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

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In the Matter of 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

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COMMENTS

MCI TELECOMMUNICATIONS CORPORATION

Donald J. Elardo
Frank W. Krogh
Larry A. Blosser
Mary J. Sisak

1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 887-2006

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SUMMARY

MCI opposes mandatory detariffing insofar as it would affect small business and residential service customers. The Commission simply cannot at this time satisfy the statutory requirements essential to applying its forbearance authority in a way that would affect their receipt of service. On the other hand, MCI believes that the requisite statutory findings may be made to support the detariffing of negotiated customer service agreements, or contract-tariffs.

Based upon its considerable experiences in the interstate, interexchange market, as well as reasoned economic studies known to the Commission, MCI believes that the interstate, interexchange market is intensely competitive. Therefore, claims that it has oligopolistic characteristics or tendencies simply are wrong.

Although MCI has some reservations, it does not object to the removal, on a conditional basis, of the Commission's long-standing rule against the bundling of basic transmission services with CPE or "Enhanced Services," provided that carriers continue to make available each of their bundled products on a separate basis. Thus, MCI recommends that, in lieu of repealing the rule at this time, the Commission should suspend its application for a one-year "trial period" and, after one year, assess the effect of the rule's suspension on the competitive interstate, interexchange service, CPE, Enhanced Service and related markets. Following such evaluation, the rule can either be repealed or reinstated, whichever is appropriate.

Finally, MCI believes that problems arising from the tariffing of individually negotiated customer service arrangements could be eliminated, if these kinds of service arrangements were allowed to be provided on a detariffed basis. If that were done, thorny problems that raise weighty equity considerations -- such as the "substantial cause doctrine" which allows a carrier to modify materially negotiated commitments by later inconsistent tariff filings -- could not arise because there would be no tariff to interfere with these privately negotiated contracts.

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COMMENTS

MCI Telecommunications Corporation (MCI) respectfully submits these comments in response to the Commission's "Notice of Proposed Rulemaking" (FCC 96-123), released March 25, 1996. Therein, the Commission seeks comment on a number of matters, including certain proposals resulting from its review of the state of competition in the interstate, interexchange marketplace and the recent, significant modifications made to the Communications Act of 1934.[1] This is the second and final phase in this proceeding.[2]

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[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (hereinafter referred to as "the new law" or "the 1996 Act," as distinct from "the Communications Act" or "the Act," which means the Communications Act of 1934, as amended, prior to enactment of the 1996 Act).

[2] The "first phase" involved the definition of relevant product and geographic markets, the provision of "out-of-region" interstate services by Local Exchange Carriers (LECs), including the Bell Operating Companies (BOCs), and geographic rate averaging and rate integration issues. Comments were filed on April 19, and Reply Comments are due on May 3, 1996.

BACKGROUND AND SUMMARY OF POSITION

This proceeding arises from pre-legislation commitments made by the Commission to evaluate competition in the interstate, interexchange market, which it last did on a major scale in August 1991,[3] and which it did most recently in connection with the deregulation of AT&T Corp. (AT&T) in connection with its provision of domestic interstate, interexchange services.[4] The 1996 Act authorizes the Commission to take still additional, substantial deregulatory measures, provided that the record allows it to make the requisite findings to support such actions.

In this phase, the Commission is proposing "mandatory detariffing," or requiring that non-dominant carriers withdraw their tariffs for all their domestic service offerings. And, it is seeking information to determine whether the interstate, interexchange market has oligopolistic tendencies or characteristics, as distinct

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[3] Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880 (1991); Order, 6 FCC Rcd 7255; Memorandum Opinion and Order, 6 FCC Rcd 7569 (1991); Memorandum Opinion and Order, 7 FCC Rcd 2677 (1992); Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 2659 (1993); Second Report and Order, 8 FCC Rcd 3668 (1993); Memorandum Opinion and Order, 8 FCC Rcd 5046 (1993); Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 4562 (1995).

[4] See Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, FCC 95-427, rel. October 23, 1995. AT&T is still regulated -- and quite properly so -- as "dominant" in connection with its furnishing of international services because it controls essential "bottleneck" facilities, namely, cables and cable-heads, essential to the ability of its competitors to compete against it.

from being effectively competitive. It also is seeking to ascertain whether the public interest would be served by removal of the rule that prohibits the bundling of basic transmission with CPE and other products, thus allowing such marketplace undertakings by non-dominant carriers. And, finally, the Commission, if it were to decide not to impose a mandatory detariffing requirement (and if non-dominant carriers continued to use tariffs in connection with their individually negotiated service arrangements), is seeking to assure that carriers do not take unfair advantage of their customers via the tariffing process.

As demonstrated herein, MCI opposes mandatory detariffing insofar as it would affect small business and residential service customers. The Commission simply cannot at this time satisfy the statutory requirements essential to applying its forbearance authority in a way that would affect their receipt of service. On the other hand, MCI believes that the requisite statutory findings may be made to support the detariffing of negotiated customer service agreements, or contract-tariffs.

In addition, based upon its considerable experiences in the interstate, interexchange market, as well as reasoned economic studies known to the Commission, MCI believes that the market is intensely competitive. Therefore, claims that it has oligopolistic characteristics or tendencies simply are wrong.

Also, although it has some reservations, MCI does not object to the removal, on a conditional basis, of the Commission's long-standing rule against the bundling of basic transmission services with CPE or "Enhanced Services," provided that carriers continue to make available each of their bundled products on a separate basis. Thus, MCI recommends that, in lieu of repealing the rule at this time, the Commission should suspend its application for a one-year "trial period" and, after one year, assess the effect of the rule's suspension on the competitive interstate, interexchange service, CPE, Enhanced Service and related markets. Following such evaluation, the rule can either be repealed or reinstated, whichever is appropriate.

Finally, MCI believes that problems arising from the tariffing of individually negotiated customer service arrangements could be eliminated, if the Commission were to impose a detariffing obligation on these kinds of service arrangements. If that were done, thorny problems that raise weighty equity considerations -- such as the "substantial cause doctrine" which allows a carrier to modify materially negotiated commitments by later inconsistent tariff filings -- could not arise because there would be no tariff to interfere with these privately negotiated contracts.

I. MANDATORY DETARIFFING

A. INTRODUCTION

The 1996 Act authorizes the Commission to forbear from applying any provision of the Communications Act, if the Commission determines that: (1) its enforcement is not needed to ensure that carrier undertakings are consistent with Sections 202(a) and 201(b) of the Act;[5] (2) its enforcement is not necessary to protect consumers; and (3) forbearance is consistent with the public interest.[6] In addition, the Commission is specifically obligated to consider whether its forbearance undertakings will promote competitive market conditions.[7]

Also, the new law grants substantial flexibility to the Commission in connection with its exercise of forbearance authority by explicitly providing that forbearance may affect a particular carrier or carriers, a particular service or services, a particular class of carriers, or a

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[5] Section 202(a) provides, in pertinent part, that "[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities or services in connection with like communication service ...," and Section 201(b) provides, in pertinent part, that "[a]ll charges, practices, classifications, and regulations for and in connection with ... communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust and unreasonable is hereby declared to be unlawful ...."

Together with the tariffing obligation contained in Section 203 of the Act, these provisions traditionally have been viewed as the cornerstone of regulation under Title II.

[6] 1996 Act at Section 401 (adding Section 10(a)).

[7] Id. (adding Section 10(b)). NPRM at para. 17.

particular class of services.[8] Thus, the Commission is not obligated to forbear in the manner it has tentatively proposed to do in its NPRM.[9]

The Commission's initial attempt at forbearance has resulted in its tentative determination that the statutory requirements can be satisfied by removal of the tariff-filing obligation contained in Section 203 of the Act for all non-dominant carrier domestic service offerings. The Commission therefore is not looking to approach the elimination of non-dominant carrier tariffing on any measured or gradual basis; rather, it is seeking to do so on

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[8] Id. at Sections 10(a) and 10(c).

[9] In asserting that "requiring non-dominant interexchange carriers to file tariffs for domestic offerings is not necessary for the protection of consumers of interexchange services" (NPRM at para. 29), the Commission creates an ambiguity that needs to be resolved. "Non-dominance" in the interexchange market describes the carrier; and "domestic" describes the type of offering. MCI believes that carriers whose regulatory status -- dominant or non-dominant -- varies by market may be able to exploit this statement to their advantage. It is unclear, for example, if a carrier that is non-dominant in the domestic market and dominant in the international market, e.g., AT&T, would be permitted to file tariffs for its domestic offerings. This ambiguity is punctuated by the Commission's proposal to forbear from requiring non-dominant firms which currently file "mixed" tariffs that include both domestic and international services to file tariffs for the international portions of their offerings as well. (NPRM at Para. 33) Similarly, it is unclear whether a non-dominant carrier furnishing interexchange service -- but dominant with respect to its local exchange service offerings -- could argue that it should be forborne from filing tariffs for its local services. The Commission should clarify that under no circumstance is it its intent in this proceeding to allow dominant carriers to avoid their tariffing obligation in connection with services provided in markets in which they possess market power.

a wholesale basis because it tentatively concludes that it is "required" to do so.[10]

The Commission's rationale rests on "prior analyses and findings"[11] rather than on any current record or assessment, which obviously will not exist until the record in this proceeding is complete. When that occurs, MCI believes that the Commission will be forced to admit that its prior findings cannot sustain its proposed action here, as the marketplace and competitive conditions in the early 1980's do not remotely resemble conditions as they exist today.

For the reasons explained herein, the Commission should abandon its tentative conclusion and impose a mandatory detariffing requirement, if at all, only to the extent recommended herein. This is the only sound approach to the detariffing question from both a legal and a policy perspective.[12]

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[10] NPRM at paras. 19, 26 and 27.

[11] The Commission is basing its proposed action here on a twelve-plus year-old record established in the Sixth Report and Order in Competitive Carriers, 99 FCC 2d 1020 (1985), vacated MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985).

[12] There is a rich history of Commission undertakings over the years to transition from a regulated marketplace to one characterized by effective competition. See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Therefor, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking (Competitive Carrier Notice), 77 FCC 2d 308 (1979); First Report and Order (First Report), 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Further Notice of Proposed Rulemaking, 47 Fed. Reg. 17308 (1982); Second Report and Order (Second Report), 91 FCC 2d 59 (1982), recon. denied, 93 FCC 2d 54 (1983); Third Report and Order (Third

B. THE STATUTORY STANDARDS

As noted above, the Commission has reached its tentative decision to forbear from requiring tariffs for all non-dominant carrier service offerings "based on the Commission's analyses and findings in prior proceedings."[13] It thereupon tentatively concluded that:

> (1) applying tariff filing requirements to nondominant interexchange carriers is not necessary to ensure that such carriers' charges, practices, or classifications are just and reasonable, and are not unjustly or unreasonably discriminatory; (2) applying tariff filing requirements to non-dominant interexchange carriers is not necessary for the protection of consumers; and (3) forbearing from applying tariff filing requirements to non-dominant interexchange carriers is consistent with the public interest.

Application of these standards in the current environment will not support mandatory detariffing because the

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Report), 48 Fed. Reg. 46791 (1983); Fourth Report and Order (Fourth Report), 95 FCC 2d 554 (1983), vacated, AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992), cert. denied, MCI Telecommunications Corp. v. AT&T, 113 S. Ct. 3020 (1993); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 1191 (1984); Fifth Report and Order (Fifth Report), 98 FCC 2d 1191 (1984); Sixth Report and Order (Sixth Report), 99 FCC 2d 1020 (1985), vacated sub nom., MCI Telecommunications Corp. v FCC, 765 F.2d 1186 (D.C. Cir. 1985). However, all of this history becomes somewhat irrelevant, given that these were undertaken when the Commission lacked the statutory warrant granted by the new law.

[13] NPRM at para 19. These included a determination, among others, that tariff-filing requirements imposed on non-dominant carriers could harm consumers by slowing "the introduction of new services, dampening competitive responses and ultimately encouraging price collusion through the forced publication of charges." Id. at para. 21, citing Competitive Carrier Further NPRM, 84 FCC 2d at 471.

Commission simply cannot make the requisite statutory findings to support that approach.

1. Tariffing Contributes Toward Assuring Carrier Compliance with Substantive Title II Requirements

MCI disagrees with the Commission's position that tariffs are not important to the enforcement of the anti-discrimination and "just and reasonable" standards contained in Sections 202(a) and 201(b), respectively.[14] Tariffing contributes toward assuring that carrier undertakings are consistent with the substantive Title II legal requirements that the Commission intends to continue to impose on non-dominant carriers. This is because tariffs serve as the central focus or authority from which millions of transactions are entered with customers, most of whom subscribe to small business and residential long distance service. Although information about terms and conditions of interexchange services would become generally known in a detariffed marketplace, tariffs facilitate enforcement of the requirement that all carriers treat their customers consistently. Competitive forces substantially reduce the risk of anti-competitive conduct by non-dominant carriers, but through its decision to continue to enforce the substantive requirements of Sections 202(a) and 201(b), the

[14] NPRM at para. 28.

Commission itself recognizes some residual risk of discrimination.

2. The Tariff Filing Requirement Protects Consumer Interests

At least as important, tariffs also serve as an efficient and cost-effective transactional mechanism. Consumers thus will be adversely affected because carrier transactional costs will increase if tariffs no longer are employed.

In a tariffed world, carriers provide customers with basic information about their services when they sign up and usually inform them of later significant changes. However, in a detariffed world where relationships with millions of individual customers would be established by contracts potentially governed by the laws of multiple jurisdictions, carriers could be forced to provide advance notice of all initial terms and conditions and all later changes, no matter how minor or frequent. In this regard, MCI is unaware of any desire or need on the part of customers for the reams of information that now are submitted in tariff format to the Commission on almost a daily basis.

Without an availability of tariffs as the means by which all these sales and service-related activities are carried out, carrier costs will increase dramatically, and these costs will not likely be absorbed by the carriers but,

rather, will be passed on to consumers in the form of higher rates and charges. In this same context, service delivery time i.e., the time between a new customer's service order and installation, likely will increase simply because a more cumbersome contract process will delay order processing and implementation. This makes little sense when smaller business and residential long distance customers who purchase the same services are involved. Accordingly, tariffing is an efficient way to maintain low transaction costs without any countervailing adverse consequences to consumers.

Particularly troublesome in this regard is the Commission's position that tariffs not only are unnecessary to protect consumers, but that they "harm[] consumers by undermining the development of vigorous competition."[15] According to the Commission, tariffs "stifle[] price competition and service and marketing innovations."[16] There simply is no basis in fact to support these claims. There is no evidence, for example, that tariffs being filed today by non-dominant carriers are "undermining competition." The interexchange market is intensely competitive, as the Commission repeatedly has found. Furthermore, no explanation is offered, nor can there be any, that tariffs adversely affect price competition or

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[15] Id at para. 29.

[16] Id.

service and marketing innovations. Indeed, as noted herein, price competition will be hindered by the disappearance of tariffs because higher costs will very likely result in higher carrier rates and charges to consumers, and make it more difficult for non-dominant carriers to compete against dominant carriers.

Certainly, one-day notice requirements do not deprive carriers of the ability to deliver, and the public to receive, new products or prices rapidly as, perhaps, 45-day notice periods used to do.[17] The fact that carriers publish their prices in tariffs, furthermore, does not make this industry any less competitive than those in which no tariffs are filed.[18] And, it would be a mistake to conclude that removal of tariffing would make price-signaling more difficult because, with or without tariffs, carriers, just like competitors in unregulated markets, will learn promptly of their competitors' pricing. Simply stated, tariffing does not yield anti-competitive results.

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[17] In addition to delay resulting from tariff notice periods, there used to be an opportunity for competitors to challenge and potentially delay new offerings or prices. This no longer is a possibility under the current rules applicable to non-dominant carriers.

It should be noted that carrier service and rate initiatives will face much greater delays in the absence of tariffs. This is because carriers will be unable to effectuate product and pricing changes as rapidly as they can in a tariffing environment.

[18] MCI submits that price information is widely disseminated and known quickly in industries where tariffs are not used.

In addition, the ready availability from one central source of complete and comprehensive information about the offerings of all interexchange carriers makes it easier for those who advise consumers on telecommunications purchases to know of the offerings available in the marketplace and to perform price and feature comparisons for consumers. This kind of undertaking would be more difficult to perform without an availability of tariffs.

Finally, MCI finds it somewhat contradictory, on the one hand, for the Commission to attempt to drive the industry toward "a more market based environment" while, on the other hand, requiring that carriers "maintain at their premises price and service information" regarding their offerings.[19] The NPRM does not explain any consumer or competitive benefit from requiring carriers to maintain this generally available information at their premises rather than with the Commission through tariffing. It makes little sense for the Commission to mandate detariffing and then undertake to prescribe that detariffed carriers must make the same tariff information publicly available through other means that are not necessarily more effective.

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[19] NPRM at para. 36.

3. Mandatory Detariffing Of All Non-Dominant Carriers Would Be Inconsistent With The Public Interest

For all the reasons expressed in these comments, MCI believes that it would be inconsistent with the public interest if non-dominant carriers were required to detariff all their service offerings, as distinct from only those better provided under contract. Tariffs serve as an efficient vehicle to manage relationships with millions of customers in a mass-market setting.

Furthermore, in the absence of tariffs, dispute resolution will become more complicated. Normally, when a complaint is filed with the Commission, either the complainant or the defending carrier will include in the record a copy of relevant tariff pages, which usually are central to the resolution of the controversy.[20] Without tariffing, there likely will arise a threshold issue of what the agreement was between the parties and efforts will need to be spent in establishing the contract, as distinct from its interpretation or its application in particular situations.

Finally, the mandatory detariffing of non-dominant carrier interstate, interexchange services will place these carriers in the difficult position of having to offer the interstate portion on a non-tariff basis and the

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[20] See Section 1.720(h) of the Commission's complaint rules, which reads in pertinent part: "Specific reference must be made to any tariff provision relied on in support of a claim or defense."

international and intrastate portions on a tariff basis depending upon particular state requirements. MCI and other carriers have adopted tariffing schemes that allow for the complementary interaction of their interstate and intrastate tariffs and, obviously, disruption in this approach will result in increased costs to carriers and consumers.[21]

4. Mandatory Detariffing Of All Non-Dominant Carriers Will Not Promote Competitive Market Conditions

The mandatory detariffing of all non-dominant carrier service offerings will not promote competitive market conditions, as the Commission assumes. In fact, such detariffing may well have the opposite effect by making the affected market less competitive than it is with tariffing.

The most significant example of this involves dominant carriers against whom non-dominant carriers will be competing. Dominant carriers will continue to be able to file tariffs and thereby avail themselves of the administrative benefits and cost savings that tariffing provides. This translates into lower transactional costs, as explained above, which means lower potential service rates.

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[21] For example, many state tariffs currently point to the federal tariff for provisions that apply to instate service. With mandatory detariffing, this referencing capability would no longer exist.

Thus, the Commission will have brought about the most perverse of all possible results by implementing a regulatory scheme that favors dominant-carrier competitors over non-dominant carrier competitors. These dominant carriers will be able to act and react in response to market changes -- price increases and/or reductions -- relatively quickly via the tariffing mechanism, while their non-dominant competitors will in all likelihood be unable to respond as quickly due to constraints arising from their contractual relationship with consumers. This result would seem to be exactly the opposite of what the Commission intends to achieve in this proceeding.

Finally, the Commission has concluded that the public interest will be served by detariffing because competition will be promoted and "price coordination" will be deterred.[22] For all the reasons set forth herein, the Commission is plainly mistaken. To contend that one-day tariff-filing notice requirements deprive carriers of their ability to make rapid changes in their product offerings is facially absurd because there can be no more rapid an approach to bringing about change. It is equally absurd to argue that tariffs frustrate competitive pricing actions as,

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[22] It appears that "price coordination" means "collusive pricing" to the Commission (NPRM at para. 30) or "send[ing] price signals ... [to] manipulate prices." (NPRM at para. 35). Apparently, the Commission assumes that, in the absence of filed tariffs, carriers will be unable to learn of their competitors' pricing. As explained above, this is not likely to be the case.

indeed, tariffs allow for the rapid and widespread public dissemination of information concerning those actions. Finally, and perhaps most absurd because it is inconsistent with reality, is the claim that tariffing imposes costs on carriers seeking to make new offerings. On the contrary, tariffing offers carriers the most efficient and cost-effective mechanism to introduce new products into the marketplace.

The Commission's conclusions concerning tariffing thus are unfounded and incorrect in any event. Although it now may possess the authority under the new law to "require" detariffing, it can only do so when it can satisfy all of the elements contained in the statute. Otherwise, it may not lawfully impose detariffing on non-dominant carriers in connection with their domestic service offerings.[23]

Also, the Commission asks whether AT&T, recently found to be non-dominant in the domestic interstate, interexchange

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[23] Even though the Commission has decided not to propose to forbear from requiring the detariffing of international non-dominant carrier services at this time, it apparently is willing to consider such detariffing if a non-dominant carrier has a bundled or "mixed" tariff consisting of both domestic and international services, as distinct from separate tariffs for the two offerings. (See para. 33.) This doesn't appear to MCI to make sense. If the Commission were to forbear from requiring tariffs for international services in this context, then it seems it ought to forbear from requiring them in any context. Moreover, were the Commission to follow through on this proposal, AT&T, regulated as dominant in international markets, apparently would be freed of tariff regulation in connection with its "mixed" international offerings. The better approach would be to allow affected carriers to create and file a standalone international tariff for their international services, if forbearance were to apply to all domestic services.

market, should continue to be bound to commitments that it previously made to achieve such regulatory status.[24] MCI disagrees with the Commission's tentative conclusion that AT&T should be bound to any commitments other than those that might arise from this proceeding, and which would apply equally to all non-dominant carriers. Of particular importance here is the fact that, by virtue of its continuing to be subject to the tariffing requirement for some of its offerings, AT&T would be given an unwarranted competitive advantage over its non-dominant competitors. It could maintain certain of its business arrangements by tariff, while its non-dominant competitors would be unable to do so.

Perhaps most important, the Commission's proposal to retain tariffing for one non-dominant carrier proves the importance of tariffing -- in the Commission's mind -- as a monitoring and enforcement mechanism. In this regard, if detariffing is appropriate in other situations involving non-dominant carriers, it ought to be equally appropriate here. Furthermore, if the Commission is determined to enforce commitments previously made by AT&T, it should do so via the "certification" process, which it is inclined to use

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[24] Id. at para. 39.

as a policing mechanism in other contexts in this proceeding.[25]

II. PRICING ISSUES

The Commission indicates that there have been "[c]hanges in the structure of the interexchange marketplace over the past decade,"[26] and that such changes have led some to believe that there is "oligopolistic price co-ordination" in the industry. The Commission indicates that it cannot make such a finding due to "inconclusive and conflicting evidence in the record" but nevertheless asserts that its reclassification this past October of AT&T as non-dominant, thereby reducing the notice periods associated with its tariff filings, and the new law which allows additional competitive entry by the BOCs when certain conditions have been satisfied and allows for mandatory detariffing, will address and resolve the problem.[27]

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[25] The Commission is proposing to use self-certification as a substitute policing mechanism for tariffs in connection with non-dominant carrier obligations to fulfill the geographic rate averaging and rate integration requirements imposed by the 1996 Act.

[26] NPRM, at para. 80.

[27] The Commission's uncertainty is somewhat puzzling, given the fact that the Common Carrier Bureau recently found that "[c]ompetition for long-distance customers has become increasingly intense" and spoke of consumers being "showered with television and print advertising for an array of long-distance calling plans ...." "Common Carrier Competition," Spring 1996, Report No. CC96-9, dated April 10, 1996.

Based upon its considerable competitive experiences in the interstate, interexchange marketplace, MCI believes that the market is intensely competitive and that, therefore, claims made that the market has oligopolistic characteristics or tendencies are wrong. As these claims largely had been made by or on behalf of the BOCs, which previously have been barred from the subject market but which now want to enter it to compete, their motivations for making them are fairly obvious.[28] Of course, the premise here is that an incomplete and imperfect competitive environment will be remedied by unfettered BOC entry into the interstate, interexchange market.[29]

First and foremost, there is no pricing collusion in the interstate, interexchange marketplace. This market has been the single most competitive telecommunications services

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[28] E.g., Paul W. MacAvoy, "Tacit Collusion Under Regulation In The Pricing Of Interstate Long-Distance Services," The Massachusetts Institute of Technology, Journal of Economics & Management Strategy, Vol. 4, No. 2, Summer 1995. The writer posits that since 1990, a number of conditions have been conducive to the development, in the interstate, interexchange market, of "market sharing rather than significant price competition." The "most important" of these, according to the author, "has been the tariffing process" which allows for pricing announcements and, subsequently, price replication by competitors.

[29] It is impossible at this time to know how many new competing BOC entrants there will be, given the haste on their part to merge with one another or enter into alliances. Assuming that some BOCs may not elect to enter and compete in the interstate, interexchange market at all, it appears possible that the infusion of competition assumed by some to be the ultimate result of BOC entry may never materialize. In fact, of course, mergers take two natural competitors and combine them into one, thereby reducing actual or potential competition.

market of all. The best evidence of the vibrant competition that characterizes the market is that the Commission recently found it possible to rule AT&T to be a non-dominant carrier, in effect ascertaining that there was little fear that elevating AT&T to non-dominant status would inflict any harm on consumers or on competition.[30] In addition, claims of pricing collusion among interexchange carriers in connection with their standard rates ignore the introduction and widespread use of special discounting plans.[31]

Those who contend that the subject market is an oligopoly, presumably "controlled by AT&T, MCI and Sprint," simply fail to understand the true dynamics of a competitive market and how competition really manifests itself. In particular, claims that real competition in the telecommunications services industry occurs only when prices fall disclose a basic misunderstanding of the industry, which is characterized by significant fixed costs, e.g., billing, with substantial expense factors that are beyond

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[30] The Commission (NPRM at para. 37) poses the question of whether removal of AT&T from its prior status of "close regulation" as "a nationwide dominant carrier" -- the result of which meant that AT&T was obliged to file tariffs that usually served as the "ceiling" against which non-dominant carriers set their prices -- should affect its mandatory detariffing proposal. Given MCI's position that the Commission could not meet the statutory requirements to implement mandatory detariffing now, MCI will not address this question.

[31] See Robert E. Hall, "Long Distance Public Benefits From Increased Competition," Applied Economic Practices, October 1993.