other format, and in a manner that minimizes carrier costs and rates.[21] Mandatory detariffing could preclude carriers from offering these vital services altogether, which alone warrants rejecting this proposal. In all events, the costs and dislocations identified above demonstrate that mandatory detariffing would not meet the public interest requirement of Section 10.

D. The Commission's Concerns About The Filed Rate <u>Doctrine Do Not Warrant Mandatory Detariffing.</u>

Finally, the Notice's concerns about the filed rate doctrine are misplaced. In particular, the Notice expresses the concern (¶¶ 34, 94) that under a permissive detariffing rule, carriers could invoke the filed rate doctrine to justify the filing of unilateral tariff revisions that modify the terms of unfiled contracts between themselves and their customers.[22] In such circumstances, courts and agencies have reasoned that because the statutes at issue (including the Communications Act prior to the recent addition of Section 10) required that all rates be

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[21] It would be impractical, for example, to try to provide the essentials of a contractual relationship in materials maintained at most public or aggregator telephones, or to provide such information orally on each call.

[22] As a preliminary matter, the filed rate doctrine will rarely be invoked in such circumstances, if at all. A carrier that acquires a reputation for going back on a bargain could not succeed in today's competitive market.

filed, and prohibited agencies from abrogating that requirement, the only ``lawful'' rates were "filed" rates.[23]

Contrary to the Notice's concern, however, adoption of a permissive detariffing rule pursuant to Section 10 would eliminate the statutory basis for invoking the filed rate doctrine against customers in these circumstances.[24] Because tariffs would no longer be required, a tariffed rate would no longer be the "only" lawful rate. A permissive detariffing rule can only mean that rates contained in an unfiled contract are lawful and enforceable.

Nevertheless, to minimize confusion about the enforceability of unfiled agreements, and the identity of the instrument that governs the provision of service, the Commission can and should adopt a few simple rules. All

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23 See, e.g., Maislin Industries, U.S. v. Primary Steel, 497 U.S. 116, 127 (1990), quoting Louisville & Nashville R. Co. v. Maxwell, 237 U.S. 94, 97 (1915)(carrier's "duly filed [rate] is the only lawful charge").

24 The filed rate doctrine has also been invoked by carriers in response to claims that oral representations, brochures, a course of dealing or the like can be used to vary or supplement the terms of a filed tariff. In this situation, the filed rate doctrine operates in a manner that is analogous to "merger," "integration" or so-called "entire agreement" clauses in commercial contracts. Like the filed-rate doctrine, these clauses generally provide that the terms of the transaction are governed exclusively by the document at issue (a contract instead of a tariff). Carriers should continue to be able to rely on the filed rate doctrine under a permissive detariffing rule if its tariff provides that it may not be varied or supplemented, or may be varied or supplemented only in a specified manner.

agreements to provide service other than under tariff should be reduced to writing and expressly state that the rates, terms and conditions of service will be governed by a specifically identified contract, notwithstanding any tariff containing inconsistent rates or terms.[25] In all other cases, the terms of a filed tariff should conclusively control the rates, terms and conditions of service.[26]

II. ALLEGATIONS OF PRICE COORDINATION IN THE INTEREXCHANGE MARKET ARE MERITLESS; PREMATURE ENTRY BY THE BOCS WILL HARM, NOT PROMOTE, COMPETITION.

The Notice (¶ 81) seeks comment on how to address any problem of tacit price coordination in the interexchange market. At the same time, the Notice describes the evidence of alleged tacit price coordination as ``inconclusive and conflicting,''[27] and is therefore reduced to seeking comment on a solution to the problem, "to the extent it exists."

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[25] This requirement need only apply to carriers who do business under both tariffs and unfiled contracts. The contract may also provide that the carrier relinquishes its right to file an inconsistent tariff or enforce such tariff against the customer. Regardless of whether such language appears, a customer could assert the contract as a defense to any claim based on the tariff.

[26] In cases where the terms of a filed tariff are incorporated in an unfiled contract, the carrier's right to make changes in the referenced tariff and incorporate those changes in the contract can also be spelled out in the contract.

[27] Notice, ¶ 81, citing AT&T Nondominance Order, ¶¶ 81-83.

The search for a solution to a nonexistent problem is hardly consistent with a "deregulatory" agenda.

As AT&T has previously demonstrated, tacit price agreements in the interexchange market ``would be virtually impossible to form and even more difficult to maintain.''[28] For example, the significant amount of excess capacity in the interexchange industry eliminates any incentive for carriers to restrict output, and the unequal market shares of the largest competitors make it nearly impossible for them to establish a focal point for any collusive activity. Moreover, the huge number of IXCs in the marketplace precludes any attempt to sustain a collusive scheme that includes all carriers. Thus, customers would always have alternative suppliers to turn to, even if some IXCs attempted to collude.

There are numerous additional structural reasons why the interexchange industry is not conducive to tacit collusion. These include the absence of significant barriers to entry; the complex pricing structures for telecommunications services; the dynamic nature of the technology used to provide such services and the skewed nature of market demand characteristics. Moreover, evidence such as the long downward trend of long distance prices; the instability of AT&T's market share combined with the high

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[28] AT&T Reply Comments in CC Docket No. 79-252, filed June 30, 1995 (``AT&T Nondominance Reply''), pp. 24-25.

level of customer churn; aggressive IXC advertising and marketing; and econometric data all support the conclusion that any attempts at tacit collusion could not succeed.[29]

Ironically, the Notice (¶ 81) suggests that one solution to the "phantom" problem of coordinated pricing could be the entry of additional facilities-based competitors "such as the BOCs." Given the existence of excess capacity in the market and the hundreds of carriers providing interexchange service today, there is no economic basis for concluding that additional facilities-based entry would materially reduce the negligible (at most) risk of coordinated pricing. But one thing is clear: entry by firms (such as the BOCs) with bottleneck control over access facilities that are essential inputs to the provision of interexchange service could dramatically reduce, not promote, interexchange competition.

Indeed, the Notice (¶ 52 n.120) elsewhere acknowledges this fact, and that "there are numerous ways in

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[29] See AT&T Nondominance Reply, pp. 24-35 and D. Kaserman and J. Mayo, ``Is AT&T 'Dominant'? An Assessment of the Evidence,'' attached to letter from Charles L. Ward to William F. Caton, dated June 12, 1995, CC Docket No. 79-252. The claims of oligopolistic behavior in the interexchange market are based entirely on increases in basic schedule rates by major IXCs. The extensive discounting of carriers' basic rates completely undermines any notion of oligopoly pricing, however. Indeed, as the Notice recognizes, the increases in basic schedule rates can readily be explained by the "fact that price caps have kept basic schedule rates below cost." Notice, ¶ 81, citing AT&T Nondominance Order, ¶¶ 81-83.

which the BOCs could "raise their [interexchange] rivals costs." Upon entry into the interexchange market, the BOCs would possess substantial market power by virtue of their monopoly over exchange access services. Thus, premature BOC entry could readily change the market from one in which there is open entry and numerous competitors to one in which a small number of regional carriers obtain illicit advantages to the detriment of consumers and competition.[30]

For this reason, the Act establishes a number of substantial preconditions to allowing the BOCs to provide in-region, interexchange services, including compliance with the fourteen-point checklist set forth in Section 271, the presence of facilities-based competition in the local exchange, and a determination by the Commission, with input from the Department of Justice, that BOC in-region entry is in the public interest. All of these steps are necessary to assure that BOC entry will not threaten competition in the interexchange market. The Commission should reject any invitation to disregard these conditions or otherwise ignore its duties under Section 271, especially to solve a non-existent ``pricing problem.''

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[30] See AT&T's Comments in Phase I of this docket, filed April 19, 1996, pp. 6-14.

III. THE COMMISSION'S PROPOSAL TO ELIMINATE THE PROHIBITION AGAINST BUNDLING OF INTEREXCHANGE SERVICES WITH CUSTOMER PREMISES EQUIPMENT SHOULD BE ADOPTED AND EXTENDED TO ELIMINATE THE BUNDLING RESTRICTIONS APPLICABLE TO INTEREXCHANGE SERVICES AND ENHANCED SERVICES.

The Commission's proposal to eliminate the current rule prohibiting the bundling of CPE and common carrier telecommunications services[31] epitomizes the deregulatory and pro-competitive purpose of the amended Communications Act. This change is long overdue, and will enable carriers and CPE vendors to offer innovative packages to consumers which have, to date, been inhibited, if not totally prohibited, under the Commission's Rules. In addition, it will allow nondominant carriers to compete more fairly, by eliminating the unequal enforcement of the rule against rival carriers.

Where, as here, both the interexchange and CPE markets are subject to intense competition, there can be no legitimate concern about the ability of any provider to leverage market power into competitive markets, or about any possible harm to consumers from bundled offerings. To the contrary, continued prohibitions on bundling can only harm competition by foreclosing the ability of providers to create and offer packages of services and CPE, which can provide consumers with value, efficiencies and pricing solutions that they demand.

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[31] See Notice, ¶¶ 84-90. See also 47 C.F.R. § 64.702(e).

Indeed, the Notice (¶ 88) correctly concludes that ``it is unlikely that non-dominant interexchange carriers can engage in the type of anticompetitive conduct that led the Commission to prohibit the bundling of CPE with the provision . . . of interstate, interexchange services,'' because the competitive nature of both the interexchange and CPE markets ensures that providers will continue to offer customers the products and services they want, in the combinations that they want, and at the prices that they demand.[32] Moreover, the abundance of service and product providers will ensure that customers desiring unbundled service and CPE options will still have those options available -- because if one provider does not offer unbundled components, its competitors will. There is thus no need for regulation to interfere with the competitive marketplace and impose a requirement of separate availability of interexchange services on particular terms.[33]

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32 See Second Computer Inquiry, Final Decision, 77 F.C.C.2d 384, 443, n.52 (1980), modified on recon., 84 F.C.C.2d 50 (1980), further modified on recon., 88 F.C.C.2d 512 (1981), aff'd sub nom. Computer and Communications Indus. Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1984)(``[I]n many real-world, non-regulated, workably competitive markets, there exist sustainable markets for both bundled and unbundled commodities. In such cases consumers decide individually whether the benefits of packaging exceed the potential benefits of buying the component of a bundle individually'').

33 The removal of the bundling prohibition would also be consistent with international obligations of the United

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For these reasons, the Commission's tentative conclusion to eliminate the prohibition against bundling CPE with interstate, interexchange services offered by nondominant interexchange carriers is a truly pro-competitive step which, when implemented, will not only bring added choice to consumers, but also relieve carriers and the Commission from the burdens of compliance with this outmoded rule. However, the Commission has not gone far enough. The Commission should also eliminate the bundling restrictions on nondominant interexchange carriers so that they can offer single-price packages of interexchange and enhanced services.[34] Because the rationale underlying the

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States. (See Notice, ¶ 89.) The ability ``to purchase or lease and attach terminal or other equipment which interfaces with the network'' as required by the trade agreements reached in the Uruguay Round would not be impaired by removal of the bundling restrictions, because third parties will not be prohibited from attaching any CPE that is technically-compliant under Part 68 of the Commission's Rules to the network of U.S. interexchange carriers. See Annex on Telecommunications, Uruguay Round Trade Agreements, H.R. Doc. 103-316, 103d Congress, 2d Session, Vol. 1 at 1617 (1994). Moreover, countries are allowed to meet their obligations ``by whatever measures are necessary.'' Id. at 1616, n.1. Thus, nothing in the trade agreements would require a government to impose a specific requirement of separate availability in an open and competitive marketplace.

[34] These restrictions are not codified in the Commission's Rules, but arise from the Commission's decisions in its Second Computer Inquiry and Third Computer Inquiry proceedings. See Second Computer Inquiry, supra; Third Computer Inquiry, Report and Order, 104 F.C.C.2d 958 (1986).

Commission's proposal to eliminate the bundling restrictions for CPE and interexchange services applies equally to enhanced services, it compels such action.

If anything, the enhanced services market is even more robust, competitive and diverse than the market for CPE. This market is highly fragmented, and characterized by hundreds of entities that provide on-line services, Internet services, electronic commerce services, and other forms of store-and-forward messaging and communication services, serving both narrow and broad market segments. No single provider has a significant share of this vast and growing market, or could otherwise raise even an inference of ``market power.''[35] Moreover, enhanced services in the United States have grown year over year at explosive rates, and are projected to continue to grow at dramatic rates over the next five years.[36]

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[35] AT&T is only one of these myriad of enhanced services providers. AT&T estimates that, in 1995, its total enhanced services revenues amounted to $427 million; the U.S. domestic market for enhanced services generated $17.4 billion during that year. Thus, AT&T is a very small player in this market, with only a 2.4 percent market share.

[36] AT&T estimates that Internet service revenues in the U.S. grew 130 percent from 1994 to 1995 (Source: IDG/INPUT, Inc.), and are expected to grow at a cumulative average growth rate (``CAGR'') of 100 percent from 1995 through 2000. (Source: Morgan Stanley, Inc.) The U.S. consumer on-line services revenues have experienced similar dramatic growth rates, increasing by 64 percent from 1994 to 1995, and are expected to grow at a CAGR of 35 percent from 1995 to 2000. (Source: SIMBA Information, Inc.) Electronic commerce, which includes electronic messaging services, realized a 39 percent growth rate in the U.S.

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In light of the intensely competitive nature of the enhanced services market, and the Commission's findings regarding the competitiveness of the interexchange market, continued restrictions on the ability of nondominant interexchange carriers to offer bundled packages of telecommunications and enhanced services is no longer justified. Absent market power in either of these markets, competitors are unable to affect adversely either market, cross-subsidize services (without affirmatively disadvantaging the service providing the cross-subsidy), or discriminate among customers. Removal of these restrictions will thus not cause any harm in the marketplace; rather, such action will eliminate the harm existing today as a result of the current prohibitions, which force providers to limit their service offerings and thus restrict customer choice.

For these reasons, AT&T urges the Commission to institute a Supplemental Notice of Proposed Rulemaking to eliminate the restrictions against the bundling of interexchange services and enhanced services by nondominant interexchange carriers.

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from 1994 to 1995, with anticipated overall U.S. growth rate of 22 percent from 1995 through 2000. (Source: AT&T EasyCommerce^{sm} Services).

IV. THE COMMISSION SHOULD NOT ALTER OR REPLACE THE ``SUBSTANTIAL CAUSE'' TEST, DICTATE THE TERMS OR CONDITIONS OF CONTRACT TARIFFS, OR IMPOSE LONGER NOTICE PERIODS FOR REVISIONS TO CONTRACT TARIFFS.

The Notice (¶ 92) seeks comment on certain contract tariff and other tariff-related issues that it believes ``will remain relevant'' if the Commission determines not to adopt a mandatory detariffing policy. AT&T addresses each of these issues below.

A. The Substantial Cause Test Is Consistent With The Communications Act And Strikes A Proper Balance Between The Interests Of Carriers And Customers.

The Notice (¶¶ 93-96) seeks comment on the application of the ``substantial cause'' test to assess the reasonableness of rate changes initiated by carriers. Specifically, it (¶ 96) seeks comment on the legal principles that should be used in applying the ``substantial cause" test, and on whether the test is applicable only to customers who have negotiated an agreement, or also to customers who receive service pursuant to such an agreement after it has been tariffed. Finally, the Notice (id.) seeks comment on whether a contract tariff modified by a carrier for substantial cause should be treated as a ``new'' contract tariff offering.

The Communications Act, and prior rulings of the Commission, resolve each of these issues. The Act requires common carriers to honor all reasonable requests for service,[37] and to provide service at rates, terms and conditions that are just, reasonable and non-discriminatory.[38] Correlatively, the Act recognizes that, in order to ensure that they can comply with these obligations,[39] common carriers must be permitted to establish and change rates, and define the terms and conditions on which they will offer telecommunications services.[40] Unless such rates and terms are found by the Commission to be unjust, unreasonable, or otherwise violative of the Act, they must be given full effect.

Notwithstanding these core premises of the Act, the Commission has properly recognized that customers may have legitimate expectations of stability in term arrangements where service is provided pursuant to a contract tariff or other long-term service agreement. In such instances, it may be necessary to examine carrier rate changes to ensure that they are ``just and reasonable'' under the Act.[41] To ascertain reasonableness, the

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[37] 47 U.S.C. § 201(a).

[38] 47 U.S.C. § 202(a).

[39] See AT&T v. FCC, 487 F.2d at 864, 873-74 (2d. Cir. 1973); see also U.S. v. SCRAP, 412 U.S. 669, 697 (1973) (interpreting cognate provisions of Interstate Commerce Act).

[40] See AT&T v. FCC, 487 F.2d at 873-74; RCA American Communications, Inc., (``RCA Americom'') 86 F.C.C.2d 1197, 1201 (1981); Showtime Networks, Inc. v. FCC, 932 F.2d 1, 3-4 (D.C. Cir. 1991).

[41] See 47 U.S.C. § 201(b).

Commission has utilized the ``substantial cause'' test. This test is not an independent, substantive requirement, but rather a means to assist the Commission in determining whether a change in rates or terms by a common carrier is within the ``zone of reasonableness'' required by the Act.[42] The Commission has refined the ``substantial cause'' test so that it is now clear that a carrier must show that its proposed change will allow it to avert an identified harm, and that this harm outweighs the subscriber's reasonable expectations in term stability.[43]

The Notice provides no basis for the Commission to replace or modify the substantial cause test. The rights and obligations cited in Commission and judicial decisions that have applied -- and refused to limit -- the substantial cause test are a function of provisions of the Act from which the Commission is not proposing to forbear -- Sections 201 and 202.[44] Accordingly, the Commission is required to assess rate changes under the ``reasonableness''

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[42] RCA Americom, 86 F.C.C.2d at 1201-02; Showtime Networks, Inc. v. FCC, ("Showtime Networks, Inc.") 932 F.2d at 3-4 (substantial cause is a "gloss on the 'just and reasonable' standard" of Section 201(b), not "an additional hurdle [for a] carrier . . . to clear").

[43] Id.

[44] The substantial cause test is unaffected by the Commission's proposal to forbear from enforcement of Section 203, and would apply whether rates and terms for customers are established by mandatory tariffs, permissive tariffs, or unfiled contracts.

test of Section 201(b) (which includes the substantial cause test), and is precluded from imposing any ``additional hurdle.''[45]

Further, the Commission's obligation under Section 201(b) to ensure that rates are just and reasonable applies both to ``original'' customers under a contract tariff (or other long-term agreement), and to customers who subsequently receive service under the contract tariff. Distinguishing among customers may be appropriate, however, in determining whether the test has been satisfied. Whether reasonable expectations of term stability exist and outweigh carrier harm, depends on a number of factors, including the extent to which a customer has ``originally'' negotiated for, committed to, and relied upon the terms of a contract tariff.[46]

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[45] Showtime Networks, Inc., 932 F.2d at 3. In a permissive detariffing environment, Section 201(b) and the substantial cause test are nonetheless sufficiently flexible to accommodate commercial law principles where appropriate. In cases where rates and terms have been embodied exclusively in an untariffed agreement, the Commission might appropriately look to contract principles to determine whether under Section 201(b) the common carrier has acted reasonably in seeking to alter the terms of its service agreement.

[46] For purposes of determining whether a customer has an expectation of term stability, customers who order service after tariff changes have been filed will generally be distinguishable from customers who have received service prior to the revisions. See AT&T Contract Tariff No. 1, Transmittal No. 3856, Public Notice, Report No. TD-2, DA 95-2100 (October 5, 1995) (petition to reject contract tariff revisions denied where customer had submitted order after revisions were

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Finally, Section 201(b) does not require the Commission to treat modified contract tariffs as ``new'' offerings available to additional customers during an extended (or renewed) eligibility period.[47] The Commission applies the substantial cause test to protect the carrier's right to control the terms of its service offerings and to ensure that customers' expectations of stability are not unduly frustrated. Neither of these concerns is addressed by requiring that modified contract tariffs be made available to "additional" customers, who have made no commitments and can have no expectations.[48] Moreover, the substantial cause test requires good cause for carriers to alter terms of an existing contract tariff, eliminating any discretion on the part of carriers to change terms solely to disadvantage subscribers.

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filed but before they became effective, without determination of substantial cause).

47 See Notice, ¶ 96.

48 The Commission also seeks comment (¶ 97) on the Mobile-Sierra doctrine. The Courts have made clear that Section 201(b) and the substantial cause test will govern rate changes to long-term service agreements between carriers and end-users, while the Mobile-Sierra ``public interest'' test is mandated for changes to carrier-to-carrier agreements. Bell Telephone of Pennsylvania v. FCC, 503 F.2d 1250 (3rd Cir. 1974), cert. denied, 422 U.S. 1026 (1975), rehearing denied, 423 U.S. 886 (1975).

B. AT&T Will Abide By Its Voluntary Commitments For The Agreed-Upon 12-Month Period.

The Notice (¶ 98) seeks comment on its tentative conclusion that AT&T should remain subject to the commitments concerning changes to contract tariffs that it voluntarily undertook at the time of the AT&T Nondominance Order.[49] It (id.) also seeks comment on a number of additional requirements proposed purportedly to provide further protection against carriers' ability to revise contract-tariff rates.[50]

AT&T will abide by the terms of its prior commitments regarding contract tariff changes. These commitments were made to alleviate resellers' concerns

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[49] AT&T committed to continue its practice of ``grandfathering'' existing customers when it initiates changes to a contract tariff or term plan. In those rare instances where ``grandfathering'' is not appropriate, AT&T agreed, for a period of twelve months, to file tariff revisions on one day's notice with the affected customers' consent, on six days' notice (with five days meaningful advance notice of the filing) where affected customers do not consent, and on fourteen days' notice for changes involving deposits, discontinuance, or transfer or assignment of service. Notice, ¶ 98; AT&T Nondominance Order, ¶ 134.

[50] Certain carriers suggest that AT&T should be required to provide customers advance notice of changes to negotiated agreements; obtain the consent of all affected customers before filing such changes; allow any customer refusing consent either to terminate the agreement without liability or enforce the prior terms; and to provide a period of rate stability to permit a customer to ``migrate'' service if it chooses to terminate its agreement. In addition, some of these parties suggest that the Commission treat customers' lack of consent to proposed changes as a prima facie evidence of unlawfulness. Notice, ¶ 98.

(unjustified, in AT&T's view) during the initial period of AT&T's regulation as a nondominant carrier, and should lapse at the prescribed time.[51] AT&T is a nondominant carrier competing in a vigorously competitive interexchange market;[52] there is no basis to impose unique burdens on AT&T for any additional period after its voluntary commitments expire.

C. The Commission Should Not Impose Longer Notice Periods For Carrier-Initiated Changes To Long-Term Service Arrangements.

The Notice (¶ 99) also seeks comment on whether the Commission should adopt a rule, applicable to all nondominant interexchange carriers, imposing a longer notice period for tariff filings that materially revise contract tariffs or other long-term service tariffs. The Notice (id.) also seeks comment on whether nondominant carriers should be required to clearly identify such filings.

In today's competitive interexchange market, this is precisely the type of unnecessary regulation that the Commission has sought to eliminate, not create. The market will surely discipline any carrier that attempts to ``game'' the tariff filing process to the detriment and disadvantage of customers.[53] In a competitive environment, such carriers

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51 These commitments will expire on October 23, 1996.

52 See, e.g., AT&T Nondominance Order, ¶ 80.

53 Competition in the Interexchange Marketplace, CC Docket No. 90-132, Order on Reconsideration (``Reconsideration Order''), ¶ 24, released February 17, 1995 (``if a

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will quickly damage their own reputations and drive customers to waiting competitors.[54] For this reason, the Commission has recognized there will be few instances of unilateral revision of long-term agreements by interexchange carriers.[55] As an additional safeguard, the complaint process will be available for customers to challenge the reasonableness of tariff changes.[56] There is no reason to impose additional and unique notice periods when customer interests have already been safeguarded.

D. There Is No Need For The Commission To Dictate The Specific Terms Of Contract Tariffs And Long-Term Service Agreements.

The Notice (¶ 100) also seeks comment on the objections of some resale carriers to terms contained in certain contract tariffs. Specifically, it seeks comment on whether certain ordering procedures should be allowed,

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carrier attempts making such changes, it risks losing the future business of the affected customers and damaging its own reputation in the marketplace'').

[54] Id.

[55] Id.

[56] See 47 U.S.C. §§ 201(b), 208. The Act provides sufficient remedies to subscribers where the Commission finds that a carrier's rates are unjust and unreasonable. See AT&T v. FCC, 487 F.2d at 871 (``carriers may be required to keep account of increases collected so that refunds may be made if the new rates are found unjustified'') & n.12 (``This refund is in addition to the rights of parties to institute proceedings, either in court or before the Commission, to collect damages from the carrier'').

whether certain terms (such as upfront deposits) should be prohibited as unreasonable, and on the appropriate level of specificity for customer descriptions used to determine eligibility for contract tariff offerings.

There is no need for rules limiting the use of any of these terms in contract tariffs. Each of these provisions serves legitimate purposes for both the carrier and customers. It is clear, for example, that detailed ordering procedures embodied in some contract tariffs enable interexchange carriers, among other things, to establish implementation schedules and dates most efficiently and to begin timely service installation. It is also clear that detailed customer descriptions can appropriately enable carriers to identify similarly (and dissimilarly) situated customers before the parties commit to a long-term agreement. Further, deposits or advance payments may be necessary to protect carriers against the risk that customers will be unable to pay shortfall charges for failure to meet long-term revenue commitments, after these customers have taken substantial advantage of attractive contract tariff rates and terms.[57]

[57] Indeed, the Commission itself has recognized that deposits and advance payments are a legitimate means by which interexchange carriers can minimize such financial risk through tariff. See Public Service Enterprises of Pennsylvania, Inc., FCC 95-169, Memorandum Opinion and Order (``PSE Order''), 10 FCC Rcd. 8390, 8398 n.33 (1995).

It would disserve competition to impose unnecessary restrictions on the availability of such terms. To the extent that scrutiny of tariff provisions of this type is necessary, the Commission's complaint process is sufficient to ensure that carrier practices are just and reasonable.[58]

Respectfully submitted,

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April 25, 1996

[58] See, e.g., PSE Order (evaluating service information and deposit requirements for contract tariff services).