

Before the
Federal Communications Commission
Washington, D.C. 20554

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

ORDER

Adopted: October 7, 2002

Released: October 7, 2002

Direct Case Due by: October 28, 2002
Oppositions to Direct Case Due by: November 12, 2002
Rebuttal Due by: November 19, 2002

By the Chief, Pricing Policy Division:

I. INTRODUCTION

1. In this order, we designate for investigation, pursuant to sections 204 and 205 of the Communications Act of 1934, as amended (the Act),¹ certain issues regarding the rates, terms, and conditions in tariff Transmittal No. 226 that the Verizon Telephone Companies (Verizon) filed to become effective August 9, 2002. Verizon subsequently deferred the effective date of the subject revisions in Transmittal 226 to August 23, 2002.² We suspended Transmittal 226 for five months on August 22, 2002, and initiated this investigation.³ As discussed below, we designate for investigation issues relating to Verizon’s provisions for security deposits and advance payments contained in tariff Transmittal No. 226 to ensure that the proposed tariff provisions are not unjust, unreasonable, or unreasonably discriminatory in violation of sections 201 and 202 of the Act.⁴

II. BACKGROUND

2. A brief overview of the Commission’s policies concerning security deposits and treatment of uncollectibles would be useful to the discussion of the issues presented by the

¹ 47 U.S.C. §§ 204 and 205.

² *The Verizon Telephone Companies*, Tariff FCC Nos. 1, 11, 14 and 16, Transmittal No. 231 (Aug. 6, 2002).

³ *The Verizon Telephone Companies*, Tariff FCC Nos. 1, 11, 14 and 16, Transmittal No. 226, Order, DA 02-2055 (WCB, rel. Aug. 22, 2002).

⁴ 47 U.S.C. §§ 201 and 202.

present tariff revisions. Existing incumbent local exchange carrier (LEC) interstate access tariffs contain protections for uncollectibles. In 1984, the Commission rejected incumbent LECs' proposed security deposit tariff language and instead permitted dominant LECs to require security deposits from: (1) those carriers that have a proven history of late payments to the LEC; and (2) those carriers that have no established credit.⁵ These provisions since have become a standard term in interstate access tariffs.⁶ In 1987, the Commission addressed a BellSouth proposal to reduce the notice it must give to terminate service for nonpayment to 15 days from 30 days. The Commission allowed a 15-day notice period only if the customer received its bill within three days after the billing date.⁷

3. The Commission's ratemaking policies for incumbent LECs also account for interstate uncollectibles and provide for their recovery through interstate access charges. As a price cap carrier, Verizon's rates at the time it entered price caps included a factor reflecting wholesale uncollectibles.⁸ Under price caps, the permitted price indexes are annually adjusted for changes in general economic conditions as reflected in the GDP-PI inflation index.⁹ Price cap carriers experiencing a rise in uncollectibles resulting in interstate rates of return below 10.25% may, if eligible, seek a low-end adjustment, permitting the carrier to target a 10.25% rate of return.¹⁰ Price cap carriers that are not eligible for a low-end adjustment because they have exercised pricing flexibility retain the right to demonstrate that earnings are low enough to warrant an above cap filing, or to seek an exogenous cost change, either of which would allow them to charge rates that exceed the current price caps.¹¹

4. Under Verizon's current tariff, Verizon may require deposits from a customer that has a proven history of late payments or does not have established credit.¹² Under its proposed revisions, Verizon may require at any time additional security deposits or advance payments from a customer based on any one of the following six criteria: (1) the customer has fallen in arrears in its account balance in any two months out of any consecutive twelve-month period; (2) the customer owes \$250,000 or more that is thirty days or more past due; (3) the customer or its parent (defined as an entity that owns an equity interest in more than 50 percent of the customer) informs Verizon or publicly states that it is unable to pay its debts as such debts become due; (4) the customer or its parent has commenced voluntary or involuntary receivership or bankruptcy; (5) the customer's or its parent's senior debt securities are below investment grade as defined by

⁵ *Investigation of Access and Divestiture Related Tariffs*, Phase I Order, CC Docket No. 83-1145, 97 FCC 2d 1082, 1169 (1984).

⁶ In general, existing tariffs also provide that deposits may not exceed the actual or estimated rates and charges for service for a two-month period.

⁷ *Annual 1987 Access Tariff Filings*, Memorandum Opinion and Order, 2 FCC Rcd 280, 304-05 (1986). BellSouth apparently never implemented this provision.

⁸ For rate-of-return carriers, uncollectibles are reflected in the rate base that they use to calculate the 11.25% allowed rate of return. An increase in uncollectibles will result in higher rates the following year. Upon a proper showing of an extraordinary rise in uncollectibles, rate-of-return carriers may file mid-term corrections to raise their rates to target an 11.25% rate of return. See 47 C.F.R. § 69.3(b).

⁹ 47 C.F.R. § 61.45(b).

¹⁰ 47 C.F.R. § 61.45(d)(1)(vii).

¹¹ 47 C.F.R. § 61.45(d).

¹² Verizon Telephone Companies, Tariff FCC No. 1, Section 2.4.1(A).

the Securities and Exchange Commission; or (6) the customer's or its parent's senior debt securities are rated the lowest investment grade rating category by a nationally recognized statistical rating organization and are put on review by the rating organization for a possible downgrade.¹³

5. Advance payments, which would not accumulate interest, would be based on the customer's average monthly billed account balance for the most recent three months for existing customers, and, for new customers, would be based on an amount equal to the estimated future charges for the next bill month, and, trued up every six months following payment of the first advance payment assessed.¹⁴ Advance payment must begin within seven days of written request from Verizon.¹⁵ The tariff revisions allow Verizon to determine whether late-paying customers will be required to make advance payments or supply a security deposit.¹⁶ Security deposits would be refunded after one year of prompt payment and if the customer has not met any of the six criteria listed above for more than one year.¹⁷ The revisions would also shorten from thirty to seven days the notice period before which Verizon can refuse to process new orders or discontinue service.¹⁸

6. As justification for this revision, Verizon states that its "interstate uncollectible revenues more than doubled in 2001 versus 2000," and that it is a party to 92 different bankruptcy proceedings.¹⁹ Verizon also states, "[t]he telecommunications industry is in a period of unprecedented financial stress and upheaval."²⁰

7. On August 1, 2002, AT&T Corp. (AT&T); Sprint Communications Company, L.P. (Sprint); WorldCom, Inc. (WorldCom); counsel for the Association for Local Telecommunications Services (ALTS), Broadview Networks, Inc., the Competitive Telecommunications Association, KMC Telecom Holdings, Inc., Talk America Inc., and XO Communications, Inc.; and counsel for the Association of Communications Enterprises, Business Telecom, Inc., DSL.net, Inc., ATX Communications, Inc., CTC Communications Corp., Focal Communications Corp., Freedom Ring Communications, LLC, Level 3 Communications, LLC, PaeTec Communications, Inc., Pac-West Telecomm, Inc., and US LEC Corp. filed petitions to reject, or, in the alternative, to suspend and investigate Verizon's tariffs.²¹ On August 8, 2002,

¹³ See, e.g., Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, 1st Revised Page 2-26.

¹⁴ See, e.g., Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, Original Page 2-26.1.

¹⁵ See, e.g., Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, Original Page 2-26.1.

¹⁶ See, e.g., Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, 1st Revised Page 2-26 and Original Page 2-26.1.

¹⁷ See, e.g., Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, Original Page 2-26.3.

¹⁸ See, e.g., Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, 1st Revised Page 2.7 and 1st Revised Page 2-8.

¹⁹ Verizon Telephone Companies, Tariff FCC Nos. 1, 11, 14 and 16, Transmittal No. 226, Description and Justification at 9, 6.

²⁰ *Id.* at 6.

²¹ Verizon Telephone Companies, Tariff FCC Nos. 1, 11, 14 and 16, Transmittal No. 226, Petition of AT&T Corp. (Aug. 1, 2002) (*AT&T Petition*); Petition of Sprint to Reject or Alternatively Suspend and Investigate (Aug. 1, 2002) (*Sprint Petition*); WorldCom Petition to Reject or, in the Alternative, Suspend and Investigate (Aug. 1, 2002) (*WorldCom Petition*); Petition to Reject or, Alternatively, to Suspend and Investigate of ALTS, Broadview

(continued...)

Verizon filed its reply.²²

III. ISSUES DESIGNATED FOR INVESTIGATION

A. Basis for Requiring a Deposit or advance payments from a Customer

1. Background

8. Under its present tariff, Verizon has discretion to require a deposit from a customer with a proven history of late payments or who does not have established credit.²³ Under the proposed revisions, in addition to the above deposit requirement, Verizon could require the customer to pay a security deposit in a fixed amount of no more than two months estimated rates and charges, or require additional security in the form of advance payments for services if any of six criteria is met.²⁴ Advance payments, which would not accumulate interest, would be based on the customer's average monthly billed account balance for the most recent three months for existing customers, and, for new customers would be based on an amount equal to the estimated future charges for the next bill month, and trued up every six months following payment of the first advance payment assessed.²⁵ Security deposits would be refunded after one year of prompt payment and if the customer has not met any of the six criteria for more than one year.²⁶ The revisions would also shorten from thirty to seven days the notice period before which Verizon can refuse to process new orders or discontinue service.²⁷

9. Several carriers petitioned against the Verizon Transmittal No. 226.²⁸ These petitioners allege that the tariff revisions: (1) are unjust, unreasonable, and discriminatory in violation of sections 201(b) and 202(a) of the Act,²⁹ (2) are vague and ambiguous in violation of

(...continued from previous page)

Networks, Inc., the Competitive Telecommunications Association, KMC Telecom Holdings, Inc., Talk America Inc., and XO Communications, Inc. (Aug. 1, 2002) (*ALTS Joint Petition*); Petition to Reject or Suspend and Investigate Proposed Tariff Revisions of the Association of Communications Enterprises, Business Telecom, Inc., DSL.net, Inc., ATX Communications, Inc., CTC Communications Corp., Focal Communications Corp., Freedom Ring Communications, LLC, Level 3 Communications, LLC, PaeTec Communications, Inc., Pac-West Telecomm, Inc., and US LEC Corp. (Aug. 1, 2002) (*Association of Communications Enterprises Joint Petition*).

²² Verizon Telephone Companies, Tariff FCC Nos. 1, 11, 14 and 16, Transmittal No. 226, Reply Comments of Verizon to Petition to Reject or Suspend and Investigate (Aug. 7, 2002).

²³ See, e.g., Verizon Telephone Companies, Tariff F.C.C. No. 1, Section 2.4.1(A).

²⁴ See para. 4, *supra*. See also, e.g., Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, 1st Revised Page 2-26.

²⁵ See, e.g., Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, Original Page 2-26.1.

²⁶ See, e.g., Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, Original Page 2-26.3.

²⁷ See, e.g., Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, 1st Revised Page 2.7 and 1st Revised Page 2-8.

²⁸ AT&T and WorldCom allege that Verizon's tariff filing violates a Commission prescription from 1984. See *supra*, note 5; AT&T Petition at 4-7; WorldCom Petition at 5-7. Even if these parties are correct, a tariff investigation is a valid means of reviewing a Commission prescription. *Pacific Northwest Bell Telephone Company*, Revisions to Tariff FCC No. 9, Transmittal No. 159, Memorandum Opinion and Order (rel. Oct. 11, 1985).

²⁹ 47 U.S.C. §§ 201(b) and 202(a). See, e.g., AT&T Petition at 8; WorldCom Petition at 14-18; Sprint Petition at 8-9; ALTS Joint Petition at 14-15.

sections 61.2 and 61.54 of the Commission's rules,³⁰ and (3) permit Verizon too much discretion in determining whether to require a security deposit or advance payments for services.³¹

10. In addition, several petitioners assert that requiring a security deposit or advance payment from any customer that has "commenced a voluntary receivership or bankruptcy proceeding (or had a receivership or bankruptcy proceeding initiated against it)"³² conflicts with the U.S. Bankruptcy Code provisions³³ and bankruptcy court precedent.³⁴ WorldCom asserts that the bankruptcy court has exclusive responsibility to determine the "adequate assurance" of payment to utilities to preclude termination of service for non-payment of certain utility bills.³⁵

2. Discussion

11. The initial issue designated for investigation is whether the revised security deposit and advance payment provisions applicable to interstate access customers, both new and existing, are reasonable and not so vague as to permit Verizon to discriminate unreasonably among its interstate access customers, whether they be interexchange carriers, competitive LECs, or business end-user subscribers. The interstate access market has two distinct characteristics -- Verizon must provide access services to IXCs and competitive LECs requesting such service, and those carriers must use Verizon's access services to originate or terminate many of their interstate calls. The proposed revisions regarding security deposits and advance payments significantly alter the balance between Verizon and its interstate access customers with respect to the risks of nonpayment of interstate access bills that was struck in the early 1980s when access charges were instituted. The revisions raise the question whether circumstances have changed so as to warrant the imposition of additional security deposits and advance payment requirements. The tariff also raises concerns about whether the tariff language clearly and unambiguously sets forth a standard that can be objectively administered in a nondiscriminatory manner. We therefore direct Verizon to respond to the matters discussed below and provide the requested information in its direct case. Nonetheless, Verizon may, as part of its direct case, seek to justify its expansion of the instances in which security deposits and advance payments may be required of interstate access customers.

12. As part of its direct case, Verizon shall explain why it believes its rates under price caps do not adequately compensate it for the risk of uncollectibles. Verizon's rates include a revenue requirement component for uncollectible debts that is based on the amount of uncollectibles permitted as an interstate revenue requirement at the time Verizon became subject to price cap regulation. Verizon is directed to submit the level of uncollectible debts from interstate access services for the years 1990 to the present and indicate the level of uncollectibles

³⁰ 47 C.F.R. §§ 61.2 and 61.54. *See, e.g.*, WorldCom Petition at 2-5, 9-14; AT&T Petition at 4-8, 13-14, 8-10; Sprint Petition at 5, 6-8.

³¹ *See, e.g.*, AT&T Petition at 9-10; Sprint Petition at 9.

³² *See, e.g.*, Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, 1st Revised Page 2-26.

³³ *See, e.g.*, 11 U.S.C. §§ 361 (explaining what constitutes "adequate protection" under sections 362, 363 and 364 of the Bankruptcy Code), 366, and 547.

³⁴ *See, e.g.*, WorldCom Petition at 8-9; ALTS Joint Petition at 11; Association of Telecommunications Enterprises Joint Petition at 10-12.

³⁵ WorldCom Petition at 8-9.

that was included in its initial price cap rates. It shall then address 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, or whether it reflects some long term trend that warrants expanded security deposits and advance payments from customers meeting Verizon's proposed standards. Verizon shall provide the Commission with the total amount uncollected by year from January 2000 to July 31, 2002. Verizon shall also provide the totals of each of the individual defaults grouped into the following ranges: less than \$250,000; \$250,001-\$500,000; \$500,001-\$1,000,000; \$1,000,000-\$5,000,000; and more than \$5,000,000. For each range, Verizon shall indicate the number of defaulting entities. Verizon shall also indicate the total dollar amount of security deposits it holds that are attributable to interstate access services and the percentage relationship of that amount to average monthly interstate access billings. The changes in the security deposit and advance payment provisions of Verizon's interstate access tariff would increase customer-supplied funding as well as reduce Verizon's exposure to defaults. Verizon should accordingly address what modifications should be made to its price cap indexes and service band indexes to account for these changes to the capital and risk parameters of price caps.

13. To assist the Commission in understanding the increase in the level of uncollectibles, Verizon should describe its billing and collection procedures and explain any changes in its billing and collection procedures or the accounting treatment of disputed amounts on bills within the past two years that could have affected the levels of uncollectibles. Verizon shall indicate the average length of time from the bill date until the bill is sent to the carrier customer and what percentage of those bills, by number of entities and by billed amount, is sent electronically. In addition, Verizon shall provide the Commission with the number of customers that have been sent non-payment, discontinuance of service, or refusal of new orders letters in the past year and the average length of time from a bill's being delinquent until the letter was sent. To provide information on possible changes in customer behavior, Verizon shall provide the Commission with the percent of carrier bills disputed, the percent of carrier-billed revenues disputed, and the percentage of the disputed amounts that were successfully disputed by the carrier for billing periods beginning with January 2000 to the present. Verizon should also indicate if it deducts disputed amounts from amounts billed for purposes of determining whether a carrier has complied with a deadline.

14. Verizon shall indicate which services in its interstate access tariff, including the subscriber line charge and other common line services, are billed in advance and those that are billed in arrears. It shall indicate the percentage of interstate billings that are billed in advance, how this level has changed over the past five years, and how this change has affected the risk Verizon faces. In this connection, Verizon should discuss whether different security deposit or advance payment provisions should apply depending upon whether the service is billed in advance or billed in arrears. Verizon shall also discuss the extent to which it has a debtor relationship with its customers and how that may affect Verizon's credit risk. Verizon has multiple business relationships with many of its access customers. For example, an IXC could also be a CLEC and bill Verizon for reciprocal compensation. By year for the period January 2000 to July 31, 2002, Verizon should indicate the total amount as well as the net amount owed it by customers it identified as defaulting on access charge payments.

15. Verizon should indicate the amount of unpaid bills of defaulting customers that have gone into bankruptcy since January 2000 and the percentage of that amount that it has recovered through bankruptcy proceedings. Verizon should address whether its proposed tariff requiring a

security deposit or advance payment is consistent with the U.S. Bankruptcy Code and precedents given that bankruptcy law contains provisions addressing payment to utilities by debtors.³⁶

16. If Verizon believes that the risk of uncollectible debts has increased permanently, it should explain what accounts for this change, *e.g.*, the general economic climate or some structural change in the market. If the change is a structural one, are there methods other than the Verizon proposal that would adequately address this additional risk, *e.g.*, is there a subset of carriers that can be identified that are the major cause of the increased risk? Verizon should also discuss any other steps, other than requiring additional security deposits or advance payments, it might take to mitigate the risk. Verizon's tariff revisions increasing the security deposits and imposing advance payment obligations would impose additional costs on carriers that are also Verizon's competitors at a time when access to capital markets is extremely limited. This could adversely affect the competitiveness of telecommunications markets. Thus, if some measures are necessary, an approach that has the fewest adverse effects on the competitive market while protecting Verizon's interests would be preferred. One alternative would be to phase in deposit requirements over several months after a trigger had been reached. Verizon should comment on the efficacy of this alternative and how it might reduce Verizon's risk.

17. Verizon's proposed security deposit and advance payment provisions also raise questions about whether they are sufficiently clear and unambiguous to preclude discriminatory or anticompetitive application. Section 61.54(j) of the Commission's rules provides that "[t]he general rules (including definitions), regulations, exceptions, and conditions which govern the tariff must be stated clearly and definitely."³⁷

18. Presently, Section 2.4.1 (A) of the tariff³⁸ allows Verizon to obtain a deposit for a period of no more than two months' estimated billings. Proposed Section 2.4.1 (A) (1) would allow Verizon to obtain a "deposit" for an unspecified amount. In addition, proposed Section 2.4.1 (A) (2) would allow Verizon to obtain a "security deposit" for no more than two months' estimated billings, or advance payment, as defined in proposed Section 2.4.1 (A) (3), in an amount equal to estimated future charges for the next month's bill. What is the difference between a "deposit" as stated in Section 2.4.1 (A) (1) and a "security deposit" as stated in Section 2.4.1 (A) (2)? How does the proposed Section 2.4.1 (A) (1) work with the proposed Section 2.4.1 (A) (2) or Section 2.4.1 (A) (3)? May Verizon collect more than two months' "deposit"? Verizon also proposes to adjust the size of advance payments at six month intervals, based on a three-month average.³⁹ This long an interval potentially allows a mismatch to develop between advance payments and actual usage. Verizon should explain why advance

³⁶ See, *e.g.*, 11 U.S.C. § 366.

³⁷ 47 C.F.R. § 61.54(j).

³⁸ Verizon Tariffs FCC Nos. 1, 11, 14 and 16, Section 2.4.1.

³⁹ See, *e.g.*, Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, Original Page 2-26.1 (proposed Section 2.4.1(A)(3) states that "the estimated future charges for the next bill month will be based on the customer's average monthly billed account balance during the most recent three (3) monthly billing periods Within six (6) months following payment of the first advance payment assessed, the Telephone Company shall adjust the required advance payment to true up the difference between the total charges billed and the advance payment received by the Telephone Company and will adjust the monthly advance charge to reflect the revised amount until further revised. The Telephone Company will conduct similar true ups no less than twice a year thereafter. An advance payment is not a deposit, and no interest will accrue on any true up balance for the advance payment.").

payments should not be based on a rolling average of the previous three months' billings.

19. The revisions in proposed Section 2.4.1 (A) (2) state that, "the Company may . . . require a customer to make a security deposit" and in Section 2.4.1 (A) (3) state that, "in the event the Telephone Company elects to require payments in advance." The terms "may" and "elects" give Verizon considerable discretion to enforce these provisions. Without definitive criteria in the tariff, what would prevent Verizon from collecting a security deposit or advance payment from one customer and nothing from another customer when both meet one of the criteria for security deposits or advance payment? Verizon should explain how these tariff provisions can be applied in a non-discriminatory manner.

20. Proposed Section 2.4.1 (A) (2) of the tariff allows Verizon to require a customer "to make a security deposit in a fixed amount" or "in lieu of a security deposit . . . require additional security in the form of recurring payments in advance."⁴⁰ If a customer meets one of the conditions for imposition of security deposits or advance payments, what criteria would Verizon use to determine whether to require a security deposit or advance payments? In reviewing the tariff, how would a customer know whether it will be required to make a deposit or pay in advance? In responding, Verizon should explain how these tariff provisions can be applied in a non-discriminatory manner.

21. Verizon's proposed tariff revisions give Verizon discretion to require a customer to make a security deposit in a fixed amount or require additional security in the form of advance payments for services if any one of the following occurs: (1) the customer has fallen in arrears in its account balance in any two months out of any consecutive twelve-month period; (2) the customer owes \$250,000 or more that is thirty days or more past due; (3) the customer or its parent informs Verizon or publicly states that it is unable to pay its debts as such debts become due; (4) the customer or its parent has commenced voluntary or involuntary receivership or bankruptcy; (5) the customer's or its parent's senior debt securities are below investment grade as defined by the Securities and Exchange Commission; or (6) the customer's or its parent's senior debt securities are rated the lowest investment grade rating category by a nationally recognized statistical rating organization and are put on review by the rating organization for a possible downgrade.⁴¹ Verizon has not shown that criteria 3, 4, 5 and 6 are valid predictors of the likelihood of a customer paying its access bill, or that they are better predictors of whether a customer will pay its bills in the future than the customer's past payment history. As part of its direct case, Verizon shall explain how each of criteria 3, 4, 5, and 6 is a valid predictor of whether the carrier will pay its interstate access bill and why each is a better predictor of timely payment than is a customer's previous payment history with Verizon. Verizon shall also explain how such varied data can be applied in a manner that will not produce arbitrary and/or discriminatory results. This is especially important because in most cases the entity upon which Verizon would impose the security deposit would also be a competitor of Verizon itself, or of its long-distance affiliate. In this connection, Verizon shall provide the Commission with information concerning the security deposits that it has required of any of its long-distance affiliates. We note that most of these criteria relate to ratings for carriers and large businesses. Verizon should discuss its intentions, if any, with respect to residential end users.

⁴⁰ See, e.g., Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, 1st Revised Page 2-30.

⁴¹ See, e.g., Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, 1st Revised Page 2-26.

22. Verizon shall provide the Commission with data on the payment characteristics of defaulting interstate access customers during the year prior to the time the account was 90 days overdue. Verizon shall present the data in terms that will enable the Commission to identify patterns that may exist in a customer's payment practices prior to default that may permit alternatives to security deposits or advance payment to be identified and evaluated.

23. Finally, we ask Verizon to provide data, to the extent available, on the level of uncollectibles of other regulated utilities, or in the broader marketplace. It should also discuss the means those businesses use to address the risks of default, especially how they manage bad credit risks while continuing to provide goods or services to the customer.

B. Notice for Deposit and Shortened Termination Period

1. Background

24. Verizon's tariff revisions provide that "[a]ny security deposit or advance payment requirement shall be in addition to, and not in lieu of, any rights the Telephone Company may have to suspend or terminate services for nonpayment."⁴² The revisions also provide that if the customer fails to comply with certain provisions, including the provisions for advance payment and security deposit, Verizon may refuse additional applications for service and/or pending orders for service, and discontinue the provision of service to the customer, on seven days' notice, rather than the 30-day notice requirement in the existing tariff.⁴³ The proposed revisions further provide that a security deposit is due within ten business days after receiving written notice from Verizon that a deposit is required.⁴⁴ Verizon may utilize the security deposit to cover any amounts not paid within 30 days after the bill date, and the customer must reimburse the amount used within five days after receiving notice of such use.⁴⁵ Advance payments are due monthly, beginning seven days from receiving written notice from Verizon.⁴⁶

25. Petitioners argue that Verizon's proposed timing provisions for deposit payments and termination of service are unjust, unreasonable, and violate the Commission's rules.⁴⁷ The Association of Communications Enterprises claims that Verizon's proposed tariff revisions provide inadequate time, i.e., ten days, to assess Verizon's determination that a carrier must make a security deposit, and contain no provision to dispute the accuracy of such a determination.⁴⁸ The Association of Communications Enterprises claims that such unilateral nature of the deposit timing provision is unjust and unreasonable in violation of section 201 of the Act, because, if the customer does not comply with Verizon determination within 10 days,

⁴² See, e.g., Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, Original Page 2-26.3.

⁴³ See, e.g., Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, 1st Revised Pages 2-7, 2-8, and 2-9.

⁴⁴ See, e.g., Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, Original Page 2-26.2.

⁴⁵ See, e.g., Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, Original Page 2-26.2.

⁴⁶ See, e.g., Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, Original Page 2-26.1.

⁴⁷ See, e.g., AT&T Petition at 7-8 and 13.

⁴⁸ Association of Communications Enterprises Joint Petition at 13.

Verizon could discontinue all services, including those provided under other tariffs.⁴⁹

2. Discussion

26. The second issue designated for investigation is whether Verizon's proposals to reduce from 30 days to 7 days the notice required before termination of a service may occur and to require a customer to provide a security deposit and advance payments within 10 days of written notice are just and reasonable. We direct Verizon to respond to the matters discussed below and provide the requested information in its direct case. Nonetheless, Verizon may, as part of its direct case, seek to justify the reduced notice provisions in its proposed tariff revision.

27. As part of its direct case, Verizon shall explain why it believes that the security deposit and advance payment provisions it proposes are inadequate and why it needs shortened notice periods as well. Verizon shall explain why a ten-day deadline for payment of security deposits is (1) necessary to protect its interests and (2) adequate to allow a customer to assess Verizon's determination that a deposit is required, dispute that determination, and raise the necessary funds. Verizon shall also submit information for the most recent twelve months as to the timeliness of its billings. In this connection, it shall state the billing date, the delivery date (indicating whether it was by mail or electronically), and the due date for each billing cycle. It shall also address whether the Commission should prescribe the time within which a bill must be presented to the customer if a shortened notice period is allowed, in order to permit the customer sufficient time to review the bill and pursue its dispute rights. In particular, Verizon should address whether it could meet the three-day requirement the Commission adopted in 1987.⁵⁰

C. Refund of Deposits

1. Background

28. The proposed tariff revision provides that a security deposit requested pursuant to any one of the six criteria will be returned to the customer at the customer's written request, if the customer satisfies all of the following: (1) the customer's account balance has been paid in full, (2) the customer no longer satisfies any of the six criteria for requiring a security deposit, and (3) the customer has not met the six criteria for a period of at least one year.⁵¹

29. Certain petitioners assert that the refund language is unreasonable and there is no justification for Verizon to keep any deposit for so long.⁵²

2. Discussion

30. The third issue designated for investigation is the reasonableness of the deposit refund provision. The refund provision requires a written request for a refund and ties the refund obligation to the six criteria used to determine if a security deposit is required. We direct Verizon to explain why it should not include provisions that provide it will periodically review

⁴⁹ Association of Communications Enterprises Joint Petition at 13.

⁵⁰ See, *Annual 1987 Access Tariff Filings*, Memorandum Opinion and Order, 2 FCC Rcd 304-05.

⁵¹ See, e.g., Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, Original Page 2-26.3.

⁵² See, e.g., AT&T Petition at 12.

the need for a security deposit and why it should not make refunds after timely payments have been received for twelve months. We further direct Verizon to explain why the proposed refund provision is not unreasonable, vague, and ambiguous for the same reasons identified for issue A, above. Verizon should also explain when and how interest received on “a cash deposit” will be paid to a customer under its proposed provisions.⁵³ Verizon should also clarify whether the term “cash deposit” includes a cash “security deposit” under Sections 2.4.1(A)(2).⁵⁴ Nonetheless, Verizon may, as part of its direct case, seek to justify the security deposit refund provisions in its proposed tariff revision.

D. Application of Revised Deposit Requirements to Term Plan Customers

1. Background

31. Several petitioners assert that Verizon has not demonstrated substantial cause for a material change in a provision of a term plan, citing *RCA Communications, Inc.*⁵⁵ For example, WorldCom states that the revisions fail the substantial cause test, under which the Commission measures the reasonableness of a tariff modification during a term plan by weighing two principal considerations: the carrier’s explanation of the factors necessitating the desired changes at that particular time; and the position of the relying customer.⁵⁶ WorldCom asserts that Verizon has not shown that it has experienced any material change in its business circumstances, much less a change that would constitute an injury to Verizon that would outweigh the existing customers’ legitimate expectations of stability.⁵⁷ Moreover, WorldCom states that the increase in uncollectibles is merely the normal effect of the business cycle, constituting only 1.2 percent of Verizon’s interstate revenues, and with only a negligible effect on Verizon’s financial performance, which produced an interstate return of 17.1 percent in 2001.⁵⁸

2. Discussion

32. The fourth issue designated for investigation is whether the imposition of revised security deposit and advance payment provisions constitutes a material change to Verizon’s term contracts, and, if so, whether it is reasonable for Verizon to apply the revised security deposit

⁵³ See, e.g., Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, Original Page 2-26.3 (proposed Section 2.4.1 (A)(5) states that “[i]n case of a cash deposit, for the period the deposit is held by the Telephone Company, the customer will receive interest at the same percentage rate as that set forth in (B) (3) (b) (I) or in (B) (3) (b) (II), whichever is lower. The rate will be for the number of days from the date the customer deposit is received by the Telephone Company to and including the date such deposit is credited to the customer’s account or the date the deposit is refunded by the Telephone Company. Should a deposit be credited to the customer’s account, as indicated above, no interest will accrue on the deposit from the date such deposit is credited to the customer’s account.”).

⁵⁴ See, e.g., Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, Original Page 2-26.3.

⁵⁵ *RCA Communications, Inc., Revisions to FCC Tariff Nos. 1 and 2*, CC Docket No. 80-766, Transmittal Nos. 191 and 273, Memorandum Opinion and Order, 94 FCC 2d 1338 (1983). See e.g., WorldCom Petition at 14-18; Sprint Petition at 8-9; and ALTS Petition at 14-15.

⁵⁶ WorldCom Petition at 16-17.

⁵⁷ WorldCom Petition at 17.

⁵⁸ WorldCom Petition at 18.

and advance payment provisions to term plans. If a carrier would have to provide a new or increased security deposit or make advance payments to Verizon, its operating capital would be significantly reduced. This could affect other capital or loan commitments it had, potentially causing the carrier to need to restructure or terminate some services that would then trigger a termination penalty. This would be a serious destabilizing event in the competitive marketplace. We direct Verizon to respond to the matters discussed below and provide the requested information in its direct case. Nonetheless, Verizon may, as part of its direct case, seek to justify applying the revised security deposit and advance payment provisions to term plans.

33. Verizon shall explain in its direct case the reasons increased security deposits and advance payments should be required of customers with existing term plans and how that is consistent with the Commission's decision in *RCA Communications, Inc.* This could have significant financial and competitive consequences for existing term plan customers that, in most cases, would also be competitors of Verizon or its long-distance affiliate. Verizon shall provide the Commission with data on the share of its interstate access revenues that are received from services subject to term plans and, of that amount, what portion is attributable to services that are paid or billed in advance. If the majority of term plans require prepayment, the risk to Verizon would appear to be much less than if they were all paid in arrears. Moreover, we recognize that when customers' existing term plans expire Verizon will be able to apply prevailing security deposit or advance payment provisions to new plans taken by such carriers.

IV. PROCEDURAL MATTERS

A. Filing Schedules

34. This investigation is designated WC Docket No. 02-317. The Verizon Telephone Companies is designated a party to this investigation. Verizon shall file its direct case no later than October 28, 2002. The direct case must present Verizon's position with respect to the issues described in this Order. Pleadings responding to the direct cases may be filed no later than November 12, 2002, and must be captioned "Oppositions to Direct Case" or "Comments on Direct Case." Verizon may file a "Rebuttal" to oppositions or comments no later than November 19, 2002.

35. An original and four copies of all pleadings shall be filed with the Secretary of the Commission. In addition, parties shall serve with three copies: Pricing Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 6-C222, Washington, D.C. 20554, Attn: Julie Saulnier. Parties shall also serve with one copy: Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 863-2893. Members of the general public who wish to express their views in an informal manner regarding the issues in this investigation may do so by submitting one copy of their comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. Such comments should specify the docket number of this investigation, WC Docket No. 02-317. Parties are also strongly encouraged to submit their pleadings via the Internet through the Electronic Comment Filing System at <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number, which in this instance is WC Docket No. 02-317. Parties may also submit an electronic comment via Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to <ecfs@fcc.gov>, and should include the

following words in the body of the message: “get form <your e-mail address>.” A sample form and directions will be sent in reply.

36. Interested parties who wish to file comments via hand-delivery are also notified that effective December 18, 2001, the Commission will only receive such deliveries weekdays from 8:00 a.m. to 7:00 p.m., via its contractor, Vistrionix, Inc., located at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. **The Commission no longer accepts these filings at 9300 East Hampton Drive, Capitol Heights, MD 20743.** Please note that all hand deliveries must be held together with rubber bands or fasteners, and envelopes must be disposed of before entering the building. In addition, this is a reminder that as of October 18, 2001, the Commission no longer accepts hand-delivered or messenger-delivered filings at its headquarters at 445 12th Street, SW, Washington, DC 20554. Messenger-delivered documents (*e.g.*, FedEx), including documents sent by overnight mail (other than United States Postal Service (USPS) Express and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. This location is open weekdays from 8:00 a.m. to 5:30 p.m. USPS First-Class, Express, and Priority Mail should be addressed to the Commission’s headquarters at 445 12th Street, SW, Washington, DC 20554. The following chart summarizes this information:

TYPE OF DELIVERY	PROPER DELIVERY ADDRESS
Hand-delivered paper filings	236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002 (Weekdays - 8:00 a.m. to 7:00 p.m.)
Messenger-delivered documents (<i>e.g.</i> , FedEx), including documents sent by overnight mail (this type excludes USPS Express and Priority Mail)	9300 East Hampton Drive, Capitol Heights, MD 20743 (Weekdays - 8:00 a.m. to 5:30 p.m.)
USPS First-Class, Express, and Priority Mail	445 12 th Street, SW Washington, DC 20554

37. All relevant and timely pleadings will be considered by the Commission. In reaching a decision, the Commission may take into account information and ideas not contained in pleadings, provided that such information, or a writing containing the nature and source of such information, is placed in the public file, and provided that the fact of reliance on such information is noted in the order.

***Ex Parte* Requirements**

38. This investigation is a permit-but-disclose proceeding and is subject to the requirements of section 1.1206(b) of the Commission’s rules, 47 C.F.R. § 1.1206(b), as revised. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.⁵⁹ Other rules pertaining to oral and written presentations are also set forth in section 1.1206(b).

⁵⁹ See 47 C.F.R. §1.1206(b)(2), as revised.

39. Interested parties are to file any written *ex parte* presentations in this proceeding with the Commission's Secretary, Marlene Dortch, 445 12th Street, S.W., TW-B204, Washington, D.C. 20554, and serve with three copies: Pricing Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 6-C222, Washington, D.C. 20554, Attn: Julie Saulnier. Parties shall also serve with one copy: Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 863-2893.

Paperwork Reduction Act

40. This order designating issues for investigation contains no new or modified information collections subject to the Paperwork Reduction Act of 1995, Pub. Law 104-13.

ORDERING CLAUSES

41. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 4(i), 4(j), 201-205, and 403 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201-205, and 403, and pursuant to the authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the issues set forth in this Order ARE DESIGNATED FOR INVESTIGATION.

42. IT IS FURTHER ORDERED that the Verizon Telephone Companies SHALL BE a party to this proceeding.

43. IT IS FURTHER ORDERED that the Verizon Telephone Companies SHALL INCLUDE, in its direct case, a response to each request for information that it is required to answer by this Order.

FEDERAL COMMUNICATIONS COMMISSION

Tamara L. Preiss
Chief, Pricing Policy Division
Wireline Competition Bureau