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

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

To the Commission:

COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA")[1/] hereby submits its comments in the above-captioned proceeding in support of the Commission's proposal to further streamline the federal tariffing requirements applicable to domestic nondominant carriers.[2/] The dramatic growth in the relevant telecommunications markets during the period when no tariffs were required of nondominant carriers fully justifies the deregulatory measures proposed in this proceeding. These comments address three specific points raised in the Notice that directly relate to the cellular industry.

1/ CTIA is the trade association of the cellular industry. Its members include over 90% of the licensees providing cellular service to the United States and Canada. CTIA's membership also includes cellular equipment manufacturers, support service providers, and others with an interest in the cellular industry.

2/ Tariff Filing Requirements for Nondominant Carriers, Notice of Proposed Rulemaking, CC Docket No. 93-35, FCC 93-103 (Released February 19, 1993).

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First, the Notice states that the rule changes adopted in the proceeding would not apply to "cellular carriers, which have been found dominant."[3] The question whether cellular carriers should be classified as nondominant is currently under review by the Commission in a separate proceeding, RM No. 8179.[4] CTIA submits that the streamlined federal tariffing procedures adopted in the instant proceeding should apply to cellular carriers in the event they are designated nondominant in the companion proceeding. As noted below, the public interest would be best served by a regulatory scheme that applies equally to all nondominant carriers.

The second point relates to the Commission's request for comment "on whether any categories of nondominant carriers, such as nondominant wireless carriers, can and should be regulated differently than nondominant carriers generally."[5] CTIA does not believe that the Commission should distinguish among various classes of nondominant carriers for regulatory purposes.

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[3] Notice at n.12. For purposes of clarification, there has never been any "finding", as such, that cellular carriers are dominant. Indeed, the Common Carrier Bureau recently confirmed that cellular's status as dominant "is obscured by the absence of any direct examination of the competitiveness of cellular services in the interstate communications market analysis." Cellular Telecommunications Industry Association Petition for Waiver of Part 61 of the Commission's Rules, Order, DA 93-196 (Com. Car. Bur.)(Released February 19, 1993)("Waiver Order").

[4] Policies and Rules Pertaining to the Regulation of Cellular Carriers, Report No. 1927, Mimeo 31802 (Released February 17, 1993).

[5] Notice at ¶ 13.

However, should a tiered regulatory structure be established, CTIA submits that cellular carriers (assuming they are found non-dominant in RM No. 8179) should be subject to the least stringent tariffing requirements adopted by the Commission. Streamlining cellular carriers' requirements to the maximum extent permitted by law is appropriate for a variety of reasons, including: (1) cellular carriers are only minimally involved in the interstate communications marketplace;[6] (2) the availability of cost support data could deter competition given the structure of the cellular industry;[7] and (3) increased tariff filing obligations would result in an added burden on the industry and the Commission with no countervailing benefit.[8]

The final point responds to the Commission's request for comment on the legality of its proposal, under Section 203 of the Act (47 USC § 203), to allow nondominant carriers to state in

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[6] Indeed, the majority of cellular carriers engaged in interstate services do so through the resale of other carriers' interexchange services -- services which have already been classified as nondominant. See Policies and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252, Fourth Report and Order, 95 FCC 2d 554, 582 n.92 (1983).

[7] See Waiver Order at ¶ 6, ("cost support materials might provide competitors with access to information that is competitively sensitive").

[8] See id. ("the administrative burdens that would be imposed on the cellular industry in forcing its members to comply with

their tariffs either a maximum rate or a range of rates.[9] CTIA believes that the FCC has authority to adopt rules allowing non-dominant carriers (and cellular carriers, regardless of status) to file banded rates.

Section 203 of the Act and Sections 4 and 5 of the National Gas Act share similar language and derivation. 15 USC §§ 717(c), 717(d); see also AT&T v. FCC, 487 F.2d 864, 877 n.27 and 879-80 (2d Cir. 1973). Therefore, it is highly relevant that the courts have held that the Federal Energy Regulatory Commission ("FERC") has the authority to establish generic rates by rule. See Associated Gas Distributors v. FERC, 824 F.2d 981, 1007 (D.C. Cir. 1987), cert. denied, 485 U.S. 1006 (1988). The FERC policy upheld allowed "[t]ariffs ... to provide for ceilings and floors, with the pipeline free to charge anywhere within the band." 824 F.2d at 1007. FERC also found that the use of banded rates yielded important benefits in a competitive environment. Id. at 1010. Based on the above, the Commission should adopt rules that allow cellular carriers to file banded rates.

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[9] Notice at ¶ 23.

For the foregoing reasons, CTIA strongly endorses the Commission's proposal to further streamline the federal tariffing requirements for domestic nondominant carriers, and submits that cellular carriers, assuming they are labeled nondominant in RM No. 8719, should be subject to the least intrusive form of tariff regulation adopted in the instant proceeding.

Respectfully submitted,

Cellular Telecommunications
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Dated: March 29, 1993

CERTIFICATE OF SERVICE

I, Kimberley Garnes, hereby certify that on this 29th day of March, 1993, copies of the foregoing "Comments of the Cellular Telecommunications Industry Association" were served by hand-delivery upon the following parties:

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