

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter Of)	
)	
National Exchange Carrier Association, Inc.)	WC Docket No. 02-340
Tariff FCC No. 5)	
Transmittal No. 951)	

OPPOSITION OF NEXTEL TO NECA DIRECT CASE

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SUMMARY

Nextel Communications, Inc. (“Nextel”) requests that the Commission reject as unlawful the National Exchange Carrier Association’s (NECA’s) suspended tariff language, authorizing it to require security deposits, letters of credit or advance payments from interstate access customers. In its direct case, NECA failed to meet its legal burden of demonstrating that its proposed replacement tariff is just, reasonable, and not unreasonably discriminatory under Sections 201 and 202 of the Communications Act.

Facilities-based competition for interstate access continues to be conspicuous by its absence throughout the mainly rural areas served by NECA members, requiring Nextel to rely on special access services purchased from NECA member companies in order to offer its commercial mobile radio services in NECA members’ service areas. At the same time, Nextel competes with wireless affiliates of NECA member companies, such as US Cellular, Inc., a subsidiary of NECA member Telephone and Data Systems, Inc. Should requirements for security deposits increase substantially, NECA member companies will be able to raise rivals’ costs and tie up competitors’ scarce working capital.

NECA’s direct case reveals clearly that payments owed by Global Crossing and WorldCom, both of which are in bankruptcy, account for the vast majority of uncollectibles. The direct case fails to explain how the new security deposit provisions would have aided NECA’s member companies in mitigating any exposure to these bankruptcies. NECA’s proposed use of bond ratings to determine the risk that a customer will not pay for access charges is arbitrary. The direct case also neither explains nor defends the choice of Dun & Bradstreet composite credit appraisals of “good” or higher, or the Paydex score of “average,” as credit scores that are

sufficient for a customer to avoid paying a security deposit. In addition, the tariff requirement demanding security deposits whenever there are two or more late payments in the course of a year is unreasonable because, as NECA admits, some number of NECA's members count disputed payments as "late." Finally, Nextel opposes NECA's proposal to shorten the notice for disconnection from NECA member companies' networks.

The Commission should find that NECA has failed to meet its burden to justify its suspended security deposit tariff provisions as just, reasonable, and not unreasonably discriminatory. Carrier customers with track records of on-time payments should not be subject to NECA's proposed onerous security deposit requirement. The Commission should find NECA's tariff transmittal to be unlawful.

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I. INTRODUCTION

Nextel Communications, Inc. (“Nextel”), by its attorneys, hereby opposes the direct case filed by the National Exchange Carrier Association (“NECA”) in the above-captioned tariff investigation, and requests that the Commission reject the suspended tariff language as unlawful. On October 31, 2002, the Wireline Competition Bureau released an order designating issues in the investigation of NECA Transmittal No. 951. In that transmittal, NECA sought substantial changes in previously-prescribed tariff provisions governing security deposits that NECA could demand from its interstate access customers.¹ In its direct case, NECA failed to meet its legal burden of demonstrating that its proposed replacement tariff is just, reasonable, and not unreasonably discriminatory under Sections 201 and 202 of the Communications Act.²

The tariff provisions that NECA proposes would give NECA’s member companies a powerful weapon that could be deployed against its competitors, such as Nextel. As Nextel will

¹ *National Exchange Carrier Association, Inc., Tariff FCC No. 5, Transmittal No. 951*, WC Docket No. 02-340, Order (rel. Oct. 31, 2002) (DA 02-2948) (hereinafter “Designation Order”).

² 47 U.S.C. §§ 201-202.

discuss below, competitors remain highly dependent on the NECA member companies' networks for interstate access services. NECA member companies primarily serve more rural areas, where facilities-based competition for interstate access continues to be conspicuous by its absence. Nextel, along with its affiliate, Nextel Partners, Inc., purchases special access services from NECA member companies to offer its commercial mobile radio services in NECA members' service areas. At the same time, Nextel competes with wireless affiliates of NECA member companies, such as US Cellular, Inc., a subsidiary of NECA member Telephone and Data Systems, Inc. Should requirements for security deposits increase substantially, NECA member companies will be able to raise rivals' costs and tie up competitors' scarce working capital.³ In effect, the proposed tariff provisions would empower NECA's members to impose additional economic hardships on financially healthy companies like Nextel. In addition, the application of the proposed tariff language will create an undisputed discriminatory effect, since virtually none of the affiliates of NECA's member companies will be subject to security deposits.⁴ In Nextel's view, carrier customers that have a track record of on-time payments should not be subject to onerous security deposits.

II. DISCUSSION

In its order initiating an investigation, the Bureau designated several issues and made numerous data requests. Of the issues designated, there are two of particular concern to Nextel.

³ The carrier customer has virtually no bargaining power against demands for security deposits, since NECA's members have the ability to discontinue service to that customer, and the customer has no practical alternatives to these incumbent rural networks.

⁴ NECA Direct Case, WC Docket No. 02-340, at 21 (filed Nov. 21, 2002) (disclosing that of the 1,000 members of the pool, only one affiliate of one member company might be subject to a deposit requirement).

In this Opposition, Nextel first addresses whether the security deposit provisions applicable to interstate access customers are just and reasonable and not so vague as to permit NECA member companies to discriminate unreasonably among interstate access customers.⁵ NECA's direct case reveals clearly that payments owed by Global Crossing and WorldCom, both of which are in bankruptcy, account for the vast majority of uncollectibles. The direct case fails to explain how the new security deposit provisions would have aided NECA's member companies in mitigating any exposure to these bankruptcies. NECA's proposed use of bond ratings to determine the risk that a customer will not pay for access charges is arbitrary. The direct case also neither explains nor defends the choice of Dun & Bradstreet composite credit appraisals of "good" or higher, or the Paydex score of "average," as credit scores that are sufficient for a customer to avoid paying a security deposit. In addition, the tariff requirement demanding security deposits whenever there are two or more late payments in the course of a year is unreasonable because, as NECA admits, some number of NECA's members count disputed payments as "late." Finally, Nextel opposes NECA's proposal to shorten the notice for disconnection from NECA member companies' networks.⁶

A. The Tariff Provisions Requiring Security Deposits Are Vague, Ambiguous and Unreasonable

1. NECA Members' Uncollectibles Are Attributable to Two Major Bankruptcies

The Designation Order requested that NECA provide data to support its arguments that its current rates do not compensate NECA's member companies for uncollectibles, and data that

⁵ Designation Order ¶¶ 9-20.

⁶ *Id.* ¶¶ 27-28.

would demonstrate whether the uncollectibles level NECA's member companies are experiencing is a long term trend, suggesting a permanent change in the industry. The Designation Order notes that the proposed tariff imposes additional costs on competitors at a time when access to capital markets is extremely limited.⁷

While the data provided by NECA clearly show a recent increase in uncollectible revenue, it is also apparent from NECA's direct case that the lion's share of the uncollectible revenues experienced by NECA's pools are attributable to the 2002 bankruptcies of two interexchange carriers – Global Crossing and WorldCom.⁸ Through the year 2000, NECA's total common line and traffic sensitive uncollectibles ranged from approximately \$1.3 million to \$2.6 million a year. In 2001, that figure grew to approximately \$4.4 million. In 2002 year-to-date, NECA estimates that its uncollectibles for these two pools stand at approximately \$29 million. However, NECA predicts that the \$29 million figure underestimates the amount of 2002 uncollectibles that will actually occur. NECA estimates that once all its members report, the total common line and traffic sensitive 2002 uncollectible revenue attributable to these two companies will be \$70 million. Since both these companies are operating as debtors-in-possession,⁹ and presumably paying utility bills pursuant to court order, it would appear that \$70 million (if accurate) is the outside limit of NECA member companies' exposure to these

⁷ *Id.* ¶¶ 11, 14.

⁸ Global Crossing filed for bankruptcy in January 2002, and WorldCom filed in July 2002.

⁹ Indeed, Global Crossing has announced that it will emerge from bankruptcy in early 2003.

bankruptcies for 2002.¹⁰ While NECA does not disclose how much of the year-to-date \$29 million in uncollectibles is attributable to Global Crossing and WorldCom, its direct case indicates that some substantial part of it is.¹¹

Assuming, *arguendo*, that NECA's data and estimates prove accurate, it is readily apparent that NECA's rural membership may have been exposed to higher uncollectibles in 2002 mainly due to the bankruptcies of two large interexchange carriers. This fact does not support or justify a new security deposit requirement applicable to all purchasers of interstate access. At most, NECA's direct case raises a cost recovery issue of the type normally examined in annual rate filings or, on occasion, mid-year adjustments to rates. Indeed, Nextel notes that NECA has in fact raised the cost recovery issue, and that the Commission is examining the record in a separate proceeding to determine whether any rate relief is warranted.¹² But there is no data in this direct case that explains why, in response to bankruptcies of just two carrier customers, all

¹⁰ If WorldCom's stated intentions to emerge from bankruptcy in 2003 prove true, it may well be that there is no further impact from these two large bankruptcies on NECA's uncollectible levels.

¹¹ NECA Direct Case at 4 ("The picture would look far bleaker in 2002 if all of NECA's pooling companies had reported their expected losses to the pool." The text then immediately discusses that member companies have not completely reported uncollectibles owed by Global Crossing and WorldCom.).

¹² *National Exchange Carrier Association, Inc., Tariff FCC No. 5, Transmittal No. 952*, WC Docket No. 02-356, Order (rel. Nov. 8, 2002) (designating issues in the investigation of a planned increase in NECA's interstate access rates for 2002). Nextel is not suggesting that NECA should necessarily be permitted to raise rates as it is seeking to do. Nextel is suggesting that an examination of costs in relation to earnings is the method that should be followed to determine whether the proposed rates are reasonable, given that the direct case in the instant proceeding fails to justify a new security deposit policy applicable to all purchasers of interstate access.

other competitors purchasing access from a NECA member should now be subject to increased security deposit requirements.¹³

Given the importance of the Global Crossing and WorldCom bankruptcies to NECA's 2002 experience, the direct case is also deficient in explaining how the new security deposit policy would have mitigated NECA's uncollectibles had it been in place. It appears that, at most, the new policy might have enabled NECA's members to collect two months of interstate access payments as security deposits, assuming Global Crossing and WorldCom experienced a triggering event under the tariff (*e.g.*, non-investment grade bond rating) before declaring bankruptcy. But we do not know how large the security deposit might have been for these two interexchange carriers, assuming the new policy had been in effect, relative to the \$29 million in uncollectibles year to date, or the estimated \$70 million attributable to them in 2002.

Moreover, once the carrier customers are in bankruptcy, utilities like NECA's member companies are entitled to adequate assurance of payment. Under Section 366(b) of the U.S. Bankruptcy Code, utilities (including incumbent LECs) may not discontinue service unless a debtor fails to provide "adequate assurance of payment, in the form of a deposit or other security" within twenty days of a bankruptcy court's order of relief.¹⁴ It is well established that federal bankruptcy courts have the "exclusive responsibility for determining the appropriate security which a debtor must provide to his utilities to preclude termination of service for non-

¹³ Direct Case at 6 (NECA was unable to provide detail about the number of defaulting entities, by size of entity).

¹⁴ See 11 U.S.C. § 366(b).

payment of pre-petition utility bills.”¹⁵ Given that the bankruptcy process ensures post-petition debts are paid to utilities, including interstate access payments to NECA, NECA’s reliance on two customer bankruptcies as justification for sweeping new security deposit tariffs is unfounded.

2. The Tariff Provisions Specifying Use of Bond Ratings Are Unjust and Unreasonable

The Designation Order states that NECA member companies will invoke a security deposit requirement if a carrier customer’s corporate debt securities rating with respect to any outstanding general debt obligation drops below BBB according to Standard and Poor’s or an equivalent rating from other debt rating agencies. The Designation Order asks NECA to explain how this provision is a valid predictor of whether a carrier customer will pay its interstate access bill.¹⁶

The short answer to the Commission’s question is that investment ratings on debt securities are unrelated to a carrier’s ability to pay, and are unrelated to the likelihood that a carrier will pay, its access charge bills. As a result, the criteria proposed by NECA are unreasonable. Debt securities, or bonds, are long term (*e.g.*, having a term of more than one year) investments in a company. The bond investor agrees to receive the principal back at a specified future time (*e.g.*, when the bond reaches maturity), and in general also agrees to receive periodic payments of interest.

¹⁵ See *In re Adelpia Business Solutions*, 280 B.R. 63, 80 (S.D.N.Y. 2002) (*quoting Begley v. Phila. Electric Co.*, 41 B.R. 402, 405-406 (E.D. Pa. 1984), *aff’d*, 760 F.2d 46 (3d Cir. 1985)).

¹⁶ Designation Order ¶18.

A bond's credit rating¹⁷ reflects an independent rating agency's opinion of the issuer's ability to pay interest on the bond and ultimately to repay the principal upon maturity. If those payments aren't made in full and on time, the issuer has defaulted on the bonds.¹⁸

Stated simply, in the context of bonds a "credit rating" is regarded as a predictor of the likelihood that the bond issuer will pay interest and principal *on bonds*. Interstate access charge bills are not analogous to bonds. A bond rating issued by an independent agency does not predict whether a company will pay its bills for operating expenses, and certainly does not predict a carrier's ability or willingness to pay its access charge bills.

In addition, bonds that are rated just above or below investment grade levels represent one common way companies raise capital to operate and invest in their businesses. These bonds,

¹⁷ Different rating companies use different rating systems. For example, Standard and Poor's rates bonds as triple-A, double-A, single-A, or triple-B. High yield or "junk" bonds are rated double-B, single-B, triple-C, double-C or single-C. D signifies "default" – a company that has failed to meet its interest or principle commitments. See The Vanguard Group, "What's A Credit Rating?", *available at*: <<http://flagship2.vanguard.com/web/planret/AdvicePTIBInvestmentsWhatsACreditRating.html>> (last visited Dec. 4, 2002). Moody's uses a slightly different ranking system, e.g., Baa instead of BBB and Ba instead of BB. In general, investment grade bond ratings contain the letter "A", or are the highest of the "B" ratings a company uses. High yield or "junk" bond ratings are any rating below investment grade.

¹⁸ See The Vanguard Group, "Investing in Bonds," *available at*: <<http://flagship2.vanguard.com/web/planret/AdvicePTIBInvestmentsInvestingInBonds.html>> (last visited Dec. 4, 2002); see also Moody's Investors Service, Global Credit Research, "Understanding Moody's Corporate Bond Ratings and Rating Process," Special Comment at 6, *available at*: <<http://www.moody.com/moodys/cust/staticcontent/2001400000399032/74982.pdf?section=rdef>> (May 2002). "Credit analysis consists of opinion forecasts (predictions) about the probability that a [bond issuer] will make promised payments. . . . There is an expectation that ratings will, on average, relate to subsequent [bond] default frequency, although they typically are not defined as precise default rate estimates." *Id.* While the paper notes that bond ratings have been applied in other contexts as a measure of financial health, the paper is very specific that the analysis and rating system exist to predict relative expected loss rates on corporate bond investments. *Id.* at 7.

which pay higher yields than do the “investment grade” bonds, no longer carry with them the negative connotations that they did in the 1970s or 1980s.

Issuers whose bonds trade in the high-yield market include many household names in addition to many lesser-known companies. . . . Why are high-yield bonds so popular today? For many issuers, high-yield bonds are a cost-saving alternative to borrowing money from banks.¹⁹

An estimated 80 percent of corporate debt is financed by commercial paper and public bond markets.²⁰ High yield bonds are commonly used in virtually every economic sector.

NECA’s suggested criteria will also produce discriminatory results in the market, adversely affecting competitors who use these high yield bonds as a routine form of financing. With one possible exception out of 1,000 NECA member companies, affiliates of NECA members will not be subject to security deposits under this new tariff.²¹ Yet many competitors have a Standard & Poor’s bond rating below investment grade and therefore would be subject to security deposit requirements under the proposed tariff regulations.

Even worse, NECA’s proposed tariff does not limit the bond rating to senior securities, but states that any debt security (which includes senior unsecured,

¹⁹ See Spear, Leeds & Kellogg, “Investor’s Guide to High Yield Bonds,” *available at*: <http://www.slk.com/bond/ig_hiyld/grown.html> (last visited Dec. 4, 2002). This guide also notes that in 1998, over 80% of all high yield bonds were rated single-B or above. This suggests that, depending on broader economic trends, numerous companies could issue high yield bonds for legitimate corporate purposes, but yet fail to meet Verizon’s “investment quality” criteria of triple-B or above.

²⁰ See Eric Uhlfelder, “Making the Grade,” *Registered Rep.* (Oct. 1, 2002), *available at*: <<http://registeredrep.com/magazinearticle.asp?magazinearticleid=157912&magazineid=156&mode=print>>.

²¹ Direct Case at 21.

subordinated, and junior unsecured debt securities) with a less-than-investment grade rating is sufficient to trigger a security deposit requirement.²² NECA's proposed tariff virtually ensures that companies that have issued multiple grades of debt securities will pay security deposits, since the various types of subordinated debt universally are assigned a lower rating than senior secured debt.

NECA attempts to defend its "credit-rating" criteria by relying on a confidential study filed by Verizon in support of its security deposit tariff. Verizon argues that this "internal study" demonstrates the link between the likelihood of paying interest and principal on bonds and the likelihood that a carrier customer will pay access charges.²³ In its Opposition to the Verizon Direct Case in WC Docket No. 02-317, Nextel explained that the "study" submitted by Verizon fails to establish any such link. Because Verizon has asserted that the study contains confidential information, Nextel filed its critique pursuant to the Commission's Protective Order in that case, and Nextel will not repeat its comments in that docket here. But whatever limited window into Verizon's experience the so-called "study" provides (and Nextel believes it is so limited as to be useless), its "results" cannot be generalized to NECA.

Moreover, NECA is incorrect in asserting that higher bond default rates experienced in the broader marketplace should justify its security deposit policy.²⁴ Whatever decisions companies make about debt securities obligations, the decision about paying access charge bills

²² See, e.g., *The Evolving Meaning of Moody's Bond Ratings*, August 1999 at 7-8 (providing a brief overview of the hierarchy of debt securities and noting that these various subordinated debt securities are usually rated at least one notch below senior debt securities).

²³ Direct Case at 16. The Verizon study appears in the Verizon Direct Case, WC Docket 02-317, at Confidential Exhibit A-11 (filed Oct. 29, 2002).

²⁴ Direct Case at 16.

is a completely different order of decision-making. Access services are essential to a carrier's ability to continue to operate and therefore enable cash flow, and this payment of access charges is unlike the payment of debt securities. Bond ratings predict debt payment – not operating expense payment. The Commission should not allow NECA to confuse the two, with the unreasonably discriminatory result that NECA member companies impose security deposit requirements on everyone except themselves and their affiliates.

3. NECA's Direct Case Fails to Justify Credit Scores As A Basis For Collecting Security Deposits

The Designation Order notes that NECA's proposed tariff would trigger a security deposit payment in cases where the carrier customer does not issue debt securities, but is assigned "a composite credit appraisal rating" by Dun & Bradstreet below the level of "good" or Dun & Bradstreet issues a Paydex score of below "average." The Order requests information about why these criteria validly predict whether the company will pay its interstate access bills.²⁵

NECA's direct case fails to provide even a shred of information to support its proposed use of these Dun & Bradstreet credit scores, much less provide unambiguous references to which of the numerous credit rating measures produced by Dun & Bradstreet that NECA's members will be entitled to use.²⁶ First, NECA does not explain or justify why "a composite credit rating" of "good" or above is sufficient to permit a carrier to escape a security deposit requirement, while a rating of "fair" is not. Nor is there any available explanation on the Dun & Bradstreet

²⁵ Designation Order ¶ 18.

²⁶ NECA's use of purchased credit scores is somewhat different than the BellSouth proposal being examined in WC Docket No. 02-304. In the BellSouth case, BellSouth is purchasing software packages that enable BellSouth itself to input data and produce a customer's credit score. Here, NECA is proposing to use credit scores as calculated by Dun & Bradstreet.

web site that explains the distinction in these gradations that would tend to support (or not support) NECA's proposed use of the grades. The only information readily available is that there are four gradations – high, good, fair and limited.²⁷ While the composite credit score appears to be related to “financial strength,”²⁸ NECA has provided no information as to: (1) why this particular indicator predicts a customer's ability to pay access charges; and (2) the facts on which this indicator is based.

The Paydex score is apparently a measure of a company's past payment habits.²⁹ Paydex scores range from “100,” which appears to reflect that a customer “anticipates” payments, to “20,” which reflects that a customer is paying its bills more than 120 days “beyond terms.” While NECA's tariff states that no security deposit will be owed if a Paydex rating of “average” or above is maintained, Nextel could find no reference to a Paydex rating of “average” on the Dun & Bradstreet web site. The ratings assigned if a customer is early or on time with bills are “anticipate,” “discount,” and “prompt.” Every other score is a number that relates to how late an entity has reportedly paid its bills. Stated simply, the “average” Paydex score referred to in NECA's suspended tariff does not appear to exist. As a result, it is impossible to know how NECA's members would apply this inherently ambiguous tariff.³⁰

²⁷ See Dun & Bradstreet, “D&B Rating, PAYDEX®, and Score Tables – United States,” available at: <http://www.dnb.com/customer_service/paydex_tables/> (last visited Dec. 4, 2002).

²⁸ *Id.*

²⁹ *Id.*

³⁰ To the extent NECA intends to research a list of companies to determine some type of industry “average” Paydex score, it is incumbent on NECA, in its direct case, to reveal its methodology. It did not do so, and the Commission must find that NECA failed to justify its use of a Paydex score.

Moreover, there is no information about Paydex itself, and why Paydex would be a valid predictor of access payments. The Dun & Bradstreet web site notes that vendors will report timeliness of payments to Dun & Bradstreet, and that this is the raw material used to calculate a Paydex score. But a company the size of AT&T, for example, would logically have many more vendor reports than a small new entrant, and there is no information to determine whether a Paydex score is meaningful in all instances. Finally, it is not clear whether timeliness in payment of all vendor bills accurately predicts a carrier's decision to pay its interstate access bills, since interstate access arrangements are mission-critical to providing services to revenue-producing customers. Yet, Paydex would appear to capture payment history for running the company cafeteria no differently than payment history for mission-critical debts.

Based on NECA's inability or unwillingness to justify these unreasonable and ambiguous tariff provisions, the Commission should declare them unlawful. Sections 61.2(a) and 61.54(j) of the Commission's rules require that tariff language be clear and definite.³¹ As the U.S. Court of Appeals for the D.C. Circuit has held, "[i]f a party could not reasonably ascertain the 'proper application' of the tariff at the time it was filed, the tariff was unclear and therefore was invalid."³² Without such specificity, the tariff can easily be applied in an arbitrary manner. The Commission should reject the tariff as unlawfully vague and ambiguous.

³¹ 47 C.F.R. §§ 61.2(a) and 61.54(j). The former rule provides that "all tariff publications must contain clear and explicit explanatory statements regarding the rates and regulations." The latter rule states "[t]he general rules (including definitions), regulations, exceptions, and conditions which govern the tariff must be stated clearly and definitely."

³² *Global NAPS, Inc. v. FCC*, 247 F.3d 252, 258 (2001); see also *GTE Telephone Operating Companies Tariff F.C.C. No. 1, Transmittal No. 988*, 11 FCC Rcd 3698, ¶ 7 (1995) (impossible to determine how GTE would exercise its discretion in deciding how it will provide services

4. The Tariff Requirement Demanding Security Deposits in the Case of Two or More Late Payments is Unreasonable When NECA's Members Include Disputed Payments as "Late"

The Designation Order requested that NECA indicate if its member companies deduct disputed amounts from the amounts billed for the purposes of determining if a carrier customer is late with a payment.³³ NECA responds that, in the time it had to prepare its direct case, it could accomplish no more than a sampling of its members. Of those responding to its sample survey, more than 25 percent of the respondents said that they “do not deduct disputed amounts.”³⁴ Yet NECA’s proposed tariff would allow its member companies to demand a security deposit if a carrier customer is late on two or more occasions during the course of a 12-month period. For 25 percent of NECA’s 1,000 members, even a partial withholding on the part of the carrier customer to reflect a legitimate dispute could trigger the security deposit requirements. This is unreasonable.

Billing disputes are routine, and partial withholdings are a routine way for carrier customers to ensure that the issues they have raised receive prompt attention. Indeed, NECA’s direct case indicates that nearly 60 percent of its members recorded disputed interstate access bills at the time the survey was taken.³⁵ It is no stretch to imagine that virtually all of NECA’s member companies have had portions of their bills disputed at one time or another.

under a proposed tariff); *Southwestern Bell Telephone Co., Revisions to F.C.C. Tariff No. 73, Transmittal No 2312*, 9 FCC Rcd 1616, ¶ 11 (1994).

³³ Designation Order ¶ 12.

³⁴ Direct Case at 10.

³⁵ *Id.*

B. NECA's Tariff Unreasonably Limits Notice Periods for Cut-Off to 10 Days

NECA's suspended tariff would decrease the amount of time NECA's member companies have to discontinue service to a carrier customer, or to refuse to process a pending order, assuming no security deposit is received, from 30 days to 10 days. Once a deposit is demanded, it must be paid in 14 days. If the deposit is not paid, NECA's proposed tariff allows its members to terminate service on 10 days' written notice. The Designation Order asks whether these provisions are just and reasonable.³⁶ The Order asks why both increased security deposit provisions and shortened notice periods are necessary, and whether the notice period proposed by NECA gives the customer sufficient opportunity to review the bill and pursue its dispute rights.

NECA argues in its direct case that the shortened notice periods are conservative, because the earliest NECA could terminate service is 67 days for services billed in advance, or 97 days for services billed in arrears. For Nextel, and for many other competitors that are dependent upon NECA member companies' special access services to provision their networks, the 14-day deadline to pay a security deposit is simply unreasonable. Competitive carriers must manage their credit, debt, and liquidity very carefully to meet investor expectations. Decisions affecting liquidity are not casually made, and require deliberation, or perhaps consultations with third parties. In addition, reducing the notice period for discontinuance from 30 days to 10 days is especially unreasonable in the context of special access services that Nextel purchases.³⁷ The

³⁶ Designation Order ¶¶ 27-28.

³⁷ *Rhythms Links, Inc. Section 63.71 Application to Discontinue Domestic Telecommunications Services*, 16 FCC Rcd 17024, ¶ 10 (2001) (noting that the type of service being discontinued has

Commission's general rules provide for a minimum 31-day notice period for the discontinuance of service so that end user customers can find another service provider.³⁸ While these rules do not apply to customer-specific disconnections for nonpayment, similar policy concerns are presented when the to-be-disconnected customer is a carrier whose own network will go dark if NECA's member company shuts down interstate special access circuits.³⁹ The Commission's 31-day notice period is the minimum period needed to ensure that end-user customers are able to find an alternative service provider.⁴⁰

a bearing on the reasonableness of permitting a network to shut down at the end of a 31-day notice period).

³⁸ 47 C.F.R. § 63.71.

³⁹ The decision, made nearly 20 years ago, that a 15-day notice period is sufficient if the customer receives the bill within 3 days of the billing date, should be re-examined in this docket. *Annual 1987 Access Tariff Filings*, Memorandum Opinion and Order, 2 FCC Rcd 280 (1986). Determinations made by the Commission in 1986 with respect to notice by incumbent LECs to interexchange carrier customers may not be reasonable where diverse carriers compete with LECs and their affiliates for local and wireless services.

⁴⁰ See, e.g., *Rhythms Links, Inc. Emergency Application to Discontinue Domestic Telecommunications Services*, 16 FCC Rcd 16372, ¶ 9 (2001) (noting that Commission review of discontinuances of service is intended to assess whether customers have a reasonable opportunity to obtain substitutable service).

III. CONCLUSION

Based on the foregoing, the Commission should find that NECA has failed to meet its burden to justify its suspended security deposit tariff provisions as just, reasonable, and not unreasonably discriminatory. Carrier customers with track records of on-time payments should not be subject to NECA's proposed onerous security deposit requirement. The Commission should find NECA's tariff transmittal to be unlawful.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of December, 2002, I caused true and correct copies of the foregoing Opposition of Nextel to NECA Direct Case to be mailed, postage prepaid, to:

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