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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
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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	)	DOCKET FILE COPY ORIGINAL

COMMENTS OF LDDS WORLDCOM

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SUMMARY

While LDDS WorldCom applauds the Commission's decision to exercise its new statutory forbearance authority regarding the filing of tariffs by nondominant interexchange carriers, the explicit terms of the 1996 Act and the public interest allow the Commission only to adopt a permissive detariffing policy. In the highly competitive long distance market, it is evident that the Commission no longer needs to rely on the mandatory filing of tariffs in order to protect consumers or competitors from unjust and unreasonable rates, terms, and conditions of service. The Commission also should not overlook the many public interest benefits of allowing carriers to file tariffs. Permissive detariffing will give carriers the necessary flexibility in a market-by-market situation to utilize contracts where their customers prefer to use individually-negotiated agreements, and tariffs where consumers favor uniform service arrangements. Where many consumers are either unable or unwilling to establish a one-to-one contractual relationship with an IXC -- such as "casual calling" using a carrier's "10-XXX" access code -- a tariff offers both carriers and customers the same degree of legal protection as a contract, but without the significant added costs of individual negotiation. Moreover, giving carriers and consumers the flexibility to utilize tariffs helps keep down the costs of providing services to the public.

At the same time, LDDS WorldCom strongly opposes the Commission's proposal to impose mandatory detariffing on carriers. The Commission lacks statutory authority to forbid carriers from filing tariffs under Section 203 of the Communications Act. Section 10 of the new Act only allows the Commission to refrain from "applying" or "enforcing" the statutory tariff filing requirements, which would be consistent with a permissive detariffing policy. In sharp contrast, a mandatory detariffing policy would <u>prohibit</u> carriers from filing tariffs altogether.

A plain reading of the statute and legislative history shows that the Commission is proposing precisely what the new statute does not allow.

Mandatory detariffing also is not supported by proper application of the three-part statutory criteria. In particular, the proposed policy would not be in the public interest because it would make it far more difficult for many types of consumers, including residential consumers, small business customers, and so-called "casual callers," to have simple, easy, and inexpensive access to long distance service. In many cases, a federal tariff is the only practical means of establishing a legal relationship with those customers who, for a variety of reasons, would choose not to take the time and expense to negotiate and sign a contract with an IXC. Without the ability to rely on a federal tariff, all IXCs would face increased expenses to establish, police, and enforce a multitude of contractual arrangements with each and every consumer. These substantial new administrative costs would be felt by the consumer, with the end result of higher prices, less efficient providers, and, in some cases, a reduction or withdrawal of services to transient and low-volume usage consumers. The Commission's universal service goals could be seriously jeopardized under this scenario.

The Commission also has failed to offer any compelling reasons for adopting a mandatory detariffing policy. First, the Commission provides no concrete evidence to support its vague concerns about "harm to competition" and alleged collusive conduct by the IXCs. Moreover, the purported remedy does not solve the alleged problem of price coordination because, even in the absence of tariffs, numerous other sources of public information about carrier rates already exist.

The Commission's second stated concern about an IXC's possible invocation of the "filed rate doctrine" is similarly misplaced. LDDS WorldCom shares the Commission's view that carriers should not be allowed to unilaterally change rates or conditions in long-term service arrangements simply by filing an inconsistent tariff provision. Nonetheless, the solution is not to prohibit the filing of tariffs altogether. Instead, the Commission can use its new forbearance authority to overturn the filed rate doctrine simply by making tariff filings optional, rendering the filed rate doctrine inapplicable to carriers' tariff filings. The Commission can also take certain procedural steps to eliminate any concerns about consumers not receiving the "benefit of the bargain" they have negotiated with carriers.

The Commission's additional statement that carriers may use tariffs to limit their liability for damages ignores the fact that carriers will be unable to provide service to certain segments of society without at least some assurance that all charges will be paid for services rendered. Without such assurances, carriers will tend not to serve those consumers who impose greater risks and costs, including casual callers and low-usage residential consumers. Universal service will suffer as a consequence.

Finally, the Commission's concerns about the costs associated with tariff filings are misplaced. Indeed, compelling carriers to abandon tariffs completely and resort to a contract regime for each and every customer will engender far more substantial costs to IXCs -- and consumers -- than the current tariff filing regime. Adoption of a permissive detariffing policy, in contrast, would significantly reduce the number of tariffs filed with the Commission, and the concomitant use of Commission resources.

Nonetheless, should the Commission decide to adopt a mandatory detariffing policy, the Commission must allow carriers and consumers a sufficient amount of time to begin the transition to a totally new regime. A minimum of twelve months would be needed to prepare carriers and customers for a far more costly and uncertain world without tariffs.

While LDDS WorldCom generally supports a permissive detariffing requirement for all IXCs, there is one very important exception. A mandatory tariffing policy should still apply in the special circumstances of out-of-region long distance services provided by the Regional Bell Operating Companies. Requiring the RBOCs' out-of-region interLATA service affiliates to file tariffs would allow the FCC to fulfill its statutory role of overseeing the RBOCs' full compliance with important provisions of the 1996 Act. A requirement that the RBOCs file federal tariffs would serve as an appropriate safeguard to try to prevent the RBOCs from exercising the full extent of their market power in discriminatory and anticompetitive ways.

LDDS WorldCom does not oppose the Commission's proposal to allow the bundling of CPE and interstate, interexchange services. In order to eliminate any concerns about potential anticompetitive conduct in the CPE and long distance markets, however, the Commission should adopt its amended rule only after AT&T's divestiture of Lucent, its former equipment manufacturing arm, is complete. In addition, the Commission should require interexchange carriers offering bundled packages of CPE and interexchange services to continue to offer separately, unbundled interexchange services on a nondiscriminatory basis.

The Notice finally raises two miscellaneous pricing issues: allegations of tacit price coordination among interexchange carriers for residential services, and the need for optional calling plans for low-income consumers. LDDS WorldCom does not believe the Commission needs to address either pricing issue in this proceeding.

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COMMENTS OF LDDS WORLDCOM

WorldCom, Inc., d/b/a LDDS WorldCom ("LDDS WorldCom"), hereby files its comments in response to Sections III, VII, VIII, and IX of the Notice of Proposed Rulemaking ("Notice"), FCC 96-123, released by the Commission on March 25, 1996 in the above-referenced proceeding. As one of the four largest facilities-based interexchange carriers ("IXCs") in the United States, LDDS WorldCom has a substantial interest in the outcome of this proceeding.

I. INTRODUCTION

Under the recently-enacted Telecommunications Act of 1996,[1] the Commission is required to undertake dozens of new rulemaking proceedings in the coming months to implement the new statute. Two statutory provisions that are addressed in this proceeding are: (1) a requirement that the Commission forbear from applying any regulation or Act provision to certain telecommunications carriers or services, if the Commission determines that certain

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[1] Pub. L. No. 104-104, 110 Stat. 56 (1996), to be codified at 47 U.S.C. §§ 151 et seq. ("1996 Act"). For the sake of clarity, LDDS WorldCom will cite to the provisions of the 1996 Act referencing the specific sections at which they will be codified.

specified conditions are satisfied;[2] and (2) a requirement that all carriers engage in geographic rate averaging and rate integration.[3] From these two requirements, the Commission has fashioned two different phases of this rulemaking.

The comments filed today address a number of major issues, including: (1) exercise of the Commission's forbearance authority to require that carriers forbear from filing federal tariffs for domestic, interstate, interexchange services; (2) amending the Commission's rules to allow nondominant IXCs to bundle customer premises equipment ("CPE") and long distance services; (3) allegations of tacit price collusion by IXCs; and (4) requirements applicable to an IXC's proposed unilateral price change to a long-term service tariff. Other related issues are being addressed in an earlier pleading cycle of this proceeding.

II. LDDS WORLDCOM SUPPORTS THE COMMISSION'S EXERCISE OF ITS NEW REGULATORY FORBEARANCE AUTHORITY TO THE EXTENT THAT THE COMMISSION WILL ALLOW, BUT NOT REQUIRE, MOST NONDOMINANT LONG DISTANCE COMPANIES TO WITHDRAW THEIR DOMESTIC, INTERSTATE, INTEREXCHANGE TARIFFS

The 1996 Act directs that "the Commission shall forbear from applying any regulation or any provision of this Act" to telecommunications carriers or services in one or more geographic markets,[4] provided that three determinations are made:

> (1) enforcement of the regulation or provision is not necessary to ensure that charges, practices, classifications or regulations are just and reasonable, and are not unjustly unreasonable or discriminatory;

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[2] 1996 Act, Section 10.

[3] 1996 Act, Section 254.

[4] 1996 Act, Section 10(a).

(2) enforcement of the regulation or provision is not necessary to protect consumers; and

(3) forbearance from applying such regulation or provision is consistent with the public interest.[5]

The 1996 Act also specifies that "[i]f the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest."[6] The Joint Conference Report notes that the Act "requires" forbearance from "any" regulation or statutory provision if the Commission makes all three findings above.[7]

Arguing that the three statutory requirements are met, the Notice proposes to forbear from applying the Section 203 tariff filing requirements to nondominant interexchange carriers for domestic interexchange services.[8] In particular, the Commission states that enforcing the Section 203 tariffing requirement "harms consumers by undermining the development of vigorous competition," and "stifles price competition and service and marketing innovations."[9] The Commission goes further, though, to propose implementing its forbearance from tariff filing requirements on a mandatory basis.[10] The Commission reasons that mandatory detariffing is "the most pro-competitive, deregulatory regime" that would "eliminate possible

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[5] Id.

[6] 1996 Act, Section 10(b).

[7] Joint Explanatory Statement of the Committee of Conference on the Telecommunications Act of 1996, at 68 ("Joint Conference Report").

[8] Notice at para. 19.

[9] Notice at para. 29.

[10] Notice at para. 34.

invocation by carriers of the filed rate doctrine" and create a legal relationship between carriers and customers that "much more closely resemble[s] the legal relationship between service providers and customers in an unregulated environment."[11] The Notice seeks comment on whether the Commission has the statutory authority to "prohibit carriers from filing tariffs."[12] Later in the Notice, the Commission also discusses certain issues regarding contract tariffs, including the filed rate doctrine, and asks for comment on these issues "if we determine not to forbear from requiring non-dominant interexchange carriers to file tariffs."[13]

A. LDDS WorldCom Supports A Permissive Detariffing Policy for Most IXCs

LDDS WorldCom supports the Commission's exercise of its forbearance authority to alter the ubiquitous Section 203 tariffing requirement so that nondominant carriers may choose not to file tariffs for their domestic interstate, interexchange services. In the highly competitive long distance market,[14] the Commission no longer needs to rely on the mandatory filing of tariffs in order to protect consumers or competitors from unjust and unreasonable rates, terms, and conditions of service. The market forces at play in a competitive market, in conjunction with the formal and informal complaints process dictated by Section 208 of the Communications

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[11] Notice at para. 34.

[12] Notice at para. 36.

[13] Notice at para. 92.

[14] The FCC has determined that the long distance market is characterized by substantial competition. See Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, FCC 95-427, released Oct. 23, 1995, recon. pending.

Act of 1934, as amended,[15] should be sufficient to ensure that the rates and terms of service established by the IXCs are reasonable.

At the same time, the Commission should not overlook the many public interest benefits of allowing carriers to file tariffs. Permissive detariffing will give carriers the necessary flexibility in a market-by-market situation to utilize contracts where their customers prefer to use individually-negotiated agreements, and tariffs where consumers favor uniform service arrangements. In the instance of those consumers who are unable or unwilling to establish a one-to-one contractual relationship with an IXC, a tariff offers both carriers and customers the same degree of legal protection as a contract, but without the added transaction costs of individual negotiation.

As one example, many consumers use long distance service even though they have no preexisting customer relationship with a carrier. In those cases, a consumer simply picks up a telephone, dials the equal access code for that carrier ("10-XXX"), and commences the call. Carriers and consumers both desire that this type of so-called "casual calling" relationship be allowed to continue because it gives consumers the ultimate freedom and convenience to choose whatever long distance carrier they desire to use at any time. Because individual contracts are plainly impossible in these situations, however, the only viable way to maintain this type of transient calling service is to allow a tariff to govern its rates, terms, and conditions. Otherwise, the only alternative is the use of prepaid calling cards, for which the consumer must pay a significantly higher per minute rate. In short, a permissive detariffing policy is pro-consumer and pro-competition because it leaves it up to consumers in the free

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[15] 47 U.S.C. § 208 (1995).

market to decide whether a tariff or a contract best fits a particular service situation.

Moreover, giving carriers and consumers the flexibility to utilize tariffs helps keep down the costs of providing services to the public. By allowing carriers the freedom to file tariffs where necessary or convenient to the consumer, permissive detariffing avoids incurring the administrative, billing and collection, and other overhead costs associated with individual contracting. This continuing cost savings will translate into the lowest possible rates to the consumer.

B. LDDS WorldCom Opposes A Mandatory Detariffing Policy

For several important reasons, LDDS WorldCom opposes the Commission's proposal to impose mandatory detariffing on carriers. First, the Commission lacks statutory authority to forbid carriers from filing tariffs under Section 203 of the Communications Act. Second, mandatory detariffing is not in the public interest because, among other reasons, the contracting process will never cover casual callers and other individual consumers who cannot or will not sign individual contracts. As a result, mandatory detariffing is not supported by proper application of the three-part statutory criteria. Moreover, mandatory detariffing is wholly unnecessary and represents bad regulatory policy.

1. The FCC Lacks Statutory Authority To Impose Mandatory Detariffing

The Communications Act of 1934, as amended by the Telecommunications Act of 1996, does not give the Commission the authority to prohibit carriers from filing tariffs. Because Section 203 of the 1934 Act specifies that "every" carrier "shall" file tariffs for "all" charges, terms, and conditions of service,[16] the D.C. Circuit held in 1984 that Section 203 cannot be overturned simply by the adoption of a Commission policy.[17] The D.C. Circuit ruled that "...if the Commission is to have authority to command that common carriers not file tariffs, the authorization must come from Congress...."[18] Otherwise, "we are not at liberty to release the agency from the tie that binds it to the text Congress enacted."[19] Thus, without authority granted expressly by the new 1996 Act, the Commission has no authority in this proceeding to require mandatory forbearance at all.

Section 10, adopted as part of the 1996 Act, is entitled "Regulatory Forbearance." The new provision states that the Commission, after certain necessary conditions are met, "shall forbear from applying any regulation or any provision of this Act."[20] Section 10(a) goes on to specify that the Commission must determine that "enforcement of such regulation or provision is not necessary" and that "applying" such provision or regulation would not be in the public interest.[21] Section 10(b) discusses "forbearance from enforcing" a provision,[22] while Section 10(d) requires states not to "apply or enforce any provision of this Act that the Commission has

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[16] 47 U.S.C. § 203(a).

[17] See MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985) (Court strikes down FCC's Sixth Report and Order in the Competitive Carrier proceeding because the mandatory detariffing policy adopted by the FCC is contrary to the dictates of Section 203 of the Communications Act).

[18] Id. at 1195.

[19] Id. at 1194.

[20] 1996 Act, Section 10(a).

[21] Id.

[22] 1996 Act, Section 10(b).

determined to forbear from applying under subsection (a)."[23] The Joint Conference Report also indicates that the Commission must "forbear from applying" any provision or regulation if it determines that "enforcement is not necessary...."[24]

LDDS WorldCom believes that the 1996 Act does not grant the FCC authority to adopt a mandatory detariffing policy. By prohibiting altogether the filing of tariffs, the Commission would be doing far more than simply not "applying" or "enforcing" the Section 203 tariff filing requirement, as the statute and the Conference Report repeatedly direct. Instead, the Commission would be eviscerating that provision of the 1934 Act completely, which the text of the 1996 Act does not do. What in essence the Commission is proposing in this proceeding is to forbid carriers from abiding by a statutory requirement. The 1996 Act never grants the FCC such broad, all-encompassing authority, and certainly does not appear to contemplate such a radical reading.[25]

Although the 1996 Act and the legislative history plainly allow the FCC only to refrain from "enforcing" or "applying" certain statutory provisions, this position is bolstered further by the accepted plain meaning of the word "forbearance." According to Webster's II New Riverside University Dictionary, to "forbear" is to "refrain from," to "desist from," or to "avoid" an action.[26] Further, the definition of "forbearance" includes a legal meaning of an

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[23] 1996 Act, Section 10(d).

[24] Joint Conference Report, at 68.

[25] Indeed, by asking for comments on the question of whether it possesses the statutory authority to "prohibit carriers from filing tariffs," the Commission obviously has some doubts of its own about the tenability of its tentative position. See Notice at para. 36.

[26] Webster's II New Riverside University Dictionary, Houghton Mifflin Co. (1988), at 496.

"act of a creditor who refrains from enforcing a debt when it falls due."[27] Again, the operative definitional concept, as in the statute itself, is to refrain from applying or enforcing a previous requirement (i.e., permissive detariffing). This is obviously a far cry from compelling entities to not abide by a previous requirement (i.e., mandatory detariffing). The distinction between passively desisting and actively forbidding is clear, and unequivocal.

Thus, the 1996 Act does not allow the Commission to adopt a mandatory detariffing policy. For the FCC to attempt to adopt such a policy in the face of clear statutory language would be, as the D.C. Circuit admonishes, to "release the agency from the tie that binds it to the text Congress enacted."[28]

2. Mandatory Detariffing Fails The Three-Part Statutory Test Because It Represents A Flawed Policy Choice That Would Not Be In The Public Interest

Even if the Commission finds that the 1996 Act somehow allows it to forbid carriers from abiding by a previous statutory requirement, the proposal to establish mandatory detariffing does not meet the three-part statutory test for forbearance. In particular, forbidding carriers from filing tariffs is not consistent with the public interest, as is required by the third prong of the statutory test.

a. Mandatory detariffing is not in the public interest

Should the Commission forbid IXCs from filing tariffs, it would be far more difficult for many types of consumers, including residential consumers, small business customers, and so-called "casual callers," to have simple, easy, and inexpensive access to long

[27] Id.

[28] MCI v. FCC, 765 F.2d at 1194.

distance service. At present, all IXC customers are covered by domestic tariffs containing comprehensive rate schedules and all pertinent terms and conditions of service. While some larger business customers often contract with IXCs directly, all residential customers and most smaller business customers take service from IXCs according to the explicit terms of the IXC's federal tariff. In particular, in the case of casual calling and transient calling, it is obviously not practical for an IXC to form a contract with numerous unidentifiable customers who may access its service at any time from any place simply by dialing an 10-XXX number. Thus, a federal tariff is the only practical means of establishing a legal relationship with those consumers, as well as other customers who, for a variety of reasons, would choose not to take the added time and expense to engage in an individual contractual relationship with an IXC.

Without the ability to rely on a federal tariff, all IXCs will face increased expenses to establish, police, and enforce a multitude of contractual arrangements with each and every consumer.[29] These substantial new administrative costs likely would be felt by the consumer in several ways. Long distance companies may decide to absorb the new expense, making those carriers less efficient competitors in the market. Some IXCs may decide to pass these costs along to the consumer in their rates, resulting in higher overall prices for service. Overall, many carriers would have less incentive to serve certain market segments, such as casual calling, low-usage residential customers, and small businesses, which would require the bulk of the expenditure of these additional costs. These consumers would suffer accordingly, with fewer and higher-priced competitive choices remaining to serve their varied needs.

[29] Smaller carriers especially will experience a disproportionate increase in overhead expenses, leaving them with far fewer resources to devote to actually serving the customer's needs.

Thus, regardless of how the new administrative costs of an across-the-board contracting regime would be absorbed or avoided, the consumer likely would see higher prices, less efficient providers, and, in some cases, a marked reduction, if not withdrawal, of services to transient and low-usage consumers. It is easy to see how universal service could be seriously threatened under this scenario. In particular, where carriers decide to cut back or eliminate service to certain higher-cost market segments, the harm would be experienced by all consumers, and especially transient, low-usage, and low-income consumers.[30] LDDS WorldCom believes that the Commission should not endanger its universal service goals by making it more difficult for carriers to serve the consumer in the most flexible and efficient manner.

b. Mandatory detariffing is not supportable

The serious flaws of mandatory detariffing aside, the Commission also has not offered any compelling reasons for its adoption. The FCC has a considerable burden under the 1996 Act to prove that its proposed regulatory forbearance policy meets all three criteria dictated by the statute, and otherwise would be in the public interest.[31] The FCC's few stated reasons in the Notice for doing away with tariffs altogether do not withstand careful scrutiny.

First, the Commission's vague concerns about "harm to competition" and alleged collusive conduct by the IXCs simply do not hold up.[32] Initially, the FCC offers no concrete evidence of the competitive harm of tariffs; even in the Notice, the Commission refers only to

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[30] As mentioned previously, the alternative of prepaid calling cards is not viable because they often are priced much higher than basic presubscribed long distance services.

[31] 1996 Act, Section 10(a).

[32] Notice at para. 34.

the "problem" of tacit price coordination "to the extent that it exists currently."[33] More concrete evidence than that is required to support the Commission's accusation.

Moreover, the remedy does not solve the alleged problem of price coordination. Even in the absence of tariffs, numerous other sources of public information about carrier rates already exist. For example, consumer organizations such as Consumer Checkbook and TRAC compile and publish regular listings of long distance rates, and advise consumers of the best available deals. Long distance companies also employ marketing analysts which survey current rates in the marketplace and plan competitive responses. If the FCC requires carriers to maintain price and services information to produce upon request, as the Notice proposes,[34] this information will be available via still another outlet. Prohibiting tariffs may remove one potential source of pricing information, but many others will remain.

The Commission's second stated concern about an IXC's possible invocation of the so-called "filed rate doctrine" is similarly misplaced.[35] LDDS WorldCom shares the Commission's view that carriers should not be allowed to unilaterally change rate or conditions in long-term service arrangements simply by filing an inconsistent tariff provision. However, the solution is not to prohibit the filing of tariffs altogether. Instead, the Commission can use its new forbearance authority to overturn the filed rate doctrine simply by making tariff filings optional. Once the mandatory nature of the tariff filing requirement is lifted, the filed rate doctrine is no longer applicable to carriers' tariff filings, and therefore has no legal foundation

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[33] Notice at para. 81.

[34] Notice at para. 36.

[35] See Notice at paras. 34, 92-101.

in the Communications Act. Alternatively, the Commission can require that carriers place statements in their permissive tariffs indicating that, where a contract and the tariff conflict, the contract's inconsistent provisions overrule the tariff, rather than the reverse.

Even if the Commission decides that the adoption of a permissive detariffing policy does not necessarily render the filed rate doctrine inapplicable, the Commission can take several steps to eliminate any concerns about consumers not receiving the "benefit of the bargain" they have negotiated with carriers. For example, the Commission can adopt several proposed procedural requirements that IXCs must meet in order to make material changes to long-term service or contract tariffs, including a longer notice period and clear identification for such tariff filings.[36] The "substantial cause" test also can be extended beyond the original customer to encompass subsequent customers who take service from the carrier.[37] The important point is that any potentially negative effects of the filed rate doctrine can be successfully avoided without resorting to the extreme step of throwing out all tariff filings altogether.

The FCC's other stated concerns also do not hold water. In particular, the Commission's statement in passing that carriers may use tariffs to "limit their liability for damages"[38] ignores the fact that carriers will be unable to provide service to certain segments of society without at least some assurance that all charges will be paid for services rendered. Without such assurances, carriers will tend not to serve those consumers who impose greater

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[36] Notice at para. 99.

[37] Notice at para. 96.

[38] Notice at para. 34.

risks and costs, including casual callers and low-usage residential consumers. Universal service will suffer as a consequence.

Finally, the Commission's concerns about "the costs associated with" tariff filings are misplaced.[39] Indeed, as discussed above, compelling carriers to abandon tariffs completely and resort to a contract regime for each and every customer will engender far more substantial costs to IXCs than the current tariff filing regime. Adoption of a permissive detariffing policy, however, which allows IXCs to refrain from filing tariffs, will significantly reduce the number of tariffs filed with the Commission, and the concomitant use of Commission resources. The important point is that is should left up to individual consumers and carriers to decide when a contract best meets the consumer's needs, and when a tariffed arrangement is more appropriate and desirable. The most "pro-competitive, deregulatory regime" is one that gives the consumers maximum choices in the marketplace, not one which forecloses such choices altogether.

Nonetheless, should the Commission decide -- incorrectly -- to adopt a mandatory detariffing policy, the Commission must allow carriers and consumers a sufficient amount of time to begin the transition to a totally new regime. In the CMRS context (which is not necessarily pertinent to the IXC market), the Commission allowed only sixty days for CMRS providers to cancel their tariffs.[40] Much more time would be required here. The entire long distance industry has constructed its customers' service offerings under the aegis of the current Section 203 tariff filing regime, which has been in place for over 60 years. At least twelve months would be needed to move all customers and services away from that regime, and to

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[39] Notice at para. 34.

[40] Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411, 1480 (1994).

prepare for the many new costs of a totally tariff-free environment.

C. Regardless of The FCC's Other Decisions, The RBOCs Should Be Required To File Tariffs For Their Provision of Out-of-Region Long Distance Services

While LDDS WorldCom generally supports a permissive detariffing requirement for all nondominant IXCs, there is one very important exception. A mandatory tariffing policy should still apply in the special circumstances of out-of-region long distance services provided by the Regional Bell Operating Companies ("RBOCs").[41]

In the Out-of-Region RBOC proceeding, the Commission has proposed to classify the out-of-region long distance services provided by the RBOCs as nondominant to the extent they are provided utilizing a separate subsidiary.[42] LDDS WorldCom has filed comments generally supporting that position,[43] and has reiterated that position in its earlier comments filed in phase I of this proceeding.[44] Whatever policy the Commission ultimately adopts to govern the RBOCs' provision of out-of-region interLATA services, however, a tariff filing requirement must be included.

The interstate tariffs that the RBOCs' affiliates would file once they enter the out-of-region long distance market may represent one of the best avenues for making sure that these

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[41] It should be noted that the LECs' interstate access tariffs are not affected in any way should the Commission adopt its proposed forbearance policy, and there is absolutely no basis for requiring or allowing those tariffs to be withdrawn.

[42] Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Service, CC Docket No. 96-21, Notice of Proposed Rulemaking, FCC 96-59, released February 14, 1996, at para. 11.

[43] Reply Comments of LDDS WorldCom, CC Docket No. 96-21, filed March 25, 1996.

[44] Comments of LDDS WorldCom, CC Docket No. 96-61, filed April 19, 1996.

entities are operating in full compliance with the 1996 Act. Indeed, the new statute requires a continuing FCC oversight role to ensure that the RBOCs do not cross-subsidize their competitive long distance service rates with non-competitive access revenues,[45] and that the RBOCs charge their affiliate the same rates for interstate access that they charge other IXCs.[46] Obviously evidence of violations of both of these statutory requirements should show up in the retail rates charged by the RBOCs' long distance affiliates.[47]

A requirement that the RBOCs file federal tariffs for their out-of-region interLATA services is also necessary on a more fundamental level. As LDDS WorldCom explained in the RBOC Out-of-Region proceeding, it is indisputable that the RBOCs retain substantial market power in the local exchange, based on their unique control over bottleneck facilities.[48] This is due to the inextricable link between market power in the local exchange and access markets, and market power in the long distance market. Given the paramount fact of overwhelming RBOC market power, and the lack of any meaningful competition in the local exchange market now and in the immediate future, the RBOCs have every ability and incentive to leverage their market power into discriminatory conduct against their new rivals in the long distance market. Thus, the public interest dictates that the Commission craft the appropriate safeguards to prevent the RBOCs from exercising the full extent of their market power in

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[45] 1996 Act, Section 254(k).

[46] 1996 Act, Section 272(e)(3).

[47] In the case of the RBOCs' future offerings of in-region long distance services, federal tariffs should be required as well because those RBOC services should be classified by the Commission as dominant.

[48] Reply Comments of LDDS WorldCom, CC Docket No. 96-21, at 4.

discriminatory and anticompetitive ways. LDDS WorldCom supports the Commission's proposal in the RBOC Out-of-Region proceeding to classify as nondominant the out-of-region interLATA services provided by the RBOCs, but only on the condition that the RBOCs utilize a separate affiliate that is significantly stronger than in the Commission's initial proposal.[49]

Here, a requirement that the RBOCs file federal tariffs would serve as a similar safeguard to assure that the RBOCs are not providing long distance services in an anticompetitive manner. Whatever action the Commission ultimately takes in this proceeding, the mandatory tariff filing requirement contained in Section 203(a) of the 1934 Act should remain in place for all out-of-region interLATA services provided by the RBOCs.

III. LDDS WORLDCOM DOES NOT OPPOSE ALLOWING AT&T AND OTHER CARRIERS TO BUNDLE CUSTOMER PREMISES EQUIPMENT WITH THEIR LONG DISTANCE SERVICES, AS LONG AS CONSUMERS ARE FULLY PROTECTED FROM POTENTIAL ANTICOMPETITIVE CONDUCT

The Notice next discusses the Commission's adoption of a rule in 1980 which prohibited common carriers from bundling the provision of customer premises equipment ("CPE") with the provision of telecommunications services.[50] The Commission's concern at that time was that, in a regulated telecommunications market dominated by one carrier (AT&T), that carrier might use the bundling of CPE as an anticompetitive marketing strategy that "restricts both consumer freedom of choice as well as the evolution of a competitive

49 Reply Comments of LDDS WorldCom, CC Docket No. 96-21, at 8-10.

50 See 47 C.F.R. § 702(e). The rule states that a carrier's provision of CPE must be "separate and distinct" from its provision of telecommunications services. Id.

marketplace."[51] Observing that the CPE market is now "widely recognized to be fully competitive," and the interexchange business service market is "substantially competitive," the Commission tentatively concludes in its Notice that it is "unlikely" that nondominant IXCs now could engage in the anticompetitive conduct that led to the CPE unbundling rule in the first place.[52] The Notice asks for comments on the Commission's proposal to amend its rules to allow nondominant IXCs to bundle CPE with interexchange services.

LDDS WorldCom agrees with the Commission's characterization of both the CPE and interexchange services markets as substantially, if not fully, competitive. The unbundling rule was not formulated with nondominant IXCs in mind, however, but rather was directed primarily at the dominant AT&T of fifteen years ago. While the long distance and CPE markets have changed markedly since then, AT&T's long distance and CPE operations still retain at least some elements of their previous dominance in their respective markets. LDDS WorldCom suggests that, in order to eliminate any lingering concerns about potential anticompetitive conduct in the CPE and long distance markets, the Commission should adopt its amended rule only after AT&T's divestiture of Lucent, its former equipment manufacturing arm, is complete.

The Notice also asks whether the Commission "should require interexchange carriers offering bundled packages of CPE and interstate, interexchange services to continue to offer separately, unbundled interstate, interexchange services on a nondiscriminatory basis."[53] LDDS WorldCom fully endorses the Commission's suggestion, especially in the interim as the

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[51] Computer II, 77 FCC 2d at 443 n.52.

[52] Notice at paras. 86, 88.

[53] Notice at para. 89.

unbundling rule is first lifted. Although it may be expected that the future bundling of CPE and long distance services will not involve significant anticompetitive activities by carriers, the prudent course would be to require carriers to continue providing separate, unbundled service offerings on a nondiscriminatory basis.

IV. THE FCC NEED NOT ADDRESS AT THIS TIME THE PRICING ISSUES MENTIONED IN THE NOTICE

The Notice finally raises several miscellaneous "pricing issues." These encompass: (1) dealing with allegations of "tacit price coordination among interexchange carriers for basic residential services, or residential service generally;"[54] and (2) encouraging IXCs to provide "optional calling plans for low-income consumers."[55]

LDDS WorldCom does not believe the Commission needs to address either pricing issue raised in its Notice. The Commission itself states its belief that any problem with tacit price coordination, "to the extent that it exists currently," will be eliminated because of several recent or proposed changes in the long distance industry, including reclassifying AT&T as nondominant, entry of the RBOCs into the long distance market, and adopting a mandatory detariffing regime.[56] While LDDS WorldCom would dispute at least some of the assumptions in this analysis, there seems little need for the Commission to proceed further on this issue.

Nor is any action required at this time on the Commission's second issue, the offering of optional calling plans by IXCs to low-income consumers. The Commission concedes

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[54] Notice at para. 81.

[55] Notice at para. 83.

[56] Notice at para. 81.