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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

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Federal Communications Commission
Office of the Secretary

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

CC Docket No. 92-13

REPLY COMMENTS OF THE
INTERNATIONAL COMMUNICATIONS ASSOCIATION

The International Communications Association ("ICA"), by its attorneys, hereby submits its reply to the initial comments on the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-referenced proceeding. As discussed below, ICA and the vast majority of the initial comments provide support that the Commission has the statutory authority to forbear from requiring nondominant interexchange carriers ("IXCs") from filing interstate tariffs and that the continuation of this long-standing policy is in the public interest. The few commenters suggesting that the Commission's forbearance policy is unlawful have misapplied the relevant case law and statutory provisions, and, accordingly, have reached the wrong result.

There is widespread support for the continuation of the Commission's forbearance policies. As a legal matter, many parties found, as ICA did, that the Commission has broad authority under the Communications Act of 1934 to permit

nondominant common carriers not to file tariffs; that Congress is

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aware of and acquiesces in the forbearance policy; and that the Commission's forbearance policy is not at odds with the Supreme Court's recent decision in Maislin Industries, U.S., Inc. v. Primary Steel, Inc., 110 S.Ct. 2759 (1990).^{1/}

In addition, many parties found a strong public interest argument in maintaining the Commission's forbearance policies.^{2/} As ICA stated in its initial comments, its members have benefited directly from Commission policies imposing less regulation on nondominant carriers. These benefits include new and improved service offerings, more service suppliers, better service quality and lower or stable prices for many services.

The few comments suggesting that forbearance is unlawful rely on a narrow reading of the requirement in Section 203(a) of the Communications Act that common carriers file tariffs.^{3/} Inarguably, Section 203(b)(2) of the Act permits the Commission, at its discretion, to "modify any requirement made by or under the authority of this section" The term "modify" plainly

^{1/} See e.g., Comments of International Business Machines Corporation, Ad Hoc Telecommunications Users Committee, Sprint Communications, L.P., MCI Telecommunications Corporation, Association for Local Telecommunications Services, First Financial Management Corporation, GTE Service Corporation, Southwest Bell Corporation, Competitive Telecommunications Association, Interexchange Resellers Association.

^{2/} See e.g., Comments of Sprint Communications Company, L.P., Ad Hoc Telecommunications Users Committee, Telecommunications Marketing Association, OCOM Corporation, Local Area Telecommunications, Inc.

^{3/} See e.g., Comments of American Telephone and Telegraph Company, Mobile Marine Radio, Inc., Alascom, Inc., US West Communications, Inc., NYNEX Telephone Companies.

refers to any provision in Section 203, including Section 203(a), and not simply to subsection 203(b). Moreover, the opponents of the forbearance policy ignore the Commission's broad authority to implement regulatory policies that will foster the goals of the Communications Act. 47 U.S.C. 154(i).^{4/}

In addition, the forbearance opponents' reliance on Maislin is misplaced. In Maislin, the Supreme Court solely addressed the scope of the filed rate doctrine, which requires carriers that file tariffs to offer service only pursuant to their filed rates. Maislin does not address the issue of whether a federal agency may permit a carrier not to file tariffs or whether a carrier may provide service on a non-tariff basis.

Because ICA is confident that the Commission will find that its forbearance policy is lawful, ICA has not addressed the issue of what policies should be implemented if the Commission finds otherwise. Notwithstanding, ICA recommends that if the Commission finds the forbearance policy unlawful, then the Commission should issue a Further Notice of Proposed Rulemaking setting forth all of the policy alternatives discussed in the comments, including further streamlining of nondominant carriers, grandfathering of existing carrier-customer contracts, and the

^{4/} There is no merit to AT&T's suggestion that the Court in MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985), rejected the Commission's argument that Section 203(b) supports the Commission's forbearance decision. The Court's decision was limited to the issue of whether the FCC could require mandatory detariffing and did not address the issue of whether common carriers must file tariffs.

possibility of reclassifying nondominant common carriers as private carriers.^{5/}

WHEREFORE, for the reasons stated above and in its initial comments, ICA continues to urge the Commission to maintain its long-standing policy allowing nondominant common carriers not to file tariffs. This policy has promoted robust competition in the interexchange marketplace, resulting in lower prices, more choices and better service for telecommunications users.

Respectfully submitted,

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^{5/} ICA also is not addressing the comments of some of the Regional Bell Operating Companies that seek reduced regulation for their interstate access services. Such relief is beyond the scope of this proceeding.

CERTIFICATE OF SERVICE

I, Laura K. Higgins, hereby certify that a true and correct copy of the foregoing "Reply Comments of the International Communications Association" was mailed, postage prepaid, this 29th day of April, 1992, to the following:

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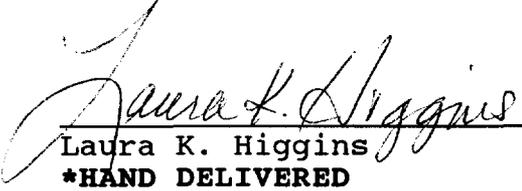
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