

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

In the matter of)
)
National Exchange Carrier Association, Inc)
Tariff FCC No. 5) Transmittal No. 951
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ORDER

Adopted: September 4, 2002

Released: September 4, 2002

By the Chief, Pricing Policy Division:

I. INTRODUCTION

1. Pursuant to section 204(a)(3) of the Communications Act of 1934, as amended,¹ the National Exchange Carrier Association, Inc. (NECA) filed Transmittal No. 951 on August 21, 2002, revising certain provisions of its interstate access tariff, FCC No. 5, to become effective September 5, 2002. NECA’s tariff revisions would amend the sections of its tariffs regarding security deposits to allow NECA to require security deposits in circumstances not covered by its existing tariffs. The filing also revises discontinuance of service provisions.

2. Under NECA’s current tariff, it may require deposits from a customer that has a proven history of late payments or lacks established credit. Under NECA’s proposed revisions, it may require additional security deposits from a customer following establishment of services pursuant to certain new criteria. These criteria are: (1) the customer has established a proven history of late payments which is defined as two or more occurrences in the preceding twelve-month period during which the company received remittance after the payment date; (2) the customer’s average monthly billing for the preceding three months has increased beyond the amount initially used to estimate the currently held security deposit, if applicable; and/or (3) the company becomes aware that the customer’s credit worthiness is below a commercially acceptable level. A commercially acceptable level of credit worthiness for a customer or its parent company is defined as having a corporate debt securities rating with respect to any outstanding general debt obligations of at least BBB according to Standard and Poor’s or an equivalent rating from other debt rating agencies. For a customer that does not issue debt securities, a commercially acceptable credit worthiness is defined as having a composite credit appraisal rating published by Dun & Bradstreet of at least “good” or a Paydex score as published by Dun & Bradstreet of at least “average.” Security deposits would be returned to the customer

¹ 47 U.S.C. § 204(a)(3).

under two conditions: (1) the deposit will be credited to the customer's account to satisfy any amounts due when the provision of service is discontinued and any remaining credit balance will be refunded to the customer; or (2) when the customer has established a history of prompt payments and has established commercially acceptable credit. The revisions would also shorten from thirty to ten days the notice period after which NECA can refuse to process new orders or discontinue service.

3. As justification for this revision, NECA states that “[i]t is essential that incumbent local exchange carriers (ILECs) participating in Tariff F.C.C. No. 5 be able to protect their ability to obtain payment for the services that they are required to provide all customers, including access services to financially troubled carriers.”² NECA further states that it “has experienced an increase in uncollectibles that is unprecedented in its history” and that this puts “NECA pooling companies at significant risk for millions of dollars.”³

4. On August 21, 2002, Sprint Communications Company, L.P. (Sprint) and WorldCom, Inc. (WorldCom) filed petitions to reject, or, in the alternative, to suspend and investigate NECA's tariff.⁴ On September 3, 2002, NECA filed its reply.⁵ In this Order we grant the petitions so far as they ask us to suspend and investigate the NECA tariff, and we suspend for five months and set for investigation NECA's revisions to its interstate access Tariff FCC No. 5.

II. DISCUSSION

5. We find that petitioners raise substantial questions regarding the lawfulness of NECA's tariff revisions that require further investigation. They question whether the revisions violate a Commission prescription, are unjust and unreasonable in violation of section 201(b) of the Act, are unreasonably discriminatory in violation of section 202(a) of the Act, and are impermissibly vague in violation of sections 61.2 and 61.54(j) of the Commission's rules.⁶ WorldCom further questions whether NECA has demonstrated substantial cause for a material change by a dominant carrier in a provision of a term plan.⁷ For these reasons, we conclude that substantial questions regarding the lawfulness of NECA's FCC Tariff No. 5, Transmittal No. 951 require further investigation, and we suspend it for five months. The specific issues that will be the subject of the investigation will be identified in an upcoming designation order and may include, but not be limited to, the issues identified in this paragraph. We may also, by order, identify discrete issues that do not warrant further investigation.

² National Exchange Carrier Association, Inc., Tariff FCC No. 5, Transmittal No. 951, Description and Justification at 1.

³ *Id.* at 3.

⁴ Petition of Sprint to Reject or Alternatively Suspend and Investigate (Aug. 21, 2002) (*Sprint Petition*); WorldCom Petition to Reject or, in the Alternative, Suspend and Investigate (Aug. 21, 2002) (*WorldCom Petition*).

⁵ National Exchange Carrier Association, Inc., Tariff FCC No. 5, Transmittal No. 951, Reply of National Exchange Carrier Association, Inc. (September 3, 2002).

⁶ 47 U.S.C. § 201(b), 202(a); 47 C.F.R. §§ 61.2, 61.54(j). *See, e.g.*, Sprint Petition at 1, 5, 6; WorldCom Petition at 2, 4, 5.

⁷ *See* WorldCom Petition at 7-8.

III. *EX PARTE* REQUIREMENTS

6. 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.⁸ Other rules pertaining to oral and written presentations are also set forth in section 1.1206(b).

IV. ORDERING CLAUSES

7. ACCORDINGLY, IT IS ORDERED that, pursuant to section 204(a) of the Communications Act of 1934, as amended,⁹ and through the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules,¹⁰ Tariff FCC No. 5, Transmittal No. 951 of the National Exchange Carrier Association, Inc. IS SUSPENDED for five months and an investigation IS INSTITUTED.

8. IT IS FURTHER ORDERED that the National Exchange Carrier Association, Inc. SHALL FILE a supplement within five business days from the release date of this order reflecting the suspension. The National Exchange Carrier Association, Inc. should cite the "DA" number on the instant order as the authority for the filing.

9. IT IS FURTHER ORDERED that the petitions to reject, or, in the alternative, suspend and investigate filed by Sprint Communications Company, L.P. and WorldCom, Inc. ARE GRANTED to the extent indicated herein and otherwise ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

⁸ See 47 C.F.R. §1.1206(b)(2), as revised.

⁹ See 47 U.S.C. § 204(a).

¹⁰ See 47 C.F.R. §§ 0.91 and 0.291.