31 US LEC Corp., **Form 10-Q, "Results of Operations" (Aug. 14, 2002).**

operating revenues for SBC and the other BOCs, the Commission should recognize the enormously disparate impact SBC's deposit requirements will have on CLECs. As the Commission stated in its Designation Order, "an approach that has the fewest adverse effects on the competitive market while protecting SBC's interests would be preferred."[32] In order to provide marginally more security to SBC to protect a very small portion of revenues, SBC's proposal would burden CLECs that are in no position to either submit cash deposits to SBC in order to obtain essential facilities and services, or encumber assets by securing letters of credit or other collateral arrangements.

What must be considered in connection with SBC's proposal is that SBC has existed in a monopoly environment in which it has historically enjoyed little risk of losses from non-payment overall. Unless SBC can demonstrate that firms in competitive markets have similar levels of security from non-payment, SBC has to be considered adequately protected from non-payment already. SBC has not provided that information, and its proposed tariff revisions should be rejected

IV. SBC IS UNABLE TO DEFEND ITS DEPOSIT REFUND PROPOSAL

The Designation Order asked SBC to explain "why it should not include provisions that provide it will periodically review the need for a security deposit[.]"[33] SBC's response was that "it is most reasonable for the customer, rather than SBC, to initiate the refund."[34] SBC then argues, essentially, that it is "customary" to put the obligation on the creditor to seek a refund of its deposit. SBC's position is meritless. If "customers are in the best position to determine

32 Designation Order at ¶ 19.
33 *Id* at ¶ 31.
34 Direct Case at 32.

when their credit or payment conditions have improved,"[35] they are also in the best position to determine when their credit or payment conditions have worsened. By SBC's reasoning, SBC should leave the decision-making regarding a security deposit to the customer. Any other approach would be asymmetrical and discriminatory.

Further, as Verizon aptly noted in its Direct Case, **a** high rate of interest owed on customer deposits would provide the BOC with an incentive to return customer deposits promptly.[36] Verizon agreed to pay an annual interest rate of 18.25% on customer deposits.[37] SBC should agree to the same interest rate. Its proposal to pay only the one-year Treasury Bill rate[38]—currently around 1%—would not be compensatory to the customer that must deposit significant sums with SBC. With SBC's proposed extremely low interest rate, SBC would never have any incentive to review its customer deposit holdings to determine whether any of them are being wrongfully withheld.

V. THE EXISTING CUSTOMER DEPOSIT CRITERIA ARE SUFFICIENT

SBC proposes to establish additional criteria regarding "impairment of credit worthiness" to determine whether it will demand a security deposit from a wholesale customer. Currently, a carrier's history of past payment is the criteria to determine whether SBC's risk of non-payment has increased. SBC seeks to supplement that criteria by other measures, including a carrier's rating for its debt securities. **As an** initial matter, the Commission instructed SBC "to explain how each of these criteria is a valid predictor of whether the customer will pay its interstate

35 *Id.*
36 Verizon Direct Case at C-1, Docket No. 02-317.
37 Id.
38 Direct Case at 26-7.

access bill."[39] SBC responded only generally by saying that "there is substantial statistical support for the positive relationship between public credit ratings and probability **of** default."[40] As evidence, SBC asserted that the risk of default for firms with investment grade debt securities was 0.4%, while the risk of default for the "lowest speculative grade" debt securities was 10%. Yet SBC's proposal is not limited to firms with the "lowest speculative grade" debt rating. It would apply to any firm that dipped below investment grade and whose risk of default is only slightly greater than the 0.4% for investment grade debt. Moreover, even at a default rate of 10% for the "lowest speculative grade" debt, SBC can expect 90% of such highly impaired firms to meet their payment obligations. SBC's numbers simply do not support its argument. The reasonable measure of a company's ability to make future payments is its history of making past payments. Unless a company demonstrates a failure to make timely payments, there should be no reason to anticipate default by the company in the future. Payment history is objective and simple to determine. The additional criteria proposed by SBC are not necessary.

VI. SHORTENED NOTICE PERIODS ARE UNJUST AND UNREASONABLE

SBC'sproposal to provide customers only 10 days notice of service termination and only 21 days notice to comply with a demand for a security deposit or advance payment is unjust and unreasonable under section 201 of the Act and, therefore, unlawful. Section 201 of the Communications Act provides that "[a]ll charges, practices, classifications, and regulations for and in connection with such communications service, shall be just and reasonable, and any such

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39 Designation Order at ¶ **20.**

40 Direct Case at 21.

charge, practice, classification, and regulation that is unjust or unreasonable is hereby declared unlawful."[41]

In an effort to provide SBC an opportunity to demonstrate that its proposed shortened notice periods are reasonable and just, the Commission set forth a series of inquiries for SBC to respond. SBC fails to respond to even the most basic Commission inquiry. SBC does not explain why its security deposit and advance payment provisions are alone insufficient to protect SBC and require shortened notice periods as well. Ignoring this basic Commission inquiry, SBC states simply that the shortened notice periods are "necessary to ensure that SBC can take prompt action to minimize its losses to **30** days."[42] This single need to minimize its exposure to **30** days, which arguably is covered by the aggressive security deposit or advance payment terms, must be balanced against the harm to the public interest. **As** the Commenters previously alerted the Commission,[43] it is impossible for customers to provision replacement services in such a short period of time, if replacement services are available at all. Furthermore, a 10-day notice would prevent customers from complying with federal and state service withdrawal and end user notice requirements. Such a short time frame is clearly not in the public interest because it would prevent proper notice to end users and, more importantly, prevent such end users from finding alternative services. Moreover, a customer would not have sufficient time to dispute SBC's unilateral decision to terminate service nor request the intervention and assistance of federal and state commissions or courts. Thus, 10 days notice to customers will likely result in the

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[41] 47 U.S.C. § 201(b).

[42] Direct Case **at 29.**

[43] *Ameritech Operating Companies, Nevada Bell Telephone Company, Pacific Bell Telephone Company, Southern New England Telephone Companies, Southwestern Bell Telephone Company Tariff F.C.C. Nos. 1, 1,* **2, 39,** *and 73,* Petition to Reject **or** Suspend and Investigate Proposed Tariff Revisions, Transmittal **Nos.** 1312, 20, 77, 772 **and** 2906 (tiled **Aug.** 9,2002) ("Petition to Reject").

disconnection of numerous end users. This grave consequence far out weights SBC's single objective to "minimize its losses to 30 days."[44]

SBC does make an attempt, albeit a pitiful one, to explain why it needs to impose a shortened bill payment period of 21 days on customers. Again, SBC presents its single objective of minimizing its risk of uncollectibles to one month.[45] It justifies its 21-day period by arguing that the 21-day trigger does not begin until the bill is sent out. This justification is flawed and misleading. On the one hand, SBC says that the 21-day period will enable SBC to "initiate disconnection procedures after 30 days of unpaid services."[46] Then, admitting that there is often a lag time in the receipt of a bill, SBC states that the 21-day period will not begin until "the date SBC sends or transmits the bill to the customer."[47] Keeping in mind it takes up to *6* days for SBC to send out a bill,[48] we are talking about a difference of only 3 days (21 plus *6* versus 30) for SBC to send a disconnect notice. While it may appear odd that SBC would go to such lengths to accelerate its release of a disconnect notice by 3 days, it is not surprising. SBC's offer is a ruse intended to sway the Commission and its customers into a false belief that the customer will have an entire 21-day period to review and process SBC bills.

One must not be fooled by SBC's empty offer. SBC's offer provides no explanation as to how the customer will know the date SBC sends or transmits the bill. Will there be a date stamp? a separate statement? a phone call? It is doubtful that SBC will give the customer any notice of the transmittal date, such options would cost money and SBC has committed to none of

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44 **Direct Case at 29.**

45 *Id.* **SBC's risk of loss is minimized already in that a significant amount of switched and special access services are billed in advance. SBC admits that "the vast majority of SBC's billing is in advance"—no less than 85% and as much as 89%.** *Id.* **at 13.**

46 *Id.* **at 29.**

41 *Id.*

48 *Id.* **at 12.**

them. Without a written indication of the transmittal date or a detailed explanation as to how a customer may determine such date, SBC will be in a position to effectively ignore its proposal in order to accelerate unfairly payment dates. Thus, it would appear that under SBC's proposal the customer has 21-days from the bill date. This is entirely unacceptable. **As** described below, customers will need to make payment immediately upon receipt of the bill and forego reviewing the bills in order to avoid termination of service.

Even if the transmittal date triggers the 21-day period, the 21-day period is unreasonable and unjust. Delivery methods vary in speed, and holidays and weekends further reduce the 21-day period. **As** noted in the Petition to Reject, it takes SBC approximately 12 days from the bill date to deliver invoices.[49] This is ***6*** days longer than the ***longest*** invoice release time-frame claimed by SBC.[50] Thus, a customer may only have 9 to 10 days, or less, after receipt of a bill to review, identify errors, and process payments. SBC's bills are riddled with inaccuracies.[51] In fact, the existing time frame to review invoices is hardly adequate. Considering the size and complexity of these bills, as well as the billing inaccuracies common in SBC bills, it is clear that the proposed 21-day period is absurd and abusive to customers.

In support of its 21-day period for payment of deposits, SBC repeats its single need to minimize its exposure to only one month.[52] SBC claims that 21 days is "sufficient time" for the customer to assess SBC's determination that a deposit is necessary.[53] SBC then states that the

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49 Petition to Reject at 13. SBC's claim that customers receive invoices within a 3-day period even by **US** mail. This claim is not consistent with the experiences of the Commenters. Moreover, SBC provides no documentation to support this claim.

50 SBC claims it may take up to ***6*** days for SBC to ***send*** *out* a bill. Direct Case at 12.

51 **As** detailed in their Petition to Reject, Commenters have experienced numerous billing inaccuracies by SBC. ***See*** Petition to Reject at 13.

52 Direct Case at 30.

53 ***Id.***

customer will have "no basis to dispute a determination that a deposit is required."[54] Thus, SBC's claim is baseless. SBC makes clear that its unilateral decision to require a deposit is not subject to question, by anyone. Placing this enormous power in the hands of SBC is irresponsible

SBC fails to address, as requested by the Commission, why the shortened notice period is necessary to protect SBC's interests and still allows adequate time for the customer to dispute the deposit and to access the necessary funds. There is no provision that allows customers to dispute SBC's determination that **a** deposit is required. **As** indicated above, SBC, in its arrogance, does not believe the customer should examine SBC's analysis. Instead, the customer is expected to blindly obey SBC and produce the deposit within 10 days or face the draconian penalty of discontinuation of *all* services, including those provided under other tariffs or contract vehicles, on virtually no notice. There is no recourse available to the customer at all once SBC has initiated the process.

The Commission further directed SBC to submit information for the most recent twelve months as to the timeliness of its billings. SBC fails to produce any information, ignoring the Commission's request. SBC provides no excuse for failing to submit information on each of the twelve months, as requested by the Commission.

It is clear from reviewing SBC's Direct Case that SBC has no basis for requesting shortened notice periods. SBC appears to be requesting shortened notice periods for the sole purpose to harass and to harm its competitors. **As** detailed above, SBC has failed to prove its case

54 *Id*

VII. CONCLUSION

Clearly, the repressive and burdensome nature of the deposit requirements are far more damaging than they need to be to protect SBC's interests. They are, in reality, punitive measures designed to punish CLECs. The proposed revisions are, in fact, a knee-jerk response to a billing and collection problem that is, to some degree, of its own making. Inasmuch as SBC collects many of its charges *in* ***advance,*** it would seem to indicate a certain inefficiency, if not negligence, on SBC's **part** if its uncollectibles have grown unwieldy, which they have not. Instead of cleaning its own house, SBC proposes to "clean out" its customers by unilaterally exacting burdensome deposits. The simple fact is that SBC prefers to draw down the resources of its customer/competitors. Moreover, the proposed provisions are much too broadly written, penalizing customers with good payment histories. The Commission should reject them as unjust and unreasonable.

For the foregoing reasons, SBC's Direct Case does not demonstrate that it should be allowed to change the security deposit requirements for its carrier customers or to shorten its notice periods. SBC is already adequately protected under the price cap regime and SBC assumed additional risk of loss when it obtained pricing flexibility for interstate services. SBC's proposed deposits requirement changes are simply modifications to its price cap plan in order to increase its earnings. SBC has shown no reason why such an increase is warranted. Accordingly, SBC's proposed tariff revisions should be rejected.

Respectfully submitted,

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Dated: November 14,2002

Exhibit

REVENUES, UNCOLLECTIBLES, RATE OF RETURN
Aggregate BOC incl. GTE ($000)

Year	Total Operating Revenues (Interstate) 1090(h)	Uncollectibles (Interstate) 1060(h)	Uncollectibles as % of TOR (Interstate)	Rate of Return (Interstate) 1920(h)	Uncollectibles Change YOY
1990	19,617,779	69,778	0.36%	12.84%	
1991	19,350,285	78,777	0.41%	12.08%	12.90%
1992	19,703,065	83,954	0.43%	12.97%	6.57%
1993	20,404,956	82,321	0.40%	13.49%	-1.95%
1994	21,182,227	106,098	0.50%	13.66%	28.88%
1995	21,773,231	103,570	0.48%	13.64%	-2.38%
1996	22,590,365	121,681	0.54%	14.77%	17.49%
1997	23,435,496	131,837	0.56%	15.36%	8.35%
1998	25,077,761	115,437	0.46%	15.98%	-12.44%
1999	26,535,208	138,073	0.52%	18.17%	19.61%
2000	28,222,750	146,983	0.52%	19.26%	6.45%
2001	30,123,598	271,432	0.90%	19.74%	84.67%
TOTAL	278,016,721	1,449,941			
AVERAGE	23,168,0601	120,8281	0.52%	15.16%	15.29%

Source: ARMIS Report 43-01: **Table I.** Cost and Revenue Table

Exhibit 2

REVENUES, UNCOLLECTIBLES, RATE OF RETURN
SBC ($000)

Year	Total Operating Revenues (TOR) (Interstate) 1090(h)	Uncollectibles (Interstate) 1060(h)	Uncollectibles as % of TOR (Interstate)	Rate of Return Verizon * (Interstate)	Uncollectibles Change YOY
1990	5,991,659	23,024	0.38%	**12.84%**	
1991	5,878,025	21,987	0.37%	**12.28%**	**-4.50%**
1992	5,980,680	21,123	0.35%	**12.73%**	**-3.93%**
1993	6,295,145	22,338	0.35%	**13.81%**	**5.75%**
1994	6,519,373	25,905	0.40%	**13.91%**	**15.97%**
1995	6,717,367	16,554	0.25%	**15.26%**	**-36.10%**
1996	6,978,562	26,896	0.39%	**15.71%**	**62.47%**
1997	7,042,184	23,029	0.33%	**13.47%**	**-14.38%**
1998	7,687,547	21,761	0.28%	**15.53%**	**-5.51%**
1999	8,254,495	21,373	0.26%	**18.88%**	**-1.78%**
2000	8,932,712	30,987	0.35%	**20.98%**	**44.98%**
2001	9,622,673	48,032	0.50%	**22.36%**	**55.01%**
TOTAL	900,422	303,009			
VERAG	158,369	25,251	0.35%	**15.65%**	**10.73%**

Source: **ARMIS Report 43-01: Table I. Cost and Revenue Table**
*** Calculated from fields 1915 (h) (Net Return), and 1920 (h) (Average Net Investment)**

CERTIFICATE OF SERVICE

I hereby certify on this 14th day of November, 2002, that copies of the foregoing Opposition to Direct Case, Docket No. WC 02-319, for **US** LEC Corp.; Level **3** Communications, LLC; Focal Communications Corporation; Pac-West Telecomm, Inc.; Business Telecom, Inc.; ATX Communications, Inc.; DSLnet Communications, LLC; **U.S.** TelePacific Corp. d/b/a TelePacific Communications; and Freedom Ring Communications, LLC d/b/a BayRing Communications (collectively "CLEC Commenters"), were served via messenger to the following:

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