

**TELECOMMUNICATIONS
MARKETING
ASSOCIATION**

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An Association of Long Distance Carriers
**FEDERAL COMMUNICATIONS COMMISSION
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VIA OVERNIGHT DELIVERY

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FCC MAIL BRANCH

July 22, 1992

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

RE: CC Docket No. 92-117 Amendment to Section 1.773 of the
Commission's Rules Regarding Pleading Cycle for
Petitions Against Tariff Filings Made on 14 Days'
Notice

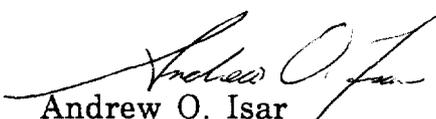
Dear Ms. Searcy:

Transmitted herewith for filing are an original and nine
copies of the Telecommunications Marketing Association's
comments in the above-captioned matter.

Questions regarding this filing may be directed to me at
(206) 641-5240.

Sincerely,

Telecommunications Marketing Association


Andrew O. Isar
Director of Industry Relations

Enclosures

No. of Copies rec'd 0 + 9
List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment to Section 1.773 of the)
Commission's Rules Regarding) CC Docket No. 92-117
Pleading Cycle for Petitions)
Against Tariff Filings Made on)
14 Days' Notice)

To the Commission:

COMMENTS OF
THE TELECOMMUNICATIONS MARKETING ASSOCIATION

The Telecommunications Marketing Association ("TMA")¹, a national association of switchless, non facilities-based interexchange providers ("switchless providers"), in response to the Commission's Notice of Proposed Rulemaking in this proceeding², hereby submits its comments on behalf of its members, encouraging the Commission to, at a minimum, retain the current seven day pleading deadline for submission of petitions to investigate, suspend or reject new tariffs filed on less than 15 Day's notice³ and allow service to be performed via facsimile, and states as follows:

Shortened Pleading Cycle

The proposed Commission amendments to Section 1.773 requiring shorter pleading deadline for submission of petitions to

¹The Telecommunications Marketing Association ("TMA") is a national association representing the interests of switchless, non facilities-based interexchange providers ("switchless providers") who serve their subscribers primarily over the facilities of the major facilities-based carriers, AT&T, MCI and Sprint ("underlying carriers"). TMA's represents over 60 resale providers and suppliers ranging from small emerging companies to well-established successful carriers generating nearly \$1B in annual revenues.

²Amendment to Section 1.773 of the Commission's Rules Regarding Pleading Cycle for Petitions Against Tariff Filings Made on 14 Days' Notice, FCC 92-215, (hereinafter "Notice")

³47 CFR §1.773(a)(2)(i).

investigate, suspend or reject new tariffs filed on less than 15 Day's notice, poses an additional challenge to an already difficult process of submission of petitions within the current seven day period, particularly for smaller entities with limited resources. Under the existing rules, seven calendar days is scant sufficient time to coordinate and prepare effective pleadings. Seven calendar days, in actuality, often become less than four days once interested parties receive notification of 14 day tariff filings. This is particularly true of smaller entities, such as the TMA and its members, who may not have a presence near the FCC nor have the resources to retain counsel or others to closely monitor 14 day tariff filings at the FCC on a daily basis. Smaller entities must typically rely public notice made by the carrier who makes the tariff filing, on direct notification by the carrier, or more likely, on the FCC Tariff Transmittal Public Reference Log itself. If the FCC Tariff Transmittal Public Reference Log is received from the FCC copy contractor by mail, the listing frequently arrives after the seven day period has ended. If the Tariff Transmittal Public Reference Log is sent via facsimile on the day it is issued, at great cost, then again less than four days typically remain to file petitions. Additionally, for the majority of those entities who do not or can not retain counsel in Washington, D.C. and must submit petitions via overnight delivery to meet the current seven day pleading cycle, yet another day is eliminated, effectively leaving no more than two days in which to coordinate and prepare pleadings. TMA believes that this is hardly sufficient time to prepare effective pleadings, while also managing multiple priorities.

As many of TMA's members provide interexchange services over the AT&T network, AT&T's Tariff FCC No.1 Software Defined Network, Distributed Network Services and other filings are of great

interest and often concern, especially in light of TMA member's experience with AT&T's less than supportive orientation toward switchless providers. These filings are governed by the current 14 day filing period and seven day pleading cycle which already has afforded little time to effectively comment. On December 20, 1992, for example, AT&T filed a revision to its Software Defined Network Services, FCC Tariff No. 1 modifying some discount levels applying after expiration of a customer's term commitment⁴. Public notice was made by AT&T in several papers including *USA Today* Life Section on December 26, 1992. Had public notice been the sole means of notification for a smaller entity, the timing of this notice, even under the current seven day filing period, would have effectively prevented an entity from filing pleadings within seven days of AT&T's tariff filing.

Although retention of D.C. counsel to monitor such filings at the FCC is an effective means of gaining timely information and assistance in preparation of pleadings, the costs of retaining counsel are often prohibitive, thus impairing a smaller entity from participating in this regulatory process. Given the tremendous power retained by AT&T and those local exchange carriers subject to the existing 14 day notice tariff filing requirement under price cap regulation to influence markets as dominant carriers, it is vital that the FCC have the benefit of reviewing pleadings of all parties who have a stake in these carriers' filings. The shortening of the pleading cycle, by even one day, under the current means available for notice of 14 day tariff filings, will serve as an effective obstacle to prevent, or at least curtail, the ability of all parties to effectively respond, particularly those with limited resources who may be most affected.

⁴AT&T Transmittal No. 3735, December 20, 1992.

Performance of Service via Facsimile

The proposed amendment to Section 1.773 requiring that pleadings be personally served on parties⁵ is unworkable for smaller entities, unless the Commission authorizes facsimile service of a petition followed by mailing a copy, as an alternative to personal service to parties other than the Commission, as the Notice contemplates. Again, smaller entities, unable to retain D.C. counsel who could personally serve carriers, would be prevented from meeting the Commission's service requirements, in the absence of an alternative method for serving parties. The requirement for personal service of pleadings would thus further prevent many parties from participating in the regulatory process. TMA believes that timely receipt of pleadings by affected parties should be the goal of performance of service. To this extent, performance of service via facsimile, followed by mailing a copy of the pleading, is an excellent alternative to personally serving parties. If the Commission's intention is to reduce the pleading cycle, facsimile transmission of pleadings is as effective, if not more so, than personal service, as documents sent via facsimile would be immediately deliverable directly to the individual or entity on whom service would be performed, without fear of misrouting or other delay. Moreover, facsimile is widely available, thus no entity would be precluded from participation simply because of the inability to serve parties personally.

Conclusion

The existing seven day period for filing petitions seeking investigation, suspension or rejection of tariffs filed by dominant carriers

⁵47 CFR §1.773(b)(2)(c), *proposed*.

with 15 days or less notice under price cap regulation, given the existing methods notice available to affected parties, already significantly limits the ability of parties to effectively coordinate, prepare and file petitions. By further reducing by one day, the period of time available to affected parties for filing petitions, the Commission would severely impair smaller entities with limited resources, from responding altogether. No affected party should be so restricted from filing pleadings, despite the Commission's presumption of the lawfulness of tariffs filed on less than 15 days' notice. Similarly, the proposed requirement for personally serving parties would, without the alternative of serving parties via facsimile, further act to preclude smaller entities from filing pleadings.

For the reasons stated above, the TMA encourages the commission to retain the current seven day period for filing of petitions seeking investigation, suspension or rejection of tariff filings made on 14 days' notice and to allow service of pleadings to be made via facsimile.

Respectfully Submitted,

TELECOMMUNICATIONS
MARKETING ASSOCIATION

By: _____


Andrew O. Isar
Director of Industry Relations

Telecommunications
Marketing Association
14405 SE 36th Street, Suite 300
Bellevue, WA 98006
(206) 641-5240

July 22, 1992

CERTIFICATE OF SERVICE

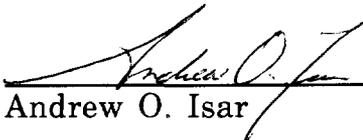
I certify that a copy of the foregoing "Comments of the Telecommunications Marketing Association" was sent by overnight delivery service on this the 22nd day of July, 1992, to the following parties:

Cheryl A. Tritt
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 500
Washington, D.C. 20554

Kathleen Levitz
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 500
Washington, D.C. 20554

Greg Vogt
Chief, Tariff Division
Federal Communications Commission
1919 M Street, NW, Room 518
Washington, D.C. 20554

Downtown Copy Center*
1919 M Street, NW, Room 246
Washington, D.C. 20554


Andrew O. Isar

July 22, 1992

*By first-class mail