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November 12, 2002

FILED²

NOV 12 2002

Missouri Public
Service Commission

Dale Hardy Roberts
Secretary of the Commission
Missouri Public Service Commission
PO Box 360
Jefferson City, MO 65101

Re: Case No. TO-2003-043

Dear Mr. Secretary:

Attached for filing with the Commission, please find the original and eight (8) copies of AT&T Communications of the Southwest, Inc.'s Surrebuttal Testimony of R. Matthew Kohly in the above referenced docket.

I thank you in advance for your cooperation in bringing this to the attention of the Commission.

Very truly yours,

Rebecca DeCook
Rebecca B. DeCook

Attachment
cc: All Parties of Record

Exhibit No.:
Issue: Telephone Specific – Other
Telephone Specific Issues
Witness: R. Matthew Kohly
Sponsoring Party: AT&T Communications of
the Southwest, Inc
Type of Exhibit: Surrebuttal Testimony
Case Nos.: TO-2003-043

AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.,

SURREBUTTAL TESTIMONY

OF

R. MATTHEW KOHLY

CASE NO. TO-2003-043

**Jefferson City, MO
November 12, 2002**

FILED²

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**Missouri Public
Service Commission**

1 Q. CAN YOU PLEASE STATE YOUR NAME AND EMPLOYER

2
3 A. My name is R. Matthew Kohly. I am employed by AT&T Corp.

4
5 Q. ARE YOU THE SAME R. MATTHEW KOHLY THAT FILED REBUTTAL TESTIMONY IN
6 THIS PROCEEDING?

7
8 A. Yes, I am.

9
10
11 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

12
13 A. The purpose of my testimony is to respond to the Rebuttal Testimony filed by
14 John VanEschen on behalf of the Staff of the Missouri Public Service Commission.

15
16 Q. MR. VANESCHEN EXPRESSED HIS OPINION THAT "ALLOWING LOCAL
17 EXCHANGE CARRIERS TO REQUEST A DEPOSIT FROM A FINANCIALLY RISKY
18 CARRIER IS A REASONABLE EXPECTATION." DO YOU HAVE A RESPONSE?

19
20 A. I agree with this general principal and that is the reason Spectra's current tariffs permit
21 Spectra to require a deposit from carriers that do not have an established credit history or
22 that have a history of delinquent payments. However, I do not agree that this principal
23 can or should be extended to IXC's whose long-term debt has been rated below BBB but
24 have never missed an access payment. Neither Spectra nor Staff has presented any
25 evidence that demonstrates the current deposit language is inadequate, that additional
26 deposit authority is warranted or appropriate or that the proposed credit rating mechanism
27 provides any indicia regarding a carrier's propensity to pay. Neither Spectra nor Staff has
28 presented any type of analysis that demonstrates that Spectra's existing rates do not
29 adequately compensate Spectra for the risk of uncollectables. In fact, Staff's rebuttal
30 testimony notes that the financial impact of the recent bankruptcies is still being
31 evaluated.¹

32 Q. MR. VANESCHEN ALSO STATES THAT THE ABILITY TO REQUEST DEPOSITS IS
33 ESPECIALLY WARRANTED FOR CARRIERS OF LAST RESORT? DO YOU AGREE?

34
35 A. Not at all. There is nothing unique about a carrier of last resort (COLR) that warrants
36 protecting these carriers, much less permitting the imposition of discriminatory access
37 deposits on their access customers.

¹ Rebuttal Testimony of John VanEschen, pg. 4.

1 In addition, Mr. VanEschen appears to be advocating special and more favorable deposit
2 requirements for certain ILECs. Missouri statutes generally prohibit unreasonable
3 discrimination. It is my understanding that these statutes are designed to protect
4 customers, not providers. For this reason, the reasonableness of discrimination must be
5 viewed from the position of the customer, not the provider. The fact that the company
6 collecting discriminatory deposits from its access customers is a COLR does not make
7 the discrimination any more reasonable from the viewpoint of the access customer forced
8 to remit deposits to CenturyTel, Inc.

9
10 Even if the discriminatory aspects of Spectra's proposed tariffs could be fixed, there is still
11 no demonstrated need for imposing additional deposits. As stated in my rebuttal
12 testimony, Spectra has presented no evidence that suggests it is currently or are likely to
13 have any financial difficulty in meeting its carrier of last resort obligations. Further, neither
14 Spectra nor Staff has presented any evidence that suggests any supposed inability of
15 Spectra to meet its COLR obligations is a direct result of uncollectable access payments.

16
17 **Q. MR. VANESCHEN STATES THAT "MR. MARTINEZ ARTICULATED THE ROLE THAT**
18 **THE RELATIVE BOND RATING AGENCIES PLACE IN ASSESSING THE RISK OF**
19 **DEFAULT OF PUBLICLY TRADED COMMERCIAL PAPER ON PAGES 6 AND 7 OF**
20 **HIS DIRECT TESTIMONY." DO YOU HAVE A RESPONSE?**

21
22 **A.** Mr. VanEschen's statement is not correct. Nowhere in Mr. Martinez's direct testimony
23 does he refer to "commercial paper" or rating for commercial paper. The term
24 "commercial paper" represents a specific financial instrument that is an unsecured, short-
25 term promissory note that businesses issue chiefly for financing accounts receivable with
26 maturities of 270 days or less. Mr. Martinez's direct testimony only focuses on the access
27 customer's "corporate bond rating." As described in Schedule 4 of Mr. VanEschen's
28 rebuttal testimony, the credit standard of "BBB" is a "Long-term credit rating."
29 Commercial paper utilizes a completely different set of ratings that has not been
30 discussed in any testimony filed in this proceeding.

1 **Q. HAS STAFF DEMONSTRATED ANY CORRELATION BETWEEN A COMPANY'S**
2 **LONG-TERM BOND RATING AND THAT COMPANY'S ABILITY TO PAY ITS**
3 **INTRASTATE ACCESS BILLS?**
4

5 A. No. Like Spectra, Staff presented no evidence that Spectra's proposed tariffs will
6 effectively mitigate the risk of uncollectables. As explained on pages 19 – 23 of my
7 rebuttal testimony and further in this testimony, long-term bond ratings are not valid
8 predictors of credit worthiness of financial instruments in the face of financial scandals.
9 There is certainly no evidence that ties long-term bond ratings to the propensity to pay
10 access bills.

11 **Q. ONE OF THE REASONS CITED BY MR. VANESCHEN FOR SUPPORTING THE**
12 **CONCEPT OF ADDITIONAL DEPOSITS WAS THAT A SWITCHED ACCESS**
13 **SUBSCRIBER MAY BE PAYING ITS BILLS IN A TIMELY MANNER BUT SUDDENLY**
14 **FILE FOR BANKRUPTCY. DO YOU HAVE A RESPONSE?**
15

16 A. There is no evidence in this proceeding to suggest that has occurred in Spectra's case.
17 Moreover as I discuss in my rebuttal testimony the two bankruptcies that Mr. VanEschen
18 references in connection with his statement, the WorldCom and Global Crossing
19 bankruptcies, were unique events, which Mr. Martinez concedes involved highly
20 publicized accounting scandals, where the companies intentionally provided false
21 information to the investment community.² This false information is what bond rating
22 agencies accepted and used in preparing their evaluations. Schedule 5 of Mr.
23 VanEschen's rebuttal testimony makes this very clear. According to that schedule,
24 credit ratings are based upon information furnished by the obligators or
25 obtained from other sources deemed reliable. Standard and Poor's does
26 not perform an audit in connection with any credit rating and may, on
27 occasion, rely upon unaudited financial information.
28

29 In relying upon information furnished by obligator, public information, and audited financial
30 information, there is no evidence to suggest that a rating agency will have any ability to
31 accurately predict such sudden bankruptcies. Thus, the additional deposit requirement
32 would not have protected Spectra and will unlikely provide the kind of protection they seek
33 in the future.
34

² Direct Testimony of Arthur Martinez, pgs. 4 – 5.

1 In fact, the latest scandals suggest otherwise. According to the Report of the Staff to the
2 Senate Committee on Governmental Affairs relating to the oversight of Enron,
3 the credit rating analysts – in particular Ronald Barone of S&P – stressed
4 over and over again that they were simply duped by Enron management,
5 and there was nothing they could do. When Chairman Lieberman asked
6 the analysts whether in retrospect, they felt they should have asked more
7 questions of Enron, Barone responded, “Senator, we rely on the audited
8 financial statements We are not forensic accountants, if that is the
9 question, and we don’t have subpoena power. . .]”³

10
11 In the case of bankruptcies caused by fraud or other sudden events, Spectra’s
12 proposed tariffs will not be effective in mitigating Spectra’s or Staff’s stated
13 concerns.

14 **Q. IN LOOKING AT THE IMPACT THE PROPOSED TARIFF WILL HAVE ON**
15 **INTEREXCHANGE CARRIERS, MR. VANESCHEN INDICATES THAT ONLY TWO OF**
16 **THE 29 LARGEST INTEREXCHANGE CARRIERS MAY BE ASKED TO POST A**
17 **DEPOSIT. DO YOU HAVE A RESPONSE?**

18
19 **A.** Yes. According to Mr. VanEschen, Staff analyzed the credit ratings of the 29 largest
20 interexchange carriers and found two with less than a BBB rating. Staff noted that it was
21 unable to find ratings for eight additional carriers. Presumably, this is because not all
22 carriers or access customers have bond ratings. This is yet another problem with the
23 proposed measure. Imposing a deposit on those IXC’s with credit ratings where IXC’s
24 without credit ratings are automatically excluded from the deposit requirement is facially
25 discriminatory.

26
27 Further, the effect of this exclusion would be that a carrier without a bond rating is
28 presumed to be credit worthy regardless of their true financial position. Spectra’s own
29 financial position shows that this presumption is completely flawed. I was unable to find
30 a bond rating for Spectra itself. However, using data obtained from Spectra’s 2001
31 Annual Report filed with the Commission, Spectra does not even meet the financial
32 standards that a competitive company is required to meet in order to be granted a

³ Financial Over Sight of Enron, The SEC and Private-Sector Watchdogs, Report of the Staff to the Senate Committee on Governmental Affairs, October 8, 2002, pg. 120 .” citing to Rating the Raters: Enron and the

1 certificate of service authority to provide basic local exchange service. For example,
2 Spectra's debt to capital ratio is 80% while the Staff expects CLECs to have less than a
3 62% debt to capital ratio. Spectra's deficiency in this regard is completely unrelated to the
4 level of uncollectable revenues. In as much as Staff's financial requirements are
5 designed to identify financially risky companies, Spectra must be considered a financially
6 risky carrier. The rebuttal testimony of Mr. Price on behalf of WorldCom, Inc. further
7 addresses this discriminatory aspect of Spectra's proposed tariff on pages four (4)
8 through eight (8) of his rebuttal testimony.

9 In considering the impact on the IXC industry, Staff failed to consider whether
10 Spectra's proposed tariffs could be applied in other non-discriminatory manners to unfairly
11 enhance Spectra's or its affiliate's competitive position. Clearly, the permissive language
12 contained in the proposed tariffs permits Spectra to select what carriers will be required to
13 post a deposit and which carriers will not be required to post a deposit. Staff also failed
14 to address the impact on consumers in the event Spectra terminated the access services
15 of IXCs or other access customers because of their inability or unwillingness to pay the
16 requested deposit.

17
18 **Q. MR. VANESCHEN COMPARES SPECTRA'S PROPOSED TARIFFS TO SPRINT**
19 **MISSOURI INC'S TARIFF CONCERNING THE IMPOSITION OF DEPOSITS FOR**
20 **RESIDENTIAL CUSTOMERS. IS THIS A VALID COMPARISON?**

21
22 **A.** I do not believe this a valid comparison for several reasons. First, there are fundamental
23 differences between retail residential customers and wholesale access customers. One
24 major difference is the magnitude of capital involved. Basic local rates for most
25 residential customers represent less than 1 percent of consumer median income. On the
26 other hand, access expense is a major business expense for interexchange carriers and
27 other access customers.

1 On the wholesale side, ILECs such as Spectra have the incentive to discriminate in the
2 collection of wholesale access deposits as Spectra and its affiliates compete with its
3 access customers in the residential interexchange market. No such incentive exists in
4 the collection of deposits from residential customers.

5
6 Third, Spectra's proposed tariff seeks to collect a deposit from existing access customers
7 based upon their bond rating regardless of their past payment history. According to
8 Sprint's tariff, Sprint relies upon of credit ratings only for collecting deposits from new
9 customers without established credit with Sprint. This is consistent with the
10 Commission's current rules regarding residential deposits, which limit the use of criteria
11 such as credit scores only to determining the credit worthiness of new customers that do
12 not have established credit. With respect to collecting deposits from existing customers,
13 Commission Rule 4 CSR 240-33.050(2) only permits two criteria for collecting a deposit
14 from an existing customer – delinquent in two of the last twelve months or if the customer
15 had service disconnected for non-payment within the last twelve months. Sprint's tariff is
16 consistent with this rule. Thus, while Sprint may use credit scores for new customers, it
17 does not and may not use credit scores for collecting deposits from existing residential
18 customers. In this sense, Sprint's tariff is fundamentally different than Spectra's
19 proposed tariff as the actual payment history of the customer takes precedent over a
20 credit score.

21
22 Fourth, implicit in Mr. VanEschen's comparison is the assumption that a consumer credit
23 rating from a nationally recognized agency is analogous to a company's long-term bond
24 rating. Like Spectra, Mr. VanEschen presented no evidence that a company's long term
25 bond rating has any predictive value in assessing an access customer's propensity to pay
26 access bills. Mr. VanEschen also has presented no evidence that a company's long-term
27 bond rating has the same or similar predictive ability as a consumer's credit score. Thus,
28 there is no basis for Mr. VanEschen's comparison.

1 A further implicit assumption in Mr. VanEschen's comparison is that the company specific
2 long term bond rating equates to the specific credit score used by Sprint to determine
3 when to collect a retail access deposits. In other words, Spectra's proposed "credit
4 score" is a long-term bond rating of BBB. Mr. VanEschen equates the reasonableness of
5 that specific credit score to the credit score used by Sprint. Ignoring the fact that two
6 standards have not been determined to be comparable, there is also no evidence that the
7 two relative scores are even comparable.

8
9 Because of these differences, Sprint's use of credit scores for assessing deposits for
10 residential customers has no precedential value or relevance to this proceeding.

11
12
13 **Q. AT THE CONCLUSION OF HIS TESTIMONY, STAFF RECOMMENDS THAT**
14 **SPECTRA'S PROPOSED TARIFF BE REJECTED BUT DOES INDICATE SUPPORT**
15 **FOR THE TARIFF IF SPECTRA MAKES FIVE MODIFICATIONS. CAN YOU PLEASE**
16 **SUMMARIZE THOSE FIVE MODIFICATIONS?**

17
18 **A.** Staff generally proposed the following modifications.

- 19
20 1. Deposit amount be limited to one month's charges;
- 21
22 2. IXC be permitted to post the deposit in four monthly installments;
- 23
24 3. Spectra should be permitted to increase the deposit if the carrier
25 becomes delinquent at any time;
- 26
27 4. Deposits greater than \$10,000 should be held in escrow; and
- 28
29 5. Spectra should clarify that it will use the standard of two or more late
30 payments during a twelve-month time period to establish whether an IXC
31 has a history of late payments.

32
33 **Q. DO YOU HAVE A RESPONSE TO THIS RECOMMENDATION?**

34
35 **A.** While Staff's first four items generally make the Spectra's proposed tariff less onerous, it
36 would still result in a tariff that is unjustified, discriminatory, and unreasonable. There is
37 simply no evidence that suggests any additional deposit authority is warranted. Further,
38 my rebuttal testimony also shows that the specific mechanism proposed by Spectra is
39 completely inappropriate. Staff's proposed modifications do not change any of these
40 factors.

1

2 **Q. IN HIS REBUTTAL TESTIMONY, MR. VANESCHEN REFERENCES A TARIFF THAT**
3 **SOUTHWESTERN BELL TELEPHONE COMPANY ("SWBT") FILED AT THE**
4 **INTERSTATE LEVEL TO EXPAND ITS ABILITY TO COLLECT ACCESS DEPOSITS.**
5 **DO YOU HAVE A RESPONSE?**

6

7 **A.** Yes. While the criteria SWBT proposes to use as a measure of an access customer's
8 credit worthiness is different from that proposed by Spectra, many of the underlying
9 issues and considerations are the same. Mr. VanEschen's rebuttal testimony notes that
10 the FCC has required Southwestern Bell Telephone Company to address numerous
11 issues in its direct case⁴.

12

13 In the Order discussed by Mr. VanEschen, the FCC stated the initial issue for
14 investigation is whether the revised deposit provisions applicable to interstate access
15 customers are reasonable and not so vague as to permit SBC to discriminate
16 unreasonably among its interstate access customers.⁵ Among the specific issues that
17 the FCC directed SWBT to address in its direct case were:

18

19 1. Explain why it believes its rates under price cap do not adequately
20 compensate it for the risk of uncollectables. As part of this, the FCC
21 sought information related to historic uncollectables, whether the variation
22 in 2001 and 2002 is normal fluctuation which would be covered by the
business risks included in its rate of return. (Order. ¶ 15)

23

24 2. Describe its billing and collection procedures and explain any changes in
25 its billing and collection procedures or the accounting treatment of
26 disputed amounts on bill within the past two years that could have
affected the level of uncollectables. (Order. ¶ 16)

27

28 3. Describe which access services are billed in advance and those that are
29 billed in arrears and how that has affected the level of uncollectables.
(Order. ¶ 17)

30

31 4. Identify the amount of unpaid bills of defaulting carriers that have gone
32 into bankruptcy since January 2000 and the amount that it has recovered
through bankruptcy proceedings. (Order. ¶ 18)

33

34 5. Whether the proposed tariff revisions related to deposit collection are
consistent with the U. S. Bankruptcy Code and precedents. (Order. ¶ 18)

35

36 6. Whether the risk of uncollectables has increased permanently, and if so,
37 what is the cause of the change and are there alternative methods that
would adequately address this additional risk. In this regard, the FCC

⁴ Rebuttal Testimony of John VanEschen, pg. 8.

⁵ WC Docket No. 02-319, In the Matter Southwestern Bell Telephone Company, FCC Tariff, No. 73, Transmittal No. 2906, Order, Released October 10, 2002, pg. 8.

1 noted that the proposed expansion of deposits would impose additional
2 costs on carriers and competitors at a time when access to capital
3 markets is extremely limited; adversely affecting the competitiveness of
4 the telecommunications markets. (Order. ¶ 19)

5 7. Explain how its proposed deposit criteria is a valid predictor of whether
6 the customer will pay its interstate access bill and also explain how such
7 data can be applied in a manner that will not produce arbitrary and/or
8 discriminatory results. (Order. ¶ 20)

9 8. Explain how failure to pay two monthly bills by the bill due date within a
10 twelve-month period of time is indicative of a "proven history of late
11 payments".

12 9. Explain how disputed amounts are used for determining a history of late
13 payment

14 10. The FCC also sought information on the deposit refund provisions.

15
16 The FCC required SWBT to address additional issues as well. A complete copy of the
17 FCC's Order suspending SWBT's interstate tariff is attached as Schedule RMK-6.

18
19 It is clear from reading the FCC's Order that the burden to justify the proposed changes is
20 on the party seeking the change and that any tariff must be supported by detailed studies
21 and information filed in the direct case. This procedure is consistent with the Missouri
22 Public Service Commission's rules as well (See 4 CSR 240-2.130(7)(A) and (C)).
23 Spectra should be required to present the same depth of analysis that the FCC requires in
24 evaluating comparable tariffs. Spectra's direct case was completely lacking in any detail
25 or analysis to support its proposed tariffs. Until it does so, it has failed to justify its
26 proposed tariff revisions and they should be summarily rejected.

27
28 **Q. WHAT IS YOUR RECOMMENDATION?**

29
30 **A.** Consistent with at least part of Staff's recommendation, this Commission should reject
31 Spectra's proposed tariffs. Further, the Commission should also articulate that it expects
32 any party filing similar tariffs to fully address issues similar to those that the FCC has
33 required be addressed at the interstate level including detailed information and analysis in
34 their direct case. Making access providers aware that they bear the burden of proof and
35 are expected to file a comprehensive direct case rather than a few pages of

1 unsubstantiated claims will prevent the Commission and access customers from wasting
2 resources.

3 Q. DOES THIS CONCLUDE YOUR TESTIMONY

4 A. Yes.

1 noted that the proposed expansion of deposits would impose additional
2 costs on carriers and competitors at a time when access to capital
3 markets is *extremely limited; adversely affecting the competitiveness of*
4 the telecommunications markets. (Order. ¶ 19)

- 5 7. Explain how its proposed deposit criteria is a valid predictor of whether
6 the customer will pay its interstate access bill and also explain how such
7 data can be applied in a manner that will not produce arbitrary and/or
8 discriminatory results. (Order. ¶ 20)
- 9 8. Explain how failure to pay two monthly bills by the bill due date within a
10 twelve-month period of time is indicative of a "proven history of late
11 payments".
- 12 9. Explain how disputed amounts are used for determining a history of late
13 payment
- 14 10. The FCC also sought information on the deposit refund provisions.

15
16 The FCC required SWBT to address additional issues as well. A complete copy of the
17 FCC's Order suspending SWBT's interstate tariff is attached as Schedule RMK-7.

18
19 *It is clear from reading the FCC's Order that the burden to justify the proposed changes is*
20 *on the party seeking the change and that any tariff must be supported by detailed studies*
21 *and information filed in the direct case. This procedure is consistent with the Missouri*
22 *Public Service Commission's rules as well (See 4 CSR 240-2.130(7)(A) and (C)).*
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34 their direct case. Making access providers aware that they bear the burden of proof and
35 are expected to file a comprehensive direct case rather than a few pages of

SCHEDULE 6

RMK-7

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

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)	
)	WC Docket No. 02-319
Pacific Bell Telephone Company)	
FCC Tariff No. 1)	
Transmittal No. 77)	
)	
Southern New England Telephone Companies)	
Tariff FCC No. 39)	
Transmittal No. 772)	
)	
Southwestern Bell Telephone Company)	
FCC Tariff No. 73)	
Transmittal No. 2906)	

ORDER

Adopted: October 10, 2002

Released: October 10, 2002

Direct Case Due by: October 31, 2002

Oppositions to Direct Case Due by: November 14, 2002

Rebuttal Due by: November 21, 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 Nos. 1312, 20, 77, 772, and 2906 that the Ameritech Operating Companies (Ameritech), the Nevada Bell Telephone Companies (Nevada Bell), the Pacific Bell Telephone Company (Pacific Bell), the Southern New England Telephone Companies (SNET), and the Southwestern Bell Telephone Company (SWBT) filed,

¹ 47 U.S.C. §§ 204 and 205.

respectively, to become effective August 17, 2002.² We suspended Transmittal Nos. 1312, 20, 77, 772, and 2906 for five months on August 16, 2002, and initiated this investigation.³ As discussed below, we designate issues relating to deposit provisions of Ameritech, Nevada Bell, Pacific Bell, SNET, and SWBT⁴ contained in tariff Transmittal Nos. 1312, 20, 77, 772, and 2906 for investigation to ensure that the proposed tariff provisions are not unjust, unreasonable, or unreasonably discriminatory in violation of sections 201 and 202 of the Act.⁵

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 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.⁶ These provisions since have become a standard term in interstate access tariffs.⁷ 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.⁸

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, SBC's rates at the time it entered price caps included a factor reflecting wholesale uncollectibles.⁹ Under price caps, the permitted price indexes are annually adjusted for changes in general economic conditions as reflected in the GDP-PI inflation index.¹⁰ Price

² Ameritech Operating Companies, Nevada Bell Telephone Company, Pacific Bell Telephone Company, Southern New England Telephone Companies, and Southwestern Bell Telephone Company, Transmittal Nos. 1312, 20, 77, 772, and 2906, respectively, Tariffs FCC Nos. 2, 1, 1, 39, and 73, respectively (Aug. 2, 2002).

³ Ameritech Operating Companies, Nevada Bell Telephone Company, Pacific Bell Telephone Company, Southern New England Telephone Companies, and Southwestern Bell Telephone Company, Transmittal Nos. 1312, 20, 77, 772, and 2906, Tariffs FCC Nos. 2, 1, 1, 39, and 73, Order, DA 02-2039 (WCB, rel. Aug. 16, 2002).

⁴ In this order, we will use the term "SBC" in lieu of each tariff-filing entity subject to this proceeding i.e., Ameritech, Nevada Bell, Pacific Bell, SNET, and SWBT. The term "SBC" is also used in lieu of the term "telephone company" in the proposed tariff revisions.

⁵ 47 U.S.C. §§ 201 and 202.

⁶ *Investigation of Access and Divestiture Related Tariffs*, Phase I Order, CC Docket No. 83-1145, 97 FCC 2d 1082, 1169 (1984).

⁷ 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.

⁸ *Annual 1987 Access Tariff Filings*, Memorandum Opinion and Order, 2 FCC Rcd 280, 304-05 (1986). BellSouth apparently never implemented this provision.

⁹ 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).

¹⁰ 47 C.F.R. § 61.45(b).

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.¹¹ 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.¹²

4. SBC's existing interstate access tariffs vary from one another with respect to deposit provisions and remedies for non-payment,¹³ but, by way of example, the existing Ameritech tariff requires a deposit from a customer who "has a proven history of late payments" or who "does not have established credit."¹⁴ The existing Ameritech tariff further states that "[s]uch a deposit will be refunded or credited . . . when the customer has established credit or after the customer has established a one-year prompt payment record at any time prior to the termination of the provision of service to the customer."¹⁵ This tariff also states that if a customer fails to pay its bills on time, Ameritech may refuse to process new orders or complete any pending orders 30 days after the customer receives a written notice.¹⁶

5. The proposed tariff revisions in Transmittal Nos. 1312, 20, 77, 772, and 2906 would revise the existing deposit provisions and make them identical across all the five tariff-filing entities subject to this proceeding. The proposed revisions include three separate criteria for imposition of a deposit: (1) a history of late payments, (2) no demonstration of established credit, and (3) an impairment of credit worthiness.¹⁷ The proposed revisions state that "[a] history of late payments exists if the customer has failed to pay two monthly bills by the bill due date within a 12-month period of time."¹⁸ These revisions further state that "[e]stablished credit means the customer has a one-year prompt payment record with another entity."¹⁹ Under the proposed revisions, an impairment of credit worthiness would be present in any of the following situations: (1) if any debt securities of a customer or its parent are below investment grade, as defined by the Securities and Exchange Commission; (2) if any debt securities of a customer or its parent are rated the lowest investment grade by a nationally recognized credit rating organization and are put on review by the rating organization for a possible downgrade; (3) if the customer does not have outstanding securities rated by credit

¹¹ 47 C.F.R. § 61.45(d)(1)(vii).

¹² 47 C.F.R. § 61.45(d).

¹³ See, e.g., *Ameritech Operating Companies*, Tariff FCC No. 2, 1st Revised Page 40 (effective June 14, 1988); *Southwestern Bell Telephone Company*, Tariff FCC No. 73, Original Page 2-56 to 61 (effective July 1, 1992); *Southern New England Telephone Company*, Tariff FCC No. 39, Original Page 2-13 (effective Nov. 28, 1988); *Pacific Bell Telephone Company*, Tariff FCC No. 1, Original Page 2-47 to 49 (effective May 12, 2000); *Nevada Bell Telephone Company*, Tariff FCC No. 1, Original Page 2-35 to 36 (effective Mar. 3, 2001).

¹⁴ See *Ameritech Operating Companies*, Tariff FCC No. 2, 1st Revised Page 40, Section 2.4.1(A).

¹⁵ See *Ameritech Operating Companies*, Tariff FCC No. 2, 1st Revised Page 40, Section 2.4.1(A).

¹⁶ See, e.g., *Ameritech Operating Companies*, Tariff FCC No. 2, 3rd Revised Page 27, Section 2.1.8(A) (effective June 6, 1998).

¹⁷ See, e.g., *Ameritech Operating Companies*, Tariff FCC No. 2, Original Page 40.1 and Original Page 40.2.

¹⁸ See, e.g., *Ameritech Operating Companies*, Tariff FCC No. 2, Original Page 40.1

¹⁹ See, e.g., *Ameritech Operating Companies*, Tariff FCC No. 2, Original Page 40.1

rating agencies, e.g., Standard and Poor's, and the customer is rated (a) "fair" or below in a composite credit appraisal published by Dun and Bradstreet, or (b) "high risk" in Paydex score as published by Dun and Bradstreet; (4) if the customer or its parent informs SBC or publicly states that it is unable to pay its debts; or (5) if the customer or its parent has commenced a voluntary receivership or bankruptcy proceedings or had one initiated against it.²⁰ SBC may seek a deposit or prepayment from a customer with impaired credit worthiness only if the customer's most recent interstate access bills from "the SBC Telephone Companies" total (including any outstanding balances) \$1 million dollars or more.²¹

6. Under the proposed tariff provisions, SBC has discretion to require a two-month deposit from a customer with a history of late payments or no established credit.²² The two-month deposit is based on the total charges billed and rendered by SBC for the most recent two months of service, and, if the customer has not received two months of service, it will be based on charges estimated by SBC for the initial two-month period.²³ SBC has discretion to require a one-month deposit based on the total charges billed and rendered by it for the most recent month of service from a customer with impaired credit worthiness.²⁴ If the customer so chooses, the customer may, in lieu of the one-month deposit, provide a prepayment for one-month's service based on the total charges billed and rendered for the most recent month of service.²⁵ If a customer with impaired credit worthiness also meets one of the other criteria, i.e., history of late payments or no established credit, the customer must pay SBC a two-month deposit.²⁶

7. The proposed tariff provisions also shorten the notice period for refusal or discontinuance of service. Ameritech, for example, would shorten the notice period from 30 days to 15 days or 10 days after which it would refuse to process new orders, including Primary Interexchange Carrier (PIC) change orders from end users, or would discontinue service if a customer fails to pay its bills on time.²⁷ Similarly, if a customer fails to pay a deposit or prepayment within 21 days of the date the notice is sent, SBC may refuse to process orders or

²⁰ See, e.g., *Ameritech Operating Companies*, Tariff FCC No. 2, Original Page 40.2 and Original Page 40.3.

²¹ See, e.g., *Ameritech Operating Companies*, Tariff FCC No. 2, Original Page 40.3. The proposed tariff revisions distinguish between "the Telephone Company" and "the SBC Telephone Companies." Because we are using the term "SBC" in lieu of "the Telephone Company" we will use the term "the SBC Telephone Companies" to indicate this difference.

²² See, e.g., *Ameritech Operating Companies*, Tariff FCC No. 2, Original Page 40.1.

²³ See, e.g., *Ameritech Operating Companies*, Tariff FCC No. 2, Original Page 40.1.

²⁴ See, e.g., *Ameritech Operating Companies*, Tariff FCC No. 2, Original Page 40.3.

²⁵ See, e.g., *Ameritech Operating Companies*, Tariff FCC No. 2, Original Page 40.3.

²⁶ See, e.g., *Ameritech Operating Companies*, Tariff FCC No. 2, Original Page 40.2.

²⁷ *Ameritech Operating Companies*, Tariff FCC No. 2, Sections 2.1.8(A)(1) and (2). Proposed Section 2.1.8(A) states that "[e]xcept for customers subject to a one month deposit requirement, the Telephone Company may initiate any or all of the following actions on fifteen (15) days written notice or on ten (10) days written notice as set forth in Section 2.4.1(A) and (B), electronically, or by Certified U.S. Mail . . . to the person designated by that customer to receive such notices of noncompliance (for customer subject to a one month deposit requirement, a ten (10) day notice interval shall apply)." See *Ameritech Operating Companies*, Tariff FCC No. 2, 4th Revised Page 27.

may terminate service 11 days after the original deposit or prepayment due date.²⁸

8. As justification for these revisions, SBC states that it has participated in 53 bankruptcies in the past two years.²⁹ SBC estimates that WorldCom owes it more than \$300 million, "most of which . . . could be lost in bankruptcy proceedings."³⁰

9. On August 9, 2002, AT&T Corp. (AT&T); WorldCom, Inc. (WorldCom); and counsel for the Association for Local Telecommunications Services (ALTS), the Competitive Telecommunications Association (CompTel), Grande Communications Networks, Inc., Ionex Telecommunications, Inc., KMC Telecom Holdings, Inc., NuVox, Inc., Sage Telecom, Inc., Talk America, Inc., and XO Communications, Inc.; and counsel for the Association of Communications Enterprises (ASCENT), ATX Communications, Inc., Focal Communication Corp., Level 3 Communications, LLC, Pac-West Telecomm, Inc., US LEC Corp., and U.S. TelePacific Corp. filed petitions to reject, or, in the alternative, to suspend and investigate all the SBC tariffs.³¹ Sprint Corporation (Sprint) filed a petition to reject, or, in the alternative, to suspend and investigate the Ameritech, Pacific Bell, SNET, and SWBT tariffs.³² MPower Communications Corp. (MPower) filed a petition to reject, or, in the alternative, to suspend and investigate the Ameritech, Pacific Bell, and SWBT tariffs.³³ Nextel Communications, Inc. (Nextel) filed a petition to reject, or, in the alternative, to suspend and investigate the SWBT tariff.³⁴ On August 16, 2002, SBC Communications filed its reply on behalf of Ameritech, Nevada Bell, Pacific Bell, SNET, and SWBT.³⁵

²⁸ See, e.g., Ameritech Operating Companies, Tariff FCC No. 2, Original Pages 40.1 and 40.3.

²⁹ See, e.g., Ameritech Operating Companies, Tariff FCC No. 2, Transmittal No. 772, Description and Justification at 7.

³⁰ See, e.g., *id.* at 7-8.

³¹ Ameritech Operating Companies, Nevada Bell Telephone Company, Pacific Bell Telephone Company, Southern New England Telephone Companies, and Southwestern Bell Telephone Company, Transmittal Nos. 1312, 20, 77, 772, and 2906, respectively, Tariffs FCC Nos. 2, 1, 1, 39, and 73, respectively, Petition of AT&T Corp. (Aug. 9, 2002) (*AT&T Petition*); WorldCom Petition to Reject or, in the Alternative, Suspend and Investigate (Aug. 9, 2002) (*WorldCom Petition*); Petition to Reject or, Alternatively, to Suspend and Investigate of ALTS, CompTel, Grande Communications Networks, Inc., Ionex Telecommunications, Inc., KMC Telecom Holdings, Inc., NuVox, Inc., Sage Telecom, Inc., Talk America, Inc., and XO Communications, Inc. (Aug. 9, 2002) (*ALTS Joint Petition*); Petition to Reject or Suspend and Investigate Proposed Tariff Revisions of ASCENT, ATX Communications, Inc., Focal Communications Corp., Level 3 Communications, LLC, Pac-West Telecomm, Inc., US LEC Corp., and U.S. TelePacific Corp. (*ASCENT Joint Petition*).

³² Ameritech Operating Companies, Pacific Bell Telephone Company, Southern New England Telephone Companies, and Southwestern Bell Telephone Company, Transmittal Nos. 1312, 77, 772, and 2906, respectively, Tariffs FCC Nos. 2, 1, 39, and 73, respectively, Petition of Sprint to Reject or Alternatively Suspend and Investigate (Aug. 9, 2002) (*Sprint Petition*).

³³ Ameritech Operating Companies, Pacific Bell Telephone Company, and Southwestern Bell Telephone Company, Transmittal Nos. 1312, 77, and 2906, respectively, Tariffs FCC Nos. 2, 1, and 73, respectively, Petition of MPower Communications Corp. to Reject or Alternatively Suspend and Investigate (Aug. 9, 2002) (*MPower Petition*).

³⁴ Southwestern Bell Telephone Company, Transmittal No. 2906, Tariff FCC No. 73, Petition of Nextel Communications, Inc. to Reject or Alternatively Suspend and Investigate (Aug. 9, 2002) (*Nextel Petition*).

³⁵ Ameritech Operating Companies, Nevada Bell Telephone Company, Pacific Bell Telephone Company, Southern New England Telephone Companies, and Southwestern Bell Telephone Company, Transmittal Nos. 1312, 20, 77, (continued....)

III. ISSUES DESIGNATED FOR INVESTIGATION

A. Basis for Requiring a Deposit from a Customer

1. Background

10. Under the proposed tariff provisions, SBC would have discretion to require a two-month deposit from a customer with a history of late payments or no established credit.³⁶ The two-month deposit is based on the total charges billed and rendered by SBC for the most recent two months of service, and if the customer has not received two months of service, it will be based on charges estimated by SBC for the initial two-month period.³⁷ SBC has discretion to require a one-month deposit based on the total charges billed and rendered by it for the most recent month of service from a customer with impaired credit worthiness.³⁸ If the customer so chooses, the customer may, in lieu of the one-month deposit, provide a prepayment for one-month's service based on the total charges billed and rendered for the most recent month of service.³⁹ If a customer with impaired credit worthiness also meets one of the other criteria, i.e., history of late payments or no established credit, the customer must pay SBC a two-month deposit.⁴⁰

11. "Impaired credit worthiness" is defined as meeting any one of the following criteria: (1) if any debt securities of a customer or its parent are below investment grade, as defined by the Securities and Exchange Commission; (2) if any debt securities of a customer or its parent are rated the lowest investment grade by a nationally recognized credit rating organization and are put on review by the rating organization for a possible downgrade; (3) if the customer does not have outstanding securities rated by credit rating agencies, e.g., Standard and Poor's, and the customer is rated (a) "fair" or below in a composite credit appraisal published by Dun and Bradstreet, or (b) "high risk" in Paydex score as published by Dun and Bradstreet; (4) if the customer or its parent informs SBC or publicly states that it is unable to pay its debts; or (5) if the customer or its parent has commenced a voluntary receivership or bankruptcy proceedings or had one initiated against it.⁴¹ SBC may require a deposit or prepayment from a customer with impaired credit worthiness "only if the customer's most recent interstate access bills from the SBC Telephone Companies total (including any outstanding balances) \$1 million dollars or more."⁴² A "history of late payment exists if the customer has failed to pay two monthly bills by the bill due date within a 12-month period of time."⁴³ Further, SBC's revisions change the method used to determine the interest rate on

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772, and 2906, respectively, Tariffs FCC Nos. 2, 1, 1, 39, and 73, respectively, SBC Opposition to Petition to Reject or, in the Alternative, Suspend and Investigate (Aug. 16, 2002).

³⁶ See, e.g., Ameritech Operating Companies, Tariff FCC No. 2, Original Page 40.1.

³⁷ See, e.g., Ameritech Operating Companies, Tariff FCC No. 2, Original Page 40.1.

³⁸ See, e.g., Ameritech Operating Companies, Tariff FCC No. 2, Original Page 40.3.

³⁹ See, e.g., Ameritech Operating Companies, Tariff FCC No. 2, Original Page 40.3.

⁴⁰ See, e.g., Ameritech Operating Companies, Tariff FCC No. 2, Original Page 40.2.

⁴¹ See, e.g., Ameritech Operating Companies, Tariff FCC No. 2, Original Page 40.2 and Original Page 40.3.

⁴² See, e.g., Ameritech Operating Companies, Tariff FCC No. 2, Original Page 40.3.

⁴³ See, e.g., Southwestern Bell Telephone Company Tariff FCC No. 73, Transmittal No. 2906, Original Page 2-55.1.

deposits to the rate of the most current one-year Treasury Bill.⁴⁴ SBC will pay interest only on deposits, not prepayments.⁴⁵

12. Several carriers petitioned against the SBC Transmittal Nos. 1312, 20, 77, 772, and 2906.⁴⁶ These parties allege that the tariff revisions: (1) are unjust, unreasonable, and discriminatory in violation of sections 201(b) and 202(a) of the Act,⁴⁷ and (2) are vague and ambiguous in violation of sections 61.2 and 61.54 of the Commission's rules.⁴⁸ In addition, ALTS, ASCENT, and WorldCom argue that the \$1 million dollar threshold is unjust and unreasonably discriminatory.⁴⁹ ALTS, ASCENT, Nextel, Sprint, and WorldCom assert that an entity's credit standing in the investment community has no direct bearing on its ability to pay its bills on a timely basis.⁵⁰ ALTS also asserts that the interest paid on deposits is insufficient.⁵¹ AT&T argues that the tariff revisions, which trigger a deposit or advance payment from any customer that has any debt securities that are either rated "below investment grade" or are rated "at the lowest investment grade by a nationally recognized statistical rating organization and are put on review by the rating organization for a possible downgrade," are overbroad.⁵² AT&T also argues that the SBC definition of "history of late payment," which is a failure "to pay any two monthly bills by the due date within a 12 month period of time," is overbroad, and fails to comply with the existing prescription that limits deposits to carriers with a "proven history" of non-payment.⁵³

13. In addition, several petitioners assert that requiring a deposit or prepayment from a customer that has "commenced a voluntary receivership or bankruptcy proceeding (or had a receivership or bankruptcy proceeding initiated against it)"⁵⁴ conflicts with the U.S. Bankruptcy Code provisions⁵⁵ and bankruptcy court precedent.⁵⁶ WorldCom asserts that the

⁴⁴ See, e.g., Ameritech Operating Companies, Tariff FCC No. 2, Original Page 40.1.

⁴⁵ See, e.g., Southwestern Bell Telephone Company Tariff FCC No. 73, Transmittal No. 2906, Original Page 2-55.2.

⁴⁶ AT&T and WorldCom allege that SBC's tariff filing violates a Commission prescription from 1984. See *supra*, note 6; AT&T Petition at 5-10; WorldCom Petition at 6-8. 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).

⁴⁷ 47 U.S.C. §§ 201(b) and 202(a). See, e.g., AT&T Petition at 11-16; Nextel Petition at 4-7; MPower Petition at 1-6; ASCENT Petition at 2-5.

⁴⁸ 47 C.F.R. §§ 61.2, 61.54. See, e.g., AT&T Petition at 11-16; Nextel Petition at 4-7; MPower Petition at 1-6; Sprint Petition at 1-4.

⁴⁹ ALTS Petition at 10-11; ASCENT Joint Petition at 8; WorldCom Petition at 13.

⁵⁰ ALTS Petition at 8; ASCENT Joint Petition at 4; Nextel Petition at 5; Sprint Petition at 7; WorldCom Petition at 8-9.

⁵¹ ALTS Petition at 2.

⁵² See AT&T Petition at 12. See, e.g., Southwestern Bell Telephone Company Tariff FCC No. 73, Transmittal No. 2906, Original Page 2-55.3.

⁵³ See AT&T Petition at 13. See, e.g., Southwestern Bell Telephone Company Tariff FCC No. 73, Transmittal No. 2906, Original Page 2-55.1.

⁵⁴ See, e.g., Southwestern Bell Telephone Company Tariff FCC No. 73, Transmittal No. 2906, Original Page 2-55.3.

⁵⁵ 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.

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.⁵⁷

2. Discussion

14. The initial issue designated for investigation is whether the revised deposit provisions applicable to interstate access customers are reasonable and not so vague as to permit SBC 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 -- SBC must provide access services to IXC's and competitive LECs requesting such service, and those carriers must use SBC's access services to originate or terminate many of their interstate calls. The proposed revisions to the deposit terms significantly alter the balance between SBC 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 deposits. The tariffs also raise 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 SBC to respond to the matters discussed below and provide the requested information in its direct case. Nonetheless, SBC may, as part of its direct case, seek to justify its expansion of the instances in which deposits may be required of interstate access customers.

15. As part of its direct case, SBC⁵⁸ shall explain why it believes its rates under price caps do not adequately compensate it for the risk of uncollectibles. SBC'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 SBC became subject to price cap regulation. SBC 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 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 deposits from customers meeting SBC's proposed standards. SBC shall provide the Commission with the total amount uncollected by year from January 2000 to July 31, 2002. SBC 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, SBC shall indicate the number of defaulting entities. SBC shall also indicate the total dollar amount of 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 deposit provisions of SBC's interstate access tariffs would increase customer-supplied funding as well as reduce SBC's exposure to defaults. SBC should

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⁵⁶ See, e.g., WorldCom Petition at 8-9; ALTS Joint Petition at 10.

⁵⁷ WorldCom Petition at 8-9.

⁵⁸ We clarify that all information and data requested in this order should be provided separately for each tariff-filing entity i.e., Ameritech, Nevada Bell, Pacific Bell, SNET, and SWBT.

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.

16. To assist the Commission in understanding the increase in the level of uncollectibles, SBC 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. SBC 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, SBC 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, SBC 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. SBC should also indicate if it deducts disputed amounts from amounts billed for purposes of determining whether a carrier has complied with a deadline.

17. SBC 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 SBC faces. In this connection, SBC should discuss whether different deposit provisions should apply depending upon whether the service is billed in advance or billed in arrears. SBC shall also discuss the extent to which it has a debtor relationship with its customers and how that may affect SBC's credit risk. SBC has multiple business relationships with many of its access customers. For example, an IXC could also be a CLEC and bill SBC for reciprocal compensation. By year for the period January 2000 to July 31, 2002, SBC should indicate the total amount as well as the net amount owed it by customers it identified as defaulting on access charge payments.

18. SBC 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. SBC should address whether its proposed tariff revisions requiring a deposit or prepayment are consistent with the U.S. Bankruptcy Code and precedents, given that bankruptcy law contains provisions addressing payment to utilities by debtors.⁵⁹

19. If SBC 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 SBC proposal that would adequately address this additional risk, e.g., is there a subset of carriers that can be identified that is the major cause of the increased risk? SBC's tariff revisions expanding the applicability of deposits would impose additional costs on carriers that are also SBC's competitors at a time when access to capital markets is extremely limited. This

⁵⁹ See, e.g., 11 U.S.C. § 366.

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 SBC's interests would be preferred. One alternative would be to phase in deposit requirements over several months after a trigger had been reached. SBC should comment on the efficacy of this alternative and how it might reduce SBC's risk.

20. SBC's proposed tariff revisions define "impaired credit worthiness" as meeting one of the five criteria mentioned above.⁶⁰ SBC would require deposits or prepayments from customers with impaired credit worthiness only if their most recent interstate access bills from "the SBC Telephone Companies" total \$1 million or more.⁶¹ SBC has not shown that these criteria are valid predictors of the likelihood of a customer paying its access bill, or that they are better predictors of whether a customer will pay its bills in the future than the customer's past payment history. As part of its direct case, SBC shall explain how each of these criteria is a valid predictor of whether the customer will pay its interstate access bill. SBC shall also explain how such 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 SBC would impose the deposit would also be a competitor of SBC, or of its long-distance and advance services affiliates. In this connection, SBC shall provide the Commission with information concerning the deposits that it has required of its affiliates. SBC shall also indicate whether any of its affiliates has "impaired credit worthiness" according to the five criteria, and, if so, what actions SBC would take in response to that classification. We note that most of these criteria relate to ratings for businesses. SBC should discuss its intentions, if any, with respect to residential end user customers. In addition, SBC should indicate, for each month from January 2001 to present, what percentage of its interstate access customers had bills from "the SBC Telephone Companies" totaling \$1 million or more and what percentage of SBC's interstate revenues are attributable to these customers. SBC should also explain how the \$1 million threshold is consistent with section 202(a) of the Act.⁶²

21. The proposed tariff revisions would define a history of late payments as a failure to pay two monthly bills by the bill due date within a 12-month period of time. SBC should explain how this requirement is indicative of a "proven history of late payments." SBC should explain how it will implement this provision. How are disputed amounts treated for this purpose? SBC should explain why it removed from its tariffs the provision that stated that no deposit will be required of a customer which is a successor of a company which has established credit and has no history of late payments.

22. The proposed tariff revisions state that deposits and prepayments will be based on "total charges billed and rendered" by SBC.⁶³ SBC shall explain what it means by "total charges" and whether this term includes charges for disputed amounts or services not

⁶⁰ See *supra*, para. 11. See also, e.g., Southwestern Bell Telephone Company Tariff FCC No. 73, Transmittal No. 2906, Original Pages 2-55.3.

⁶¹ See, e.g., Southwestern Bell Telephone Company Tariff FCC No. 73, Transmittal No. 2906, Original Pages 2-55.2 and 2-55.3.

⁶² 47 U.S.C. § 202(a).

⁶³ See, e.g., Southwestern Bell Telephone Company Tariff FCC No. 73, Transmittal No. 2906, Original Pages 2-55.1 and Original Page 2-55.3.

purchased out its interstate access tariffs (e.g., intrastate services). SBC shall also explain what it means by the term "the SBC Telephone Companies."⁶⁴

23. The proposed tariffs would revise the methodology used to calculate the interest on customer deposits.⁶⁵ The tariffs currently apply the same methodology to calculating interest on deposits as that applied to calculating interest for late payment penalties. In reviewing the initial access tariffs, and, in particular, the interest paid on deposits, the Commission questioned the difference in interest paid on deposits and the interest penalty collected by a telephone company on late payments.⁶⁶ The Commission stated that it could find no justification for the difference and concluded that fairness dictated an evenhanded approach to interest paid and collected.⁶⁷ Finally, the Commission stated that any differences must be justified or eliminated.⁶⁸ SBC should provide justification for the different interest amount proposed here.

24. The SBC tariff revisions propose to allow prepayment for services under certain circumstances. The tariffs define prepayment as an advance payment for future services payable in cash only, and state that SBC may seek a deposit or prepayment from a customer with impaired credit worthiness.⁶⁹ The customer may choose to provide a prepayment for one month's services in lieu of a one month deposit.⁷⁰ When the customer demonstrates that its credit worthiness is no longer impaired, SBC will apply the prepayment amount to the next month's billing or, if the customer has terminated service, to the bill for the last month of service.⁷¹ There is no true-up procedure and prepayments will not accrue interest.⁷² SBC should explain why prepayments should not be based on a rolling average of the previous month's billing. SBC shall also explain how it intends to apply the prepayment provisions in a nondiscriminatory manner.

⁶⁴ See, e.g., Southwestern Bell Telephone Company Tariff FCC No. 73, Transmittal No. 2906, Original Pages 2-55.3.

⁶⁵ See, e.g., Southwestern Bell Telephone Company Tariff FCC No. 73, Transmittal No. 2906, Original Pages 2-55.2 and 2-55.4. Section 2.5.2(A) states that "[s]imple interest, established at the interest rate of the most current November 30th . . . one year Treasury Bill rate, will accrue on cash deposits held 30 days or more, beginning thirty (30) days after receipt of the deposit. Interest will not accrue on amounts guaranteed by a bank letter of credit, third party guaranty agreement, or to any prepayment. The interest on the deposit shall be applied as a credit to the customer's account beginning one year after the cash deposit is received and every 12 months thereafter."

⁶⁶ *Investigation of Access and Divestiture Related Tariffs*, CC Docket 83-1145 (Phase I), Memorandum Opinion and Order, 97 FCC 2nd 1082, 1169, Appendix D (1984).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ See, e.g., Southwestern Bell Telephone Company Tariff FCC No. 73, Transmittal No. 2906, Original Pages 2-55.3.

⁷⁰ See, e.g., Southwestern Bell Telephone Company Tariff FCC No. 73, Transmittal No. 2906, Original Pages 2-55.3.

⁷¹ See, e.g., Southwestern Bell Telephone Company Tariff FCC No. 73, Transmittal No. 2906, Original Pages 2-55.4.

⁷² See, e.g., Southwestern Bell Telephone Company Tariff FCC No. 73, Transmittal No. 2906, Original Pages 2-55.2 and Original Page 2-55.4.

25. SBC shall provide, for the period January 2000 to present, 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. SBC shall present the data in terms that will permit the Commission to identify patterns that may exist in a customer's payment practices prior to default that may permit alternatives to deposits to be identified and evaluated.

26. We ask SBC 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. Shortened Notice Period and Bill Payment Interval

1. Background

27. SBC's tariff revisions provide that, if a customer fails to pay its bills on time, SBC may refuse to process new orders, including Primary Interexchange Carrier (PIC) change orders from end users, or may discontinue service on 15 days' or 10 days' notice.⁷³ Similarly, if a customer fails to pay a required deposit within 21 days, SBC may refuse to process orders or may terminate service beginning 11 days after the original deposit or prepayment due date.⁷⁴ The proposed tariff revisions also shorten the bill payment interval from 30 days to 21 days for customers with impaired credit worthiness.⁷⁵ Several petitioners argue that SBC's proposals to reduce the interval from 30 days from the bill date to 21 days from the day the bill is sent or posted electronically, and to reduce the notice period to terminate service are unjust and unreasonable.⁷⁶ ASCENT and Sprint argue that 21 days is inadequate because it is insufficient time to evaluate the accuracy of the charges.⁷⁷

2. Discussion

28. The second issue designated for investigation is whether SBC's proposals to reduce from 30 days to 10-15 days the notice required before termination of service may occur and to require a 21-day bill payment interval for certain customers are just and reasonable. We direct SBC to respond to the matters discussed below and provide the requested information in its direct case. Nonetheless, SBC may, as part of its direct case, seek to justify the reduced notice

⁷³ See, e.g., Southwestern Bell Telephone Company Tariff FCC No. 73, Transmittal No. 2906, 6th Revised Page 2-20, 2-21 and 2-22. Proposed Section 2.1.6(A) states that "[e]xcept for customers subject to a one month deposit requirement, the Telephone Company may initiate any or all of the following actions on fifteen (15) days written notice or on ten (10) days written notice as set forth in Section 2.5.2(A) and (B), electronically, or by Certified U.S. Mail . . . to the person designated by that customer to receive such notices of noncompliance (for customer subject to a one month deposit requirement, a ten (10) day notice interval shall apply)."

⁷⁴ See, e.g., Southwestern Bell Telephone Company Tariff FCC No. 73, Transmittal No. 2906, Original Pages 2-55.1.

⁷⁵ See, e.g., Southwestern Bell Telephone Company Tariff FCC No. 73, Transmittal No. 2906, 3rd Revised Page 2-62 Section 2.5.3 states that "all bills are due when rendered and shall be paid no later than 30 days of the bill date or by next bill date . . . which ever is sooner. For those customers subject to Section 2.5.2(B), bills are due 21 days after the bill is sent or posted electronically."

⁷⁶ See, e.g., AT&T petition at 5; ALTS Petition at 17-18; Sprint Petition at 10.

⁷⁷ See ASCENT Joint Petition at 13; Sprint at 9.

provisions in its proposed tariff revision.

29. As part of its direct case, SBC shall explain why it believes that the deposit and prepayment provisions it proposes are inadequate and why it needs shortened notice periods as well. SBC shall explain why a 21-day deadline for payment of bills is (1) necessary to protect its interests and (2) adequate to allow a customer to evaluate, and dispute if necessary, the accuracy of the charges. SBC shall explain why a 21-day deadline for payment of deposits (or prepayment) is (1) necessary to protect its interests and (2) adequate to allow a customer to assess SBC's determination that a deposit is required, dispute that determination, and raise the necessary funds. SBC 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 discuss the appropriateness of prescribing the time within which a bill must be presented to the customer if a shortened notice period were to be allowed, in order to permit the customer sufficient time to review the bill and pursue its dispute rights under the tariff. In particular, SBC should address whether it could meet the three-day requirement the Commission adopted in 1987.⁷⁸

C. Refund of Deposits

1. Background

30. The revisions also state that, in the event a customer with a history of late payments and impaired credit worthiness establishes a prompt payment record but continues to have impaired credit worthiness, SBC will, within 21 days after the customer establishes a prompt payment history, return an amount equal to one-month of the two-month deposit, plus half of any uncredited interest on the two-month deposit.⁷⁹ If the deposit is triggered by one of the five criteria for impaired credit worthiness, the cash deposit, plus any uncredited interest, will be returned within 21 days after the customer demonstrates to SBC that its credit worthiness is no longer impaired.⁸⁰ Similarly, a customer who elects prepayments in lieu of one-month deposit will continue its prepayments until it demonstrates that its credit worthiness is no longer impaired.⁸¹

2. Discussion

31. The third issue designated for investigation is the reasonableness of the deposit refund provision. The refund provision requires a customer's demonstration that its credit worthiness is no longer impaired. Because some of the impaired credit worthiness triggers may remain outside of customers' control and persist over an uncertain period of time, SBC should explain why it should not include provisions that provide it will periodically review the need for a deposit or prepayment. SBC should also explain why it should not make refunds after timely payments have been received for twelve months. Further, SBC should explain

⁷⁸ See *Annual 1987 Access Tariff Filings*, Memorandum Opinion and Order, 2 FCC Rcd at 304-05.

⁷⁹ See, e.g., *Southwestern Bell Telephone Company Tariff* FCC No. 73, Transmittal No. 2906, Original Pages 2-55.2.

⁸⁰ See, e.g., *Ameritech Operating Companies*, Tariff FCC No. 2, Original Page 40.4.

⁸¹ *Id.*

why its proposal to retain half of the interest accrued on two-months deposit is necessary to protect its interest in the event a customer with a history of late payments and impaired credit worthiness establishes a prompt payment record but continues to have impaired credit worthiness.

D. Application of Revised Deposit Requirements to Term Plan Customers

1. Background

32. Certain petitioners assert that SBC has not demonstrated substantial cause for a material change in a provision of a term plan, citing *RCA Communications, Inc.*⁸² 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.⁸³ WorldCom asserts that SBC has not shown that it has experienced any material change in its business circumstances, much less a change that would constitute an injury to SBC that would outweigh the existing customers' legitimate expectations of stability.⁸⁴ Moreover, WorldCom states that the increase in uncollectibles is merely the normal effect of the business cycle, constituting only 0.5 percent of SBC's interstate revenues, and with only a negligible effect on SBC's financial performance, which produced an interstate return of 22.4 percent in 2001.⁸⁵

2. Discussion

33. The fourth issue designated for investigation is whether the imposition of revised deposit provisions constitutes a material change to SBC's term contracts, and, if so, whether it is reasonable for SBC to apply the revised deposit provisions to term plans. If a carrier would have to provide a new or increased deposit to SBC, 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 SBC to respond to the matters discussed below and provide the requested information in its direct case. Nonetheless, SBC may, as part of its direct case, seek to justify applying the revised deposit provisions to term plans.

34. SBC shall explain in its direct case the reasons increased deposits 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 SBC. SBC shall provide the Commission with data on the share of interstate access revenues that are received from services subject to term plans and, of that amount, what

⁸² *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., ALTS Petition at 16; WorldCom Petition at 13-16.

⁸³ WorldCom Petition at 13-17.

⁸⁴ WorldCom Petition at 16-18.

⁸⁵ WorldCom Petition at 18.

portion is attributable to services that are paid in advance. If the majority of term plans require prepayment, the risk to SBC would appear to be much less than if they were all paid in arrears. Moreover, we recognize that when customers' existing term plans expire SBC will be able to apply prevailing deposit provisions to new plans taken by such carriers.

IV. PROCEDURAL MATTERS

A. Filing Schedules

35. This investigation is designated WC Docket No. 02-319. Ameritech Operating Companies, Nevada Bell Telephone Company, Pacific Bell Telephone Company, Southern New England Telephone Companies, and Southwestern Bell Telephone Company are designated parties to this investigation. Ameritech Operating Companies, Nevada Bell Telephone Company, Pacific Bell Telephone Company, Southern New England Telephone Companies, and Southwestern Bell Telephone Company shall file their direct case no later than October 31, 2002. The direct case must present their position with respect to the issues described in this Order. Pleadings responding to the direct cases may be filed no later than November 14, 2002, and must be captioned "Oppositions to Direct Case" or "Comments on Direct Case." Ameritech Operating Companies, Nevada Bell Telephone Company, Pacific Bell Telephone Company, Southern New England Telephone Companies, and Southwestern Bell Telephone Company may file a "Rebuttal" to oppositions or comments no later than November 21, 2002.

36. 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. 02-319. 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. 02-319. 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.

37. 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 (e.g., 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

38. 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**

39. 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.⁸⁶ Other rules pertaining to oral and written presentations are also set forth in section 1.1206(b).

40. 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.

⁸⁶ See 47 C.F.R. § 1.1206(b)(2), as revised.

Paperwork Reduction Act

41. 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

42. 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.

43. IT IS FURTHER ORDERED that Ameritech Operating Companies, Nevada Bell Telephone Company, Pacific Bell Telephone Company, Southern New England Telephone Companies, and Southwestern Bell Telephone Company SHALL BE parties to this proceeding.

44. IT IS FURTHER ORDERED that Ameritech Operating Companies, Nevada Bell Telephone Company, Pacific Bell Telephone Company, Southern New England Telephone Companies, and Southwestern Bell Telephone Company SHALL INCLUDE, in their direct case, a response to each request for information that they are required to answer by this Order.

FEDERAL COMMUNICATIONS COMMISSION

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

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Tariff of Spectra Communications)
Group, LLC, PSC MO. NO. 2, Facilities for Intrastate)
Access)

Case No. TT-2003-43

AFFIDAVIT OF R. MATTHEW KOHLY

STATE OF MISSOURI)

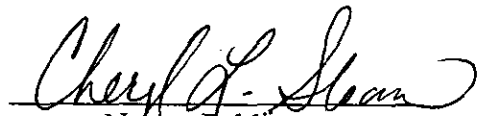
COUNTY OF COLE)

I, R. Matthew Kohly, of lawful age, being first duly sworn deposes and states:

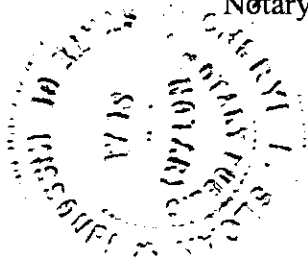
1. My name is R. Matthew Kohly. I am the District Manager for AT&T Communications of the Southwest, Inc. in its Law and Government Affairs organization.
2. Attached hereto and made a part hereof for all purposes is my Surrebuttal Testimony.
3. I hereby swear and affirm that my answers contained in the attached document to the questions therein propounded are true and correct to the best of my knowledge and belief.


R. Matthew Kohly

Subscribed and sworn to this 12th Day of November, 2002


Notary Public

My Commission Expires: CHERYL L. SLOAN
Notary Public - Notary Seal
STATE OF MISSOURI
County of Cole
My Commission Expires Nov. 17, 2006



CERTIFICATE OF SERVICE
(TT-2003-0043)

I certify that Surrebuttal Testimony by R. Matthew Kohly signed by Rebecca B. DeCook on behalf of AT&T Communications of the Southwest, Inc. were served upon the following by depositing true copies by hand-delivery or Airborne Express on November 12, 2002.



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