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

In the Matter of)
DISCONTINUANCE)
Tariff Filing Requirements for) CC Docket No. 93-36
Nondominant Common Carriers)

NOTICE OF PROPOSED RULEMAKING

Adopted: February 19, 1993

Released: February 19, 1993

Comment Date: March 29, 1993

Reply Date: April 19, 1993

By the Commission:

I. Introduction

1. On November 13, 1992, the United States Court of Appeals for the District of Columbia Circuit, in reviewing a Commission order disposing of a complaint filed by AT&T against MCI, vacated the Fourth Report of the Competitive Carrier proceeding.¹ In so doing, the court invalidated the Commission's long-standing "forbearance" policy under which nondominant carriers -- carriers lacking market power -- were permitted to refrain from filing tariffs. While stating that it had no "quarrel with the Commission's policy objectives,"² the court found that the Communications Act did not give the Commission authority to adopt such a policy. As a result of the court's decision, nondominant carriers are now obligated to file tariffs with the Commission.

2. In the Competitive Carrier proceeding, the Commission found, as a matter of policy, that tariff regulation of carriers lacking market power was unnecessary and, in fact, harmful to competition.³ We recently affirmed

¹ AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992), rehearing en banc denied, January 21, 1993 ("Forbearance Decision").

² Forbearance Decision, 978 F.2d at 736.

³ Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor (CC Docket No. 79-252) (Competitive Carrier), Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979) (Competitive Carrier Notice); First Report and Order, 85 FCC 2d 1 (1980) (First Report); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981) (Competitive Carrier Further Notice); Second Further Notice of Proposed Rulemaking, FCC No. 82-187, 47 Fed. Reg. 17,308 (1982); Second Report and Order, 91 FCC 2d 59 (1982) (Second Report), recon., 93 FCC 2d 54 (1983); Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28,292 (1983); Third Report and Order, 48 Fed. Reg. 46,791 (1983); Fourth Report and

these policy findings in an order adopted on November 5, 1992. In light of these policy findings, we initiate this rulemaking proceeding in order to consider easing in the near term the existing tariff filing requirements for nondominant carriers. Specifically, we set forth a targeted proposal to streamline, to the maximum extent possible consistent with our statutory obligations, our tariff filing rules for domestic nondominant common carriers.

II. Background

3. On August 7, 1989, AT&T filed a complaint against MCI alleging that MCI was violating Section 203 of the Communications Act by providing interstate telecommunications services to certain large business customers at rates and on terms and conditions not set forth in interstate tariffs. AT&T claimed that, notwithstanding the Commission's permissive detariffing rules, the plain language of Section 203 requires all carriers to file tariffs.

4. Recognizing that AT&T's complaint was, in effect, an attack on the legality of the Competitive Carrier permissive detariffing rule, with potentially important consequences for the entire telecommunications industry, we concluded that the issues AT&T raised should be addressed in a broader rulemaking proceeding rather than a two-party adjudication.⁴ Accordingly, in an order adopted on January 24, 1992, we denied AT&T's plea for damages against MCI and dismissed the complaint insofar as it sought injunctive relief against MCI.⁵ At the same time, we initiated a rulemaking proceeding to consider the legality of our permissive detariffing rule.⁶

Order, 95 FCC 2d 554 (1983) (Fourth Report), vacated, AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992), rehearing en banc denied, January 21, 1993; Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 922 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984) (Fifth Report), recon., 59 Rad. Reg. 2d (P&F) 543 (1985); Sixth Report and Order, 99 FCC 2d 1020 (1985) (Sixth Report), rev'd MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985) (MCI v. FCC).

⁴ AT&T Communications v. MCI Telecommunications Corp., Memorandum Opinion and Order, File No. E-89-297, 7 FCC Rcd 807, 809 (1992) ("Complaint Order").

⁵ Id.

⁶ Tariff Filing Requirements for Interstate Common Carriers, Notice of Proposed Rulemaking, CC Docket No. 92-13, 7 FCC Rcd 804, 57 Fed. Reg. 6487 (1992) ("Notice"). On November 5, 1992, we adopted an order in that proceeding reaffirming our decision in Competitive Carrier that domestic nondominant carriers subject to forbearance may, but need not, file interstate tariffs. Tariff Filing Requirements for Interstate Common Carriers, Report and Order, CC Docket No. 92-13, 7 FCC Rcd 8072 (1992) ("Section 203 Order"). This order was released on November 25, 1992. In light of the court's November 13 decision, we stayed the effectiveness of the Report and Order until further notice. Tariff Filing Requirements for

5. On November 13, 1992, the United States Court of Appeals for the District of Columbia Circuit decided that the Complaint Order was unlawful. The court held that it was arbitrary and capricious for us to dismiss AT&T's complaint without determining whether MCI's activity violated Section 203 of the Act.⁷ Also, the court found that we implicitly relied upon our permissive detariffing policy applied in the Fourth Report of the Competitive Carrier proceeding as a substantive rule in dismissing the complaint. Considering the validity of that order, the court found that our permissive detariffing policy was contrary to Section 203 of the Act.⁸ Accordingly, it vacated the Fourth Report and remanded the complaint proceeding to us.⁹

6. The Commission took various actions in the Fourth Report in the Competitive Carrier proceeding. It applied its existing permissive detariffing policy to several classes of carriers, including MCI. It was this permissive detariffing policy the court considered in its Forbearance Decision.¹⁰ In the Fourth Report, however, the Commission also made other regulatory decisions affecting interexchange carriers. Specifically, the Commission declared several classes of carriers nondominant, applied "streamlined regulation" to all but one of these carrier classes, and gave newly streamlined or forbome carriers blanket Section 214 authority to install new facilities or remove existing facilities from service.¹¹ We regard these matters as unaffected by the court's decision.

Interstate Common Carriers, Order, CC Docket No. 92-13, 7 FCC Rcd 7989 (1992). See infra Section III.A.

⁷ Forbearance Decision, 978 F.2d at 731-33.

⁸ Id. at 733-36.

⁹ In lieu of forbearance, the streamlined tariff requirements adopted in the First Report of the Competitive Carrier proceeding once again apply to nondominant common carriers. These rules can be found in Part 61 of the Commission's Rules. See 47 C.F.R. § 61. On January 27, 1993, however, we issued a Public Notice stating that during the pendency of this rulemaking proceeding we do not intend to reject tariff filings from carriers affected by the court's Forbearance Decision for failure to comply with the technical requirements sections of our rules regarding the form of tariffs. Tariff Filing Requirements for Interstate Common Carriers, Public Notice, FCC 93-51 (released January 27, 1993). On February 2, 1993, we issued a Public Notice waiving for a limited period of time the fourteen day notice requirements set forth in Section 61.58(b) of the Commission's rules for filing of tariffs by nondominant carriers for services for which there were no tariffs on file. Public Notice, FCC 93-71 (released February 2, 1993).

¹⁰ For a discussion of the Competitive Carrier proceeding, including the Fourth Report, see paras. 8-11, infra.

¹¹ See Fourth Report, 95 FCC 2d at 557-82.

III. Tariff Regulation of Nondominant Carriers

7. For better than ten years we have consistently found, as a matter of policy, that minimal tariff regulation of nondominant common carriers serves the public interest. In light of the court's specific decision that permissive detariffing lies outside our authority under the Communications Act, we now wish to consider near-term changes to our tariffing rules to implement these policy findings in this new environment.¹²

A. Past Policy Findings

8. The Commission initiated the Competitive Carrier proceeding in 1979 to examine the proper scope of regulation in the new era of competition.¹³ The Commission proposed to apply different rules to different carriers depending upon the extent of their market power. "Dominant" carriers -- primarily AT&T and its then-affiliated Bell Operating Companies -- would continue to be subject to full tariff regulation.¹⁴ For "nondominant" carriers, which lacked market power, the Commission proposed to reduce or eliminate many regulatory requirements.¹⁵

9. The Commission found in Competitive Carrier that market conditions rather than regulation controlled the lawfulness of rate levels and rate structures of such carriers. Because nondominant carriers lacked market power, the Commission concluded that if these carriers attempted to charge unjust and unreasonable rates in violation of Section 201(b) of the Communications Act,¹⁶ or to discriminate unreasonably in violation of Section

¹² We note that the court, while holding permissive detariffing unlawful, stated that it had no "quarrel with the Commission's policy objectives." Forbearance Decision, slip op. at 17.

The rules changes proposed in this Notice would not apply to international nondominant carriers, which were never subject to permissive detariffing, or to cellular carriers, which have been found dominant. We streamlined our regulation of nondominant carriers providing international services and facilities in the International Competitive Carrier proceeding. International Competitive Carrier Policies, Report and Order, CC Docket No. 85-107, 102 FCC 2d 812 (1985), recon. denied, 60 R.R.2d 1435 (1986); see also, Regulation of International Common Carrier Services, Report and Order, CC Docket No. 91-360, 7 FCC Rcd 7331 (1992). Cellular carriers were declared dominant in the Fifth Report of the Competitive Carrier proceeding. Fifth Report, 98 F.C.C. 2d at 1204, n.41.

¹³ Competitive Carrier Notice, 77 FCC 2d at 309.

¹⁴ Id. at 318-28; First Report, 85 FCC 2d at 20-22.

¹⁵ Competitive Carrier Notice, 77 FCC 2d at 313-14.

¹⁶ 47 U.S.C. § 201(b).

202(a) of the Act, customers would simply move to other carriers.¹⁷ The Commission therefore concluded that the absence of mandatory tariff regulation for nondominant carriers served the public interest.¹⁸ Based on these policy findings the Commission first adopted "streamlined" tariff regulation¹⁹, and later permissive detariffing, for domestic nondominant carriers.²⁰ On November 5, 1992, prior to the invalidation of permissive detariffing by the Court of Appeals, we adopted the Section 203 Order. There we reaffirmed the key policy findings reached by the Commission in the Competitive Carrier proceeding.²¹

B. Growth of Competition in the Marketplace

10. Actual experience during a decade of permissive detariffing helps confirm that the Commission's permissive detariffing policy has played a substantial role in the development of competition in the interexchange market and the increased choices for customers with respect to carriers and prices.²² In 1982, approximately a dozen long distance carriers operated within the United States.²³ By March 1992, there were an estimated 482 carriers purchasing switched access from local exchange carriers.²⁴ Moreover, since 1984, overall interstate calling has grown at an annual rate of about 12%, with carriers other than AT&T posting an average annual growth rate in excess of 25%.²⁵ During the period between January 1984 and October 1992, AT&T's share, stated in minutes, of the interstate market declined from

¹⁷ Id. § 202(a); see Competitive Carrier Notice, 77 FCC 2d at 334-38.

¹⁸ Competitive Carrier Notice, 77 FCC 2d at 313-14, 358-59; First Report, 85 FCC 2d at 1-12; Second Report, 91 FCC 2d at 59-73.

¹⁹ Under the streamlined rules, tariffs are presumed lawful and must be filed on fourteen days notice. Carriers do not need to file cost support.

²⁰ The permissive detariffing rules had been a cornerstone of the Commission's regulatory regime ever since their adoption.

²¹ Section 203 Order, 7 FCC Rcd at 8078-79.

²² In the Interexchange Order, we concluded based upon the extensive record in that proceeding, that competition had flourished since the Competitive Carrier decisions. See Competition in the Interstate Interexchange Marketplace, Report and Order, 6 FCC Rcd 5880, 5881-82 (1991).

²³ See Trends in Telephone Service, Industry Analysis Division, Common Carrier Bureau, FCC, at 30 & Table 19 (February 1992).

²⁴ Summary of Long Distance Carriers, Industry Analysis Division, FCC, at 6 & Table 1 (June 16, 1992). This number does not account for many resellers.

²⁵ Trends in Telephone Service, Industry Analysis Division, Common Carrier Bureau, FCC, at 34 (September 1992).

over 80% to just more than 60%,²⁶ while its rates for directly dialed interstate calls have also fallen substantially.²⁷ Several of AT&T's nondominant competitors have engaged in intensive capital investment programs to develop state-of-the-art fiber optic networks, and AT&T now has less than half of the long distance industry's fiber optic route miles.²⁸ This dramatic increase in the growth and strength of competition in the interstate interexchange marketplace must be attributed in part to our regulatory policies for nondominant carriers.

11. Competition in other service markets has also increased under our policy of permissive detariffing. For example, local exchange carriers (LECs) for many years faced little or no competition in their provision of interstate access services. Technological improvements, however, most notably fiber optics, have facilitated the development of competition in the provision of these facilities and services. Thus, while LECs still provide most interstate access services, fiber-based carriers, sometimes referred to as competitive access providers (CAPs), now provide access services in many parts of the country.²⁹ The development of competition in the provision of interstate access services has also benefitted from the lack of tariff regulation. Since their inception, CAPs have not been burdened by interstate tariff filing requirements.³⁰

²⁶ Long Distance Market Shares, Industry Analysis Division, FCC, at 9, Table 3 (January 1993).

²⁷ Trends in Telephone Service, Industry Analysis Division, Common Carrier Bureau, FCC, at 13 (February 1992).

²⁸ See Competition in the Interstate Interexchange Marketplace, Notice of Proposed Rulemaking, 5 FCC Rcd 2627, 2633-34 (1990).

²⁹ Expanded Interconnection with Local Telephone Company Facilities, Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 91-141, 6 FCC Rcd 3259 (1991). In a recent order in the same proceeding, we took steps to promote increased competition by requiring certain LECs to offer expanded interconnection to CAPs and other interested parties. See Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 (1992).

³⁰ It has consistently been our policy that a carrier is nondominant unless the Commission has previously found it to be dominant. See First Report, 85 FCC 2d at 10-11; see also 47 C.F.R. § 61.3(t) (Commission rule defining "nondominant carrier" as: "A carrier not found to be dominant.") Because CAPs have not been declared dominant in any Commission order, we consider them to be nondominant common carriers. See Application of Teleport Communications, New York, Memorandum Opinion and Order, File No. 13135-CF-TC-(3)-92, 7 FCC Rcd 5986, 5987 (para. 14) (1992) (Teleport was described as a nondominant carrier).

C. Proposed Rule Changes

12. Consistent with the overall policy findings made originally in Competitive Carrier, and recently reaffirmed in the Section 203 Order, we tentatively conclude that, as a matter of policy, existing tariff regulation of nondominant carriers inhibits price competition, service innovation, entry into the market, and the ability of firms to respond quickly to market trends. In particular, we tentatively conclude that some of our existing streamlined tariff filing requirements are unnecessary for, and burdensome on, nondominant carriers.³¹ Accordingly, we initiate this rulemaking proceeding in order to consider easing in the near term the tariff filing requirements for nondominant carriers in a manner consistent with the Act.

13. Based on the policy findings above, we tentatively conclude that the public interest would be served in the near term by streamlining, to the maximum extent possible consistent with our statutory obligations, our tariff regulation of all domestic nondominant carriers. Specifically, we propose to allow nondominant common carriers to file their interstate tariffs on not less than one day notice. We also propose to reduce tariff content requirements for nondominant carriers by allowing such carriers to state in their tariffs either a maximum rate or a range of rates. Finally, we propose to require these carriers to file their tariffs and tariff revisions on three and one half inch floppy diskettes and to give them flexibility in formatting their tariff filings. We seek comment on these proposals. We also seek comment on whether any categories of nondominant carriers, such as nondominant wireless carriers, can and should be regulated differently than nondominant carriers generally.

1. Tariff Notice Requirements

14. Under our current rules for nondominant carriers adopted in the First Report of the Competitive Carrier proceeding, tariff filings of nondominant carriers are presumed lawful and must be filed on not less than fourteen days notice.³² The notice period affords the Commission the opportunity, on our own motion or on a petition from an interested party, to investigate the lawfulness of tariffs before they become effective. Since the streamlined rules were adopted, however, the Commission has never invoked its statutory discretion to suspend and investigate nondominant carrier tariffs prior to their taking effect, and has only once rejected a nondominant carrier tariff.³³

³¹ The Commission made a similar conclusion in the Second Report. Second Report, 91 FCC 2d at 60-61.

³² The notice requirement for nondominant carriers filing tariffs is stated in Section 61.58(b) of our rules. 47 C.F.R. § 61.58(b).

³³ Capital Network Systems, Inc., Tariff F.C.C. No. 2, Memorandum Opinion and Order, 6 FCC Rcd 5609 (Com.Car.Bur. 1991).

15. We tentatively conclude that the current fourteen-day notice period, although an improvement over longer notice periods, will have, in the absence of permissive detariffing, an anticompetitive impact on nondominant carrier competition. The advance notice period allows competitors time to begin, and possibly complete, development and implementation of a market response before the tariff becomes effective. As such, the notice period delays the benefits customers receive from new offerings, and discourages carriers from taking pro-consumer actions. Accordingly, we propose to reduce the notice period required before tariffs may take effect to not less than one day.

16. We tentatively conclude that this proposed change will not hinder our ability to fulfill our responsibilities under the Act. We are fully empowered under Sections 4(i), 205, 403 and other sections of the Act to initiate investigations after a tariff becomes effective and to order any necessary relief. In addition, the Section 208 complaint process permits an aggrieved party to seek a determination of the lawfulness of a carrier's rates or practices and full compensation for any harm due to violations of the Act.

17. We also tentatively conclude that we have legal authority to implement this proposal. The Communications Act specifically grants the Commission authority, "for good cause shown," to "modify" the notice period for tariff filings "either in particular instances or by general order applicable to special circumstances and conditions."³⁴ Also, there is precedent for one day notice. The United States Court of Appeals for the Eleventh Circuit has sanctioned use of a one day notice period for certain rate decreases under Interstate Commerce Act language similar to that in Section 203 of the Communications Act.³⁵

18. We recognize that in proposing a one day notice period for nondominant carriers, we would effectively eliminate pre-effective tariff review. We note, however, that Section 204 of the Act states that "the Commission may . . . enter upon a hearing concerning the lawfulness [of a filed tariff] . . ."³⁶ The appearance of the word "may" throughout this section of the Act is a strong indication that Congress intended the Commission to have discretion to refrain from pre-effective tariff review where it would not serve the public interest.³⁷ Accordingly, we tentatively

³⁴ 47 U.S.C. § 203(b)(2).

³⁵ *Southern Motor Carriers Rate Conference v. United States*, 773 F.2d 1561 (11th Cir. 1985).

³⁶ 47 U.S.C. § 204.

³⁷ In its decisions vacating the fourth and sixth Competitive Carrier orders, the United States Court of Appeals for the District of Columbia Circuit has stated that the use of the word "shall" in the Communications Act means that the Commission has no discretion to deviate from the requirement. MCI v. FCC, 765 F.2d at 1191; Forbearance Decision, 978 F.2d at 735.

conclude that adoption of a one day notice period for nondominant common carriers is consistent with Sections 203 and 204 of the Communications Act.

19. We seek comment on our proposal to allow interstate domestic tariffs of nondominant common carriers to become effective on not less than one day notice. In particular, we seek comment concerning our tentative conclusions about the benefits and drawbacks of the current streamlined tariff filing notice period applicable to services of nondominant carriers. We also seek comment on whether any alternative notice period would better serve the public interest. Also, we seek comment on our legal authority to adopt such a proposal.

20. Finally, we tentatively conclude that the rule changes proposed in this notice should not apply to the provision of operator services by nondominant carriers. Nondominant carriers providing operator services were not previously subject to permissive detariffing. Rather, these carriers are required to file informational tariffs for their operator services pursuant to Section 226(h) of the Communications Act.³⁸ We seek comment on this tentative conclusion.

2. Tariff Content Requirements

21. We propose to further reduce the tariff filing burdens on nondominant carriers by limiting the type of information we require to appear in tariffs.³⁹ Section 203(a) of the Act requires only that carriers file "schedules showing all charges for itself and its connecting carriers . . . and showing the classifications, practices, and regulations affecting such charges."⁴⁰ We propose to require nondominant common carriers to include in their tariff only the information required under this section of the Act.

22. We also propose to modify the rate information required by our rules. Currently carriers are required to prepare and file new schedules each time they wish to implement minor rate revisions. This requirement forces nondominant carriers to make repeated revisions, with attendant administrative costs. In light of our tentative conclusion that, as a policy

Conversely, then, the use of the word "may" in Section 204 must mean that Congress intended the Commission to have discretion not to perform pre-effective review.

³⁸ 47 U.S.C. § 226(h).

³⁹ Under our current streamlined rules, nondominant carriers filing tariffs do not have to file cost support information along with their tariffs. 47 C.F.R. § 61.38. Also, as part of our streamlined tariff regulations, tariff filings of nondominant carriers were found to be presumptively lawful. First Report, 85 FOC 2d at 31-33. We do not here propose to change either this rule or finding.

⁴⁰ 47 U.S.C. § 203(a).

matter, existing tariff filing requirements are unnecessary for, and burdensome on, nondominant carriers in the absence of permissive detariffing, we propose to allow nondominant carriers to state in their tariffs either a maximum rate or a range of rates. This proposal would eliminate the need for nondominant carriers to file new schedules whenever rate changes are either under the maximum rate or within specified ranges -- whichever is appropriate. Moreover, this proposal would lessen the potential for tacit collusion among carriers by withholding from competitors the exact rate being charged by competitors at any given time.⁴¹

23. We seek comment on the lawfulness of these proposals, and, in particular, on whether they comply with Section 203(a) of the Act. We also encourage parties to recommend additional or alternative means by which we may lawfully reduce the tariff filing burdens for nondominant carriers.

3. Tariff Form Requirements

24. The streamlined tariff filing requirements adopted in Competitive Carrier provide that nondominant carriers follow the same technical tariff filing requirements as dominant carriers. These rules were designed to facilitate the tariff review process by making the detailed tariffs required of dominant carriers easier to understand and making it easier to compare new filings to old. As such, they provide a substantial benefit in the case of dominant carrier tariffs which are subject to relatively stringent tariff review. These rules, however, may not be justified in the case of nondominant carriers whose tariffs do not require stringent review.

25. Accordingly, we tentatively conclude that our tariff form requirements for nondominant carriers are unnecessary. We therefore propose to modify substantially or eliminate the tariff form requirements for these carriers.⁴² First, we propose to establish new rules for nondominant carriers and to modify the existing form requirements to state that these rules apply only to dominant common carriers. We propose to adopt the following form requirements for nondominant common carrier tariffs:

1. In order to facilitate the processing, storage, and availability of the scores of tariffs we expect to receive from nondominant carriers, we propose to require nondominant carriers to file tariffs and updates on a three and one half inch floppy diskettes that contain the complete tariff. We propose to require that updates be integrated into the complete tariff and that the entire tariff, as modified, be refiled on diskettes.
2. We propose to give carriers flexibility in indicating material that is new or changed. Carriers would be required to indicate in the tariff, in whatever way they prefer, that new or changed material is present.

⁴¹ Customers would obtain exact rate information from carriers in the course of ordering service.

⁴² The rules changes we propose are stated in Appendix A.

3. We propose that, in lieu of formal transmittal letter requirements, carriers will be permitted to file a cover letter in a form of their choice. At a minimum, we propose to require that cover letters are 8 1/2 by 11 inches in size, that they identify the carrier, and that they briefly explain the nature of the filing and indicate the date and method of filing of the original of the cover letter.

4. We propose to allow carriers to state, in any form, the tariff charges and the classifications, practices and regulations affecting such charges required under Section 203(a) of the Act.

26. We tentatively conclude that because these technical form requirements have been imposed for administrative ease rather than to meet any statutory requirement, our proposals to modify those requirements for nondominant carriers are consistent with the Act. We seek comment regarding the costs and benefits of applying the current tariff form requirements to nondominant carriers. Furthermore, we solicit comments on the proposals set forth above and on any additional or alternative means of reducing the administrative burden on nondominant carriers.

4. How Filing is Made

27. The new tariff filing requirements proposed above for nondominant common carriers will, if adopted, necessitate new rules for making a tariff filing. Accordingly, we propose to adopt the following tariff filing rules:

1. Nondominant carriers must send a paper copy of the cover letter, fee form and fee to the Mellon Bank.

2. Carriers must file with the Secretary of the Commission a copy of the cover letter and tariff filing on diskette. This copy would be for the Commission's official records and would not be generally available to the public.

3. Carriers must also send a paper copy of the cover letter and one diskette to the Public Reference Room. This copy would be available for public reference.

4. Carriers updating tariffs already on file would file a paper copy of the cover letter and diskette containing the complete tariff, with the new or changed material inserted.

V. Conclusion

28. For more than ten years, it has been our view that, as a policy matter, tariff regulation of domestic nondominant carriers -- those lacking market power -- is not necessary to serve the public interest and is, moreover, harmful to competition. Accordingly, for ten years, we permitted these nondominant carriers to refrain from filing tariffs under our permissive detariffing policy. Recently, the United States Court of Appeals

for the District of Columbia Circuit found permissive detariffing inconsistent with Section 203 of the Communications Act. The court, however, did not object to the underlying policy objectives. In this Notice, we tentatively conclude that, in the absence of permissive detariffing, some of our existing streamlined tariff filing requirements are unnecessary for, and burdensome on, nondominant carriers that were subject to permissive detariffing. We propose, therefore, to consider easing in the near term the tariff filing requirements for domestic nondominant carriers in a manner consistent with our statutory obligations. Specifically, we set forth a targeted proposal to streamline, to the maximum extent possible, our tariff filing rules for nondominant common carriers, and we seek comment on the merits of this proposal.

VI. Procedural Matters

A. Ex Parte Rules

29. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission Rules.⁴³

B. Regulatory Flexibility Act

30. An initial Regulatory Flexibility Act Analysis is contained in Appendix B.

C. Authority

31. This action is taken pursuant to Sections 1, 4(i), 4(j), 201-205, and 403 of the Communications Act as amended; 47 U.S.C. §§ 154(i), 154(j), 201-205, and 403.

VII. Ordering Clauses

32. Accordingly, IT IS ORDERED that NOTICE IS HEREBY GIVEN of the proposed regulatory changes described above, and that COMMENT IS SOUGHT on these proposals.

33. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules⁴⁴, comments SHALL BE FILED with the Secretary, Federal Communications Commission, Washington, D.C. 20554 on or before March 29, 1993, and reply comments SHALL BE FILED with the Secretary on or before April 19, 1993. To file formally in this proceeding, parties must file an original and four copies of all comments, reply comments, and supporting comments. Parties wishing each Commissioner to receive a personal copy of their comments must file an

⁴³ See generally Section 1.1206(a) of the Commission's Rules. 47 C.F.R. § 1.1206(a).

⁴⁴ 47 C.F.R. §§ 1.415 and 1.419.

original plus nine copies. In addition, parties should file two copies of any such pleadings with the Policy and Program Planning Division, Common Carrier Bureau, Room 544, 1919 M Street, N.W., Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, the International Transcription Services, Inc., Suite 140, 2100 M Street, N.W., Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy

Donna R. Searcy
Secretary

W

APPENDIX A

PROPOSED RULE CHANGES

PART 61 TARIFFS

- Sec.
61.1 Purpose and application.
61.2 Clear and explicit explanatory statements
DEFINITIONS
61.3 Definitions
61.11-61.19 [Reserved]

GENERAL RULES FOR DOMESTIC NONDOMINANT CARRIERS

- 61.20 Method of-Filing Publications
61.21 Cover Letters

SPECIFIC RULES FOR DOMESTIC NONDOMINANT CARRIERS

- 61.22 Composition of Tariffs
61.23 Notice Requirements
61.24-61.26 [Reserved]

General Rules for Domestic Nondominant Carriers

§ 61.20 Method of Filing Publications

(a) Publications sent for filing must be addressed to "Secretary, Federal Communications Commission, Washington, D.C. 20554." The date on which the publication is received by the Secretary of the Commission (or the Mail Room where submitted by mail) is considered the official filing date.

(b) In addition, for all tariff publications requiring fees as set forth in Part 1, subpart G of this chapter, issuing carriers must submit the original of the cover letter (without attachments), FCC Form 155, and the appropriate fee to the Mellon Bank, Pittsburgh, PA, at the address set forth in § 1.1105. Issuing carriers should submit these fee materials on the same date as the submission in paragraph (a).

(c) In addition to the requirements set forth in paragraphs (a) and (b) of this section, the issuing carrier must send a copy of the cover letter with one diskette containing both the complete tariff and any attachments, as appropriate, to the Secretary, Federal Communications Commission. In addition, the issuing carrier must send one diskette of the complete tariff and a copy of the cover letter to the commercial contractor (at its office on Commission premises), and to the Chief, Tariff Review Branch. The latter should be clearly labeled as the "Public Reference Copy." The issuing

carrier should file the copies required by this paragraph so they will be received on the same date as the filings in paragraph (a).

§ 61.21 Cover Letters

(a) Except as specified in § 61.32(b), all publications filed with the Commission must be accompanied by a cover letter, 8 1/2 by 11 inches in size. All cover letters should briefly explain the nature of the filing and indicate the date and method of filing of the original of the cover letter as required by § 61.20(b).

(b) A separate cover letter may accompany each publication, or an issuing carrier may file as many publications as desired with one cover letter. Note: If a receipt for accompanying publication is desired, the cover letter must be sent in duplicate. One copy showing the date of receipt by the Commission will then be returned to the sender.

Specific Rules for Domestic Nondominant Carriers

§ 61.22 Composition of Tariffs

(a) The tariff must be submitted on a 3 1/2 inch diskette, formatted in an IBM compatible form using MS DOS 5.0 and Word Perfect 5.1 software. The diskette must be clearly labelled with the carrier's name, Tariff Number, and the date of submission. The cover letter must be submitted on 8 1/2 by 11 inch paper, and must be plainly printed in black ink.

(b) The tariff must contain the carrier's name, and the information required by Section 203(c) of the Act. Rates may be expressed in a manner of the carrier's choosing and may include ranges or maximums.

(c) Changes to a tariff must be made by refileing the entire tariff on a new diskette, with the changed material included. The carrier must indicate in the tariff what changes have been made.

§ 61.23 Notice Requirements

(a) Every proposed tariff filing must bear an effective date and, except as otherwise provided by regulation, special permission, or Commission order, must be made on at least the number of days notice specified in this section.

(b) Notice is accomplished by filing the proposed tariff changes with the Commission. Any period of notice specified in this section begins on and includes the date the tariff is received by the Commission, but does not include the effective date. In computing the notice period required, all days including Sundays and holidays must be counted.

(c) Tariff filings of domestic nondominant carriers must be made on at least 1 day notice.

APPENDIX B

INITIAL REGULATORY FLEXIBILITY ANALYSIS

Reason for Action:

On November 13, 1992, the United States Court of Appeals for the District of Columbia Circuit invalidated the Commission's long-standing "forbearance" policy under which nondominant carriers -- carriers lacking market power-- were permitted to refrain from filing tariffs. As a result of the court's decision, nondominant carriers are now obligated to file tariffs with the Commission. This rulemaking is initiated in order to seek comment on a proposal to reduce the tariff filing burdens on carriers affected by the court's decision.

Objectives:

The Commission seeks to eliminate unnecessary and costly regulations placed upon nondominant carriers by streamlining our tariff filing requirements for such carriers to the maximum extent possible under the Communications Act.

Legal Basis:

This proposed action is taken pursuant to Sections 1, 4(i), 4(j), 201-205, and 403 of the Communications Act as amended; 47 U.S.C. §§ 154(i), 154(j), 201-205, and 403.

Reporting, Recordkeeping and Other Compliance Requirements:

The proposed rules are designed to ease the reporting, recordkeeping and compliance requirements for nondominant common carriers. Specifically, the Notice proposes to allow such carriers to file only the information required under Section 203 of the Act. The proposed rules would also eliminate the need for carriers to file tariff amendments for rate changes within a specified range. Finally, the proposed rules would require nondominant carriers to file tariffs on three and one half inch floppy diskettes, and eliminate many of technical tariff form requirements that apply to dominant carrier tariffs.

Description, Potential Impact, and Number of Small Entities Involved:

Any rule changes in this proceeding would affect all common carriers classified as nondominant by the Commission by changing the tariff filing requirements for such carriers. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives:

The Notice asks parties to recommend any alternative means of reducing the tariff filing requirements for nondominant carriers.