

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

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In the Matter of )  
Tariff Filing Requirements for )  
Interstate Common Carriers )  
\_\_\_\_\_ )

Federal Communications Commission  
Office of the Secretary

CC Docket No. 92-13

**COMMENTS OF ACC LONG DISTANCE CORP.**

ACC Long Distance Corp. ("ACC"), by its attorneys, submits its comments in response to the Commission's *Notice of Proposed Rulemaking* (the "NPRM") in this docket.<sup>1/</sup> The record established in the marketplace has generally validated the Commission's deregulatory policies regarding tariff filing regulations for the domestic services (other than operator services) of nondominant interstate interexchange common carriers ("IXCs").<sup>2/</sup> Accordingly, ACC believes that, at least with respect to tariffs of resale interexchange carriers ("IXCs"), the Commission should implement such regulations only pursuant to a policy of maximum streamlined regulation.

Implementation of maximum streamlining would minimize the imposition of additional administrative burdens on small IXCs such as ACC and the potential adverse impact of tariffing on competition in the domestic interstate interexchange market. Maximum streamlining would also be consistent with the Commission's well-established

<sup>1/</sup>FCC 92-35 (released Jan. 28, 1992).

<sup>2/</sup>In this connection we note that the scope of this proceeding is limited to the tariff filing aspects of the Commission's forbearance policy, and not to the policy in general. See *NPRM* at 4, ¶ 8, in which the Commission's identification of issues for public comment is limited to questions raised by its policy of permitting "non-dominant carriers not to file tariffs."

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policy of reliance on competition and marketplace forces in lieu of pervasive regulation to promote the widespread availability of technologically advanced telecommunications services at reasonable cost to the public. Moreover, it would continue the Commission's leadership role in implementing the federal policy of minimizing regulatory burdens on smaller firms expressed, *inter alia*, in the Regulatory Flexibility Act.<sup>3/</sup>

## I. Introduction and Statement of Interest

ACC is a nondominant resale interexchange carrier, based in upstate New York and providing service primarily to business customers in the Northeast. Since 1983, ACC and its predecessor firms have been leaders in the resale interexchange industry. ACC has made personalized customer service its highest priority in offering a wide range of telecommunications services to end-users at reasonable cost.

Because ACC offers its interexchange services to all customers located within the geographical areas it serves, ACC is subject to the jurisdiction of this Commission as a "common carrier" within the meaning of Section 3(h) of the Communications Act of 1934 (the "Act").<sup>4/</sup> As a nondominant resale carrier, however, ACC is exempt under the FCC's current rules from the filing of tariffs for services other than operator services.<sup>5/</sup> For a

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<sup>3/</sup>5 USC §§ 601 *et. seq.* (1988).

<sup>4/</sup>See 47 U.S.C. § 153(h). *See also NARUC v. FCC*, 525, F.2d 630 (D.C. Cir. 1976).

<sup>5/</sup>*Policies and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor ("Competitive Carrier Rulemaking")*, 91 FCC 2d 59 (1982) (Second Report and Order) (adopting the forbearance policy for non-dominant domestic resale carriers), *recon. denied*, 93 FCC 2d 54 (1983). *See also Competitive Carrier Rulemaking*, 85 FCC 2d 1 (1980) (First Report and Order) (classifying carriers as "dominant" if they have market power (*i.e.*, the ability to control price in the marketplace) and as "non-dominant" if they do not); 95 FCC 2d 554, 577-79 (1983) (Fourth Report and Order), *recon. denied*, Fifth Report and Order, FCC 84-394, 49 Fed. Reg. 34824, 34829-30 (Sept. 4, 1984). While the forbearance policy exempts resellers such as ACC (continued...)

reseller such as ACC to remain competitive, and to be able to continue to offer quality customer services, it must keep its administrative costs as low as possible. Thus, ACC would be substantially and adversely affected by new regulatory requirements that substantially increase the administrative costs attendant upon compliance with filing requirements.

**II. Maximum Streamlining of Resale IXC Tariff Filing Requirements Would Be Lawful and Proper.**

**A. The Commission May Lawfully Distinguish Between Dominant and Nondominant Carriers With Respect to the Scope of Tariff Filings.**

As the Commission has recognized in the *NPRM*, at the time the Commission extended the application of its forbearance policy to all non-dominant IXCs, it concluded not only that the policy was lawful, but also "that application of traditional section 203 tariff filing requirements to non-dominant IXCs was both unnecessary and harmful. The Commission found these requirements to be unnecessary because non-dominant IXCs, lacking market power, could not rationally charge rates, or engage in practices, that contravened the requirements of the Act."<sup>9/</sup> These findings and concerns continue to support limitation of new tariff filing requirements to maximum streamlining.

Since 1980, the Commission has properly recognized that it is both unnecessary and harmful to extend to resellers the full panoply of tariff filing requirements applicable to dominant carriers. As the Commission recognized in the *Competitive Carrier* docket, unlike

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<sup>9/</sup>(...continued)

from certain certification and tariff filing requirements of Title II of the Act, these carriers remain subject to the Title II obligations of providing service upon reasonable request (§ 201) and without unreasonable discrimination (§ 202), as well as to the Title II complaint process (§ 208). The maximum streamlining of tariff filing obligations would not affect these other continuing Title II obligations.

<sup>9/</sup>*NPRM* at 2, ¶ 4 (footnote omitted).

dominant carriers, resale carriers, such as ACC, lack market power and are therefore not able adversely to affect the public interest by charging rates or engaging in practices that contravene the requirements of the law. It also found that requiring compliance with the full panoply of tariff obligations by resale IXC's could be harmful to the public interest by inhibiting price competition, service innovation, and rapid response to changing market conditions.<sup>27</sup> The Commission's deregulatory decisions were made on the basis of a full record established during notice and comment rulemaking proceedings. Moreover, the Commission effected its policy changes gradually, in several phases, taking further deregulatory steps only after careful consideration of the operation of the marketplace as it had been affected by prior regulatory reforms.

The Commission's proper exercise of its discretion to promote the growth of competition by minimizing regulatory burdens on smaller market entrants, as well as the wisdom of the Commission's deregulatory policy, is demonstrated by the fact that there are now more than three hundred interstate interexchange carriers, a substantial increase from the situation that existed as recently as 1984. As a result, during the same period, interstate interexchange rates have fallen sharply.<sup>28</sup> Clearly, the absence of tariff filings by nondominant carriers has not resulted in increased cost to the public. Moreover, competition has created innovation in calling plans and in facilities and services that have substantially improved the telecommunications services available to both residential and business users. These consumer benefits have been achieved at the same time that the Commission has

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<sup>27</sup>See NPRM at 2, ¶ 4 (footnote omitted).

<sup>28</sup>See "Long Distance Market Share Fourth Quarter 1991" (FCC Industry Analysis Division, Dec. 19, 1991) ("Market Share Report").

saved the taxpayers the costs of regulation that would have been incurred had the Commission continued to require complete tariff filings from resellers and other nondominant carriers.<sup>9/</sup> The public interest benefits of the Commission's conclusion, based on its cost-benefit analysis, that it need not subject smaller IXC's to the full panoply of tariff regulation, have thus been amply demonstrated.<sup>10/</sup>

**B. The Commission Should Limit NonDominant IXC Tariff Filings to Maximum Streamlining.**

There can be no dispute that the Commission is authorized to classify carriers as dominant and nondominant, to exempt them from other filing requirements, such as Section 214 certification requirements, and to regulate the classes differently to the extent permitted by the Act in light of market realities. This authority has been recognized not only by the Commission but also by the federal courts<sup>11/</sup> and by Congress.<sup>12/</sup>

As regards the domestic services of nondominant resale carriers, the record established in the Commission's *Competitive Carrier Rulemaking* docket and the operation

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<sup>9/</sup>A study conducted by the Congressional Budget Office ("CBO") estimated, for example, that the Commission's additional costs related solely to the filing requirement (exclusive of the additional costs to carriers and of other costs resulting from the new legislation) with respect to operator services alone will be \$900 thousand annually for the period for 1991 to 1995. The Commission's deregulatory initiatives have certainly saved the taxpayers substantial sums to date in on-going regulatory costs.

<sup>10/</sup>Significantly, however, the FCC's Market Share Report shows that AT&T continues to dominate the long distance market, with a market share five times that of its largest competitor. Also, the FCC's policy of distinguishing as to the degree of oversight between dominant and nondominant carriers has been approved by Congress. See S. Rep. No. 101-439, to accompany S.1660 (Commerce Service, and Transportation Com.), Aug. 30, 1990 ("Senate Report") at 23 (recognizing and approving the Commission's policy of reduced regulation of non-dominant carriers).

<sup>11/</sup>*MCI v. FCC*, 765 F.2d at 1186, 1192 (D.C. Cir. 1985).

<sup>12/</sup>Senate Report at 23.

of the marketplace since the Commission implemented the decisions made in that docket support maximum streamlining of regulation of the tariffs of nondominant IXCs. Certainly, given that Congress found it unnecessary to require more than "informational tariffs" even for operator services,<sup>13/</sup> an area it viewed with particular concern, the adoption by the Commission of a maximum streamlining rule with respect to other services of nondominant carriers is within the scope of the Commission's lawful authority.<sup>14/</sup> This level of filing should thus be deemed to represent the outside boundary of what should be required of resale IXCs' tariff filings with respect to domestic services. Given the importance of continued implementation of the Commission's policies of promoting competition, it is clear that new regulatory burdens should be kept to the minimum permitted by law.

In sum, ACC therefore urges the Commission not to apply to nondominant resellers the full range of Part 61 requirements applicable to dominant carriers subject to rate regulation.<sup>15/</sup> Rather, any new tariffing rules with respect to domestic services of nondominant carriers should be consistent with a "maximum streamlining" policy. The maximum streamlining policy should permit nondominant carriers to change rates on one day's notice and should exempt such carriers from filing cost-support data. Under maximum streamlining, the Commission should also, *inter alia*, substantially reduce the tariff filing fee and permit flexible and/or banded rates. Additionally, to facilitate both tariff preparation

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<sup>13/</sup>The informational tariffs do not require cost support data, but only a statement of all applicable terms and conditions, including charges, affecting the service. Carriers must also include an estimate of the amount of traffic expected to be carried at the specified rates. *See* 47 U.S.C. § 226.

<sup>14/</sup>The Commission's deregulatory decisions with respect to regulatory matters other than tariff filing would not only be unnecessary in view of the validity, as well as the efficacy, of these policies, but also they would be outside the scope of this proceeding as noticed in the *NPRM*.

<sup>15/</sup>Congress has approved such relaxed filing requirements. *See* Senate Report at 23.

and rate analysis by the public, under maximum streamlining nondominant carriers should be permitted to reference filed tariffs of other carriers, at least to the extent of defining rates as a specific percentage of the dominant carrier rate for a particular service;<sup>16/</sup> of defining services by reference to offerings of other carriers, such as those whose services they resell; and/or of defining rates on the basis of another carrier's mileage and day part tables.

### Conclusion

As detailed above, if the Commission reimposes some form of tariff filing requirements on nondominant resale IXCs, then its regulations should implement a policy of maximum streamlining to minimize the burden on carriers, on the Commission, and on free marketplace competition.

Respectfully submitted,

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<sup>16/</sup>This approach would minimize the added burden on carriers and the Commission alike, for refilings would not be required in the event that a carrier's policy was to reflect dominant carrier rate changes by proportionate changes in its own rates. Given that the rates of facilities-based carriers have a direct impact on the minimum rates that can be charged by a reseller that must acquire capacity from them, this policy would clearly be reasonable, and would more than satisfy any reasonable informational needs of the Commission or the public. The one-day effective date of changes would avoid disruptions in the competitive functioning of the marketplace, and would make rate reductions almost immediately available to the public.