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April 17, 1996

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street NW
Washington DC 20554

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Re: Policy and Rules Concerning the Interstate, Interexchange Marketplace
Implementation of Section 254(g) of the Communications Act of 1934, as amended
CC Docket No. 96-61

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Enclosed you will find an original and eleven copies of the Comments of Scherers Communications Group, Inc., to the Federal Communications Commission Notice of Proposed Rulemaking in the above referenced proceeding. In addition, I have enclosed a duplicate copy of this letter with attached Comments. Please date stamp this as an acknowledgement of receipt and return it in the envelop provided. Any questions that you may have regarding these comments can be directed to me at the telephone number listed above.

Thank you for your cooperation.

Sincerely,

Susan Drombetta

Susan Drombetta
Manager - Rates and Tariffs

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

In the Matter of	)	
	)	
Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	CC Docket No. 96-61
	)	
	)	
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	

COMMENTS OF SCHERERS COMMUNICATIONS GROUP, INC.

1. Introduction

On March 25, 1996, the Federal Communications Commission (FCC) issued CC Docket No. 96-61 (Notice) to obtain comments on its proposal to adopt a mandatory detariffing policy for domestic services of non-dominant interexchange carriers. By its actions, the FCC "seek(s) to promote competition by reducing or eliminating existing regulations that may no longer be in the public interest in the increasingly competitive interexchange marketplace."[1] The FCC has requested comments on several issues including the necessity of tariffs in a deregulated environment. It is laudable that the Commission has quickly responded to the issues raised by the Telecommunications Act of 1996 (1996 Act). However, it is important to consider all aspects of

[1] See Policy and Rules Concerning the Interstate, Interexchange Marketplace, Notice of Proposed Rulemaking, (Notice) FCC No.96-123, CC Docket No. 96-61 (released March 25, 1996)

the changing environment before eliminating all control devices. Scherers Communications Group, Inc. (SCG), respectfully submits its comments in response to the Notice.

2. Background

Scherers Communications Group, Inc., is an interexchange carrier certified by the FCC to provide services throughout the United States. The services offered by SCG are provided through the resale of the telecommunications services of other major carriers. Therefore, SCG presents its comments to the Commission's Notice as both a non-dominant domestic interexchange carrier and a high volume customer.

3. Comments

SCG believes that the FCC has the statutory authority to eliminate the requirement of filing tariffs. The 1996 Act states "...the Commission shall forbear from applying any regulation or provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that-- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest."[2] This paragraph does

[2] See Telecommunications Act of 1996,(1996 Act)Part IV, Sec. 401 (adding § 10 (a))

not, however, grant the FCC the authority to prohibit any telecommunications carrier from filing tariffs. The only reason that the 1996 Act initiated this provision was to eliminate the barriers to competition. If the filing telecommunications carrier does not view the filing of a tariff as a barrier, the FCC does not have the right to forbid it. Our position on the statutory authority does not extend to the issue of actually detariffing the services.

SCG does not support the mandatory detariffing of interexchange telecommunications. Due to the new 1996 Act, the interexchange marketplace will become far too volatile to remove all restraints. While detariffing may eliminate some administrative barriers to competition, the economic barriers imposed by the impending entry of the Bell Operating Companies (BOCs) would cause far more harm to competition. The BOCs will have the advantages of an imbedded base of customers and network facilities in place to provide interexchange services without a major capital investment. Congress itself recognizes this dilemma and has ordered several provisions, in the form of a checklist, to protect the marketplace against domination by the BOCs.[3] One of the items on the checklist is "Telecommunications services are available for resale in accordance with the requirements of sections 251(c)(4) and 252 (d)(3)."[4] This requirement applies to interexchange services as well as local services. Local commissions will only be able to monitor the provisioning of resale on an intrastate basis. The monitoring of the interstate situation by the FCC can best be accomplished through the requirement of tariffs. While one might argue that this requirement should only apply to the BOCs, the 1996 Act also calls for

[3] Id, at Part III, Sec. 271(c) (2) (A and B)

[4] Id, at Part III, Sec. 271 (c)(2)(B)(XIV)

equitable and nondiscriminatory treatment of telecommunications providers. In order to ensure this treatment, SCG believes that continued use of mandatory tariffs is necessary.

Additionally, the 1996 Act reaffirms "the ability of a State to impose, on a competitively neutral basis and consistent with Section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers."[5] Therefore, individual States will retain their rights to require tariffs for intrastate, interexchange services. The Public Utilities Commission of Ohio was required to order a BOC to develop a tariff to allow for the interconnection of a new provider. This is one indication that tariffs will still be necessary to facilitate local competition. It is not logical to allow regulatory oversight on a State basis, while relinquishing it on a federal level, nor is it reasonable to believe that the same diligence will not be required on an interexchange level. In light of the sections in the 1996 Act regarding BOC requirements and the States' involvement in oversight, it is evident that Congress is reluctant to eliminate all regulatory oversight, and the FCC should continue to monitor activity through tariffs.

The current environment should also be evaluated to determine if the existing regulations should be considered barriers to competition, and, therefore, not in the public interest to continue. The Notice states that it had previously found that tariffs can "take away carriers' ability to make rapid, efficient responses to changes in demand and cost, impede and remove incentives for competitive price discounting, and impose costs on carriers that attempt to make new offerings."[6]

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[5] Id. at Part II, Sec. 253 (c)

[6] See Notice at 30

Since AT&T has been reclassified as a non-dominant carrier,[7] all domestic carriers now require only a one day notice for tariff revisions with no cost support data necessary.[8] These streamlined procedures, along with the nominal fee charged, do not impose any barriers to competition. Changes and additions of services and prices can be made quickly and inexpensively. We do not understand how this process can be perceived as anti-competitive. In its efforts to streamline the tariffing process, the FCC has already eliminated many barriers to competition. Consequently, SCG believes that the current regulations for non-dominant domestic interexchange carriers is "necessary to ensure that the charges, practices, classifications, or regulations, by, for, or in connection with (any) telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory..."[9]

Many resellers depend upon tariffed rates to provide stability for rates in the marketplace. The FCC Common Carrier Bureau has determined that resellers outnumber interexchange carriers, 206 to 97.[10] With such a large segment of providers dependent on the rates of others, tariffing can actually nurture competition rather than stifling it. For this reason, SCG believes that the elimination of all tariffing requirements is not consistent with the public interest. The Notice states that "... the Commission is specifically required to consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance

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[7] See Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, FCC 95-427 (released October 23, 1995)

[8] See Tariff Filing Requirements for Nondominant Common Carriers, CC Docket No 93-36

[9] See 1996 Act, Part IV, Sec. 401 (adding § 10 (a))

[10] See Carrier Locator: Interstate Service Providers, December 1995, Table 1

competition among providers of telecommunications services."[11] As explained in these comments, it does not appear that detariffing will produce the desired results of improved competition in the telecommunications industry.

A final concern voiced by the FCC is the potential that tariff filing could "harm consumers by slowing `the introduction of new services, dampening competitive responses and ultimately encouraging price collusion through the forced publication of charges.'"[12] SCG believes that the existence of tariffs countermands these effects within the interexchange market. With published prices, new entrants are provided information about the feasibility of potential products and prices, as well as opportunities for niche products not currently offered. In addition, the consumer has a centralized location in which to compare both products and prices for all carriers. Rather than encourage price collusion, the marketplace will enjoy open information about available services and opportunities. The FCC Notice states that there had been inconclusive and conflicting evidence of alleged tacit price coordination among interexchange carriers.[13] SCG does agree with a further determination that such price collusion would be difficult and ineffective with so many carriers in the marketplace.

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[11] See Notice, at 17

[12] Id. at 21

[13] Id. at 81

4. Summary

The 1996 Act provides the FCC with the statutory ability to eliminate the requirement of filing tariffs by domestic interexchange carriers. However, SCG does not agree that it also provides the FCC the ability to prohibit any filing of tariffs. The provision was established to encourage competition in the telecommunications marketplace, and the prohibition of all tariffs will not contribute to this effort.

SCG strongly opposes the elimination of tariffs for non-dominant interexchange carriers for several reasons. First of all, the elimination of tariffs would not be in the public interest, because it would also eliminate any oversight necessary during the entry of the BOCs into the interexchange marketplace. In addition, new entrants would have no means of determining the services and costs of current services or the opportunities available for new ones. Although this drawback would not be an insurmountable barrier, the lack of information would pose some problems for new competitors. Customers would also lose a centralized location for information about all providers. While individual State public service commissions may have intrastate information, the interstate information could only be secured through individual contact with each and every provider. In addition, some individual States have determined that tariffs will still be necessary even in deregulated environments. It would be illogical to discontinue interstate tariffs, while State tariffs will still be required. For all these reasons, SCG believes that the FCC should continue requiring tariffs for all non-dominant carriers of interexchange services.

The FCC also noted a concern that the requiring tariffs "presents an opportunity for collusive pricing by competing carriers..."[14] SCG contends that the publication of tariffs produces the opposite result, because new entrants can determine the current competitive rates as well as the opportunities for the future. With new entrants in the marketplace, it will be far more difficult to practice collusion. For these reasons, SCG believes that the FCC should continue its streamlined tariff filing procedures.

Respectfully submitted,

Scherers Communications Group, Inc.

By: Susan Drombetta

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Manager - Rates and Tariffs

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Dated: April 17, 1996

[14] Id. at 30