

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

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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**  
**COMMUNICATIONS TRANSMISSION, INC.**

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REPLY COMMENTS OF COMMUNICATIONS TRANSMISSION, INC.

Communications Transmission, Inc. ("CTI"), by its attorneys, hereby respectfully submits its reply to the various comments filed by a multiplicity of parties in the above-captioned proceeding. In reply thereto it is stated as follows:

As is usual in this type of proceeding comments as to whether forbearance is illegal are largely divided between the two worlds occupied by (1) dominant carriers who argue forbearance is illegal and thus all carriers must file tariffs; and (2) non-dominant carriers who argue that forbearance is not only legal, but is clearly in the public interest. It is obvious that ultimately the question of the legality of forbearance will be decided in the courts.

However, even those comments urging that all carriers subject to the Act must file tariffs agree that where a carrier is non-dominant the streamlined system of tariff regulation first established by the Commission in 1980<sup>1</sup> should be applied. No Commenter has suggested that it is the public interest to burden both the carrier and the FCC

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<sup>1</sup> Competitive Carrier Rulemaking, 85 FCC 2d 1, 33-40 (1980).

with the cost of the non-dominant carriers filing, and the FCC reviewing the extensive support documentation required by 47 C.F.R. § 61.38. It is in this non-dominant environment that the force of competition assures that carriers provide the best quality of service at the lowest prices.

However, only one carrier, other than CTI, has commented to the Commission that "all" carriers need not operate pursuant to an FCC tariff, if the service that carrier provides is that of carrier's carrier.<sup>2</sup> Since only one other Commenter has noted this exception it must be presumed that those Commenters that supported the argument that "all" carriers must file tariffs were simply urging restoration of the status quo ante forbearance deregulation. Carrier's carriers were not required to operate pursuant to tariff filings in accordance with the Communications Act before forbearance deregulation thus, it would require an amendment of the Communications Act to eliminate this statutory exception were forbearance deregulation to be set aside and full tariff filings once again required.

Several Commenters urge that were carriers required to file tariffs then this requirement should only be applied prospectively, i.e. only to new service offerings. CTI would agree that prospective application is in the public

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<sup>2</sup> Bell Telephone Company of Pennsylvania v. FCC, 503 F.2d 1250, 1277 (3rd Cir. 1974), cert. denied, 422 U.S. 1026 (1975).

interest. There has been no suggestion either by the Commission in the NPRM or the Commenters that the non-dominant carriers have provided service in a manner that is violative of either Section 201 (b) or Section 202 (a) of the Communications Act.

Even with streamlined tariff regulation it would be an extremely burdensome, if not impossible task, to provide the information required by 47 C.F.R. § 61.39 for service provided under long term contracts executed years ago. This would require cost analysis of equipment that was installed years ago, in many cases pursuant to contractual arrangements between the parties. These arrangements vary widely in length of time, quantity of service ordered by the customer and financial arrangements such as whether the customer did or did not pay preconstruction charges. Finally the very factor of competition drove prices up or down depending on the state of the national economy and recently the surplus of fiber optic facilities.

One Commenter urges the Commission to place a much heavier burden on those carriers seeking to use the vehicle of a tariff filing to increase rates above that presently set by contract then that established by the "substantial cause for change test."<sup>3</sup> CTI finds much merit to this assertion that an increase in rates or terms of service over

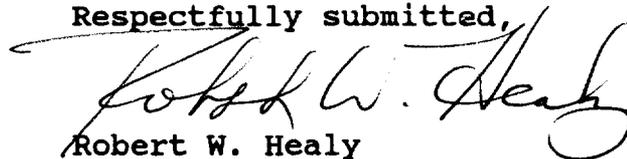
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<sup>3</sup> Cf., RCA American Communications, Inc., 84 FCC 2d 353 (1980); 86 FCC 2d 1197 (1981); 2 FCC Rcd 2236 (1987).

that specified in the contract should be presumed to be unreasonable and the proponent of this tariff filing should face a heavy burden of proof to overcome this presumption.

Many carriers in order to provide alternative routing for their customers to prevent major outages have leased a vast amount of communications facilities from other carriers under long term contracts. Any increase in these rates by the lessor's tariff filing could be devastating to the lessee and create a domino effect on the contractual arrangements the lessee, in term, has with its own customers. The proposal that such an increase be presumed unreasonable therefore has much merit. While it is not an absolute prohibition which would be unlawful in itself it does give the carrier certain rights only if it can sustain its heavy burden. In such cases the carrier should be required to give actual notice to the customer of the proposed increase in order to allow the customer adequate opportunity to fill a petition to suspend or reject.

Respectfully submitted,



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