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VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

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**Re: Policy and Rules Concerning the Interstate, Interexchange Marketplace
CC Docket No. 96-61**

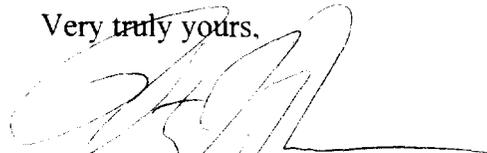
Dear Mr. Caton:

Transmitted herewith on behalf of Eastern Telephone Systems, Inc. d/b/a Eastern Tel Long Distance Service, Inc., are an original and eleven (11) copies of its Comments in the above-referenced proceeding. In addition, a paper copy of the Comments is being served on International Transcription Services, and a paper copy and a diskette are being served on Janice Myles of the Common Carrier Bureau.

Also enclosed is an extra copy of this letter and Comments. Please date-stamp the extra copy and return to the undersigned in the envelope provided.

If there are any questions concerning this matter, please contact me.

Very truly yours,



Morton J. Posner

Enclosures

cc: Janice Myles
ITS

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

REC-115

APR 25 1996

In the Matter of)
)
Policy and Rules Concerning the)
Interstate, Interexchange Marketplace)

CC Docket No. 96-61

COMMENTS OF EASTERN TELEPHONE SYSTEMS, INC.
d/b/a EASTERN TEL LONG DISTANCE SERVICE, INC.

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Counsel for Eastern Telephone Systems, Inc.
d/b/a Eastern Tel Long Distance Service, Inc.

Dated: April 25, 1996

SUMMARY

Eastern Telephone Systems Inc. d/b/a Eastern Tel Long Distance Service Inc. (“Eastern Tel”), a regional interexchange carrier, opposes the Commission’s tentative conclusion that it is required, under the Telecommunications Act of 1996 (“Act”), to order all non-dominant interstate, interexchange carriers to forbear from filing tariffs. Eastern Tel believes such a policy of mandatory detariffing is unauthorized by the Act, inconsistent with the public interest, and premature. Instead, Eastern Tel supports a policy of permissive tariffing wherein carriers may voluntarily comply with tariff filing requirements. Such a policy would enable carriers maximum flexibility to define their customer relationships, support the Commission’s complaint process, and reduce administrative burdens associated with full filing compliance.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054**

In the Matter of)
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Policy and Rules Concerning the) CC Docket No. 96-61
Interstate, Interexchange Marketplace)

**COMMENTS OF EASTERN TELEPHONE SYSTEMS, INC.
d/b/a EASTERN TEL LONG DISTANCE SERVICE, INC.**

Eastern Telephone Systems Inc. d/b/a Eastern Tel Long Distance Service, Inc. ("Eastern Tel"), by its undersigned counsel and pursuant to Section 1.415 of the Federal Communications Commission's ("FCC" or "Commission") rules, hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") regarding the interstate, interexchange marketplace.^{1/} These comments focus principally upon the Commission's proposal to mandatorily detariff interstate common carrier services.

I. INTRODUCTION

Eastern Tel, a Pennsylvania corporation, is a regional interexchange carrier which provides service to its customers in several eastern states, including Pennsylvania and New York. Eastern Tel supports the Commission's efforts to promote the development of competition in all market segments of the telecommunications industry, as mandated by the Telecommunications Act of 1996.^{2/} Eastern Tel respectfully opposes, however, the Commission's tentative conclusion that it is *required* under the Act to order forbearance from tariff filing for all non-dominant providers

^{1/} *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96061, FCC 96-123 (Mar. 25, 1996) ("NPRM").

^{2/} Telecommunications Act of 1996, Pub. L. No. 104-104, 100 Stat. 56 (1996) ("Act").

of interstate, interexchange service.^{3/} Eastern Tel suggests that the Act empowers the Commission to determine that the public interest and the promotion of competitive market conditions require permissive tariffing of interstate common carrier services. Such a policy would allow carriers such as Eastern Tel the flexibility to capture the public interest benefits of tariffs, decrease the cost of the underlying service, foster competition, and protect consumers. For these reasons, the Commission should continue to permit, on an optional basis, tariff filings for all non-dominant providers of interexchange service.

II. MANDATORY DETARIFFING IS NOT AUTHORIZED BY THE ACT, IS INCONSISTENT WITH THE PUBLIC INTEREST AND IS PREMATURE

A. Section 401(a) of the Act Authorizes “Forbearance,” Not Regulatory Elimination

Section 401(a) of the Act states that the Commission “shall forbear from applying any regulation or provision” of the Communications Act of 1934 (including the tariff filing requirements set forth in Section 203 of the Communications Act) if the Commission determines: (i) enforcement is not necessary to ensure that common carrier practices are not unjust and unreasonably discriminatory; (ii) it is not necessary for the protection of consumers; and (iii) forbearance is consistent with the public interest.^{4/}

Although it is clear that Congress intended the Commission to *forbear* from regulations under certain instances, nothing in Section 401(a) even remotely suggests that Congress intended

^{3/} *NPRM* at ¶ 19.

^{4/} 1996 Act at § 401 (adding § 10(a) of the Communications Act of 1934).

that the Commission *prohibit* the filing of tariffs. Forbearance under Section 401(a) is authorized only when enforcement of a regulation is “not necessary.” The Section simply requires the Commission to remove certain affirmative regulatory requirements when the public interest dictates, not to prohibit voluntary compliance. Commission precedent supports this interpretation. In a previous experiment with tariff forbearance, the Commission stated that carriers subject to forbearance were “not required to file tariffs,” not that they were forbidden from doing so.^{5/} As discussed below, a permissive detariffing regime would afford carriers the flexibility to file tariffs to help ensure that the marketplace operates consistent with the public interest.

B. Mandatory Detariffing Does Not Meet the Section 401(a) Public Interest Standard

As described above, Section 401(a) provides that the Commission may forbear application of its tariff regulations when a public interest showing is met. Eastern Tel respectfully suggests that mandatory detariffing currently is not in the public interest. Tariffs continue to serve a role in protecting the interests of carriers, consumers, and competition alike.

Tariff filings serve several important public interests functions. First, tariffs keep transaction costs low for carriers, thus enabling them to pass these substantial savings through to consumers. Tariffs display carrier rates and terms in a concise, public fashion. Under the Commission’s streamlined tariff filing procedures, the filing of a single tariff is less costly than negotiating and executing contracts with numerous customers. Elimination of tariff filings would serve to increase customer costs as carriers incur greater costs in maintaining an individualized

^{5/} *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorization Therefor*, 99 FCC 2d 1020, 1021 (1985).

contractual relationship with each customer. For some customers, however, an individual service contract may be necessary. These contracts often rely, in part, on standard terms and conditions which are contained within tariffs, and which are material to the contract. Elimination of tariff filings in this case would undercut these contracts by eviscerating some of their material terms. New contractual relationships would have to be established, adding to the cost of these customer services.

Second, tariffs provide vitally useful information to consumers and the telecommunications industry. Publication of rates and terms in tariffs enables consumers and competitors to compare products and services. It also provides consumers, carriers and the Commission information necessary to police anticompetitive conduct. This is information which consumers and competitors can (and do) obtain from one central source. Moreover, the availability of such information betters the ability of smaller carriers (such as Eastern Tel) to enter the market. Elimination of tariffs would pose a barrier to entry into the communications market, as well as a barrier to informed customer choice.

Third, tariffs facilitate rapid price changes to enhance competition. Rather than impede “the introduction of new services, dampening competitive responses and ultimately encouraging price collusion through the forced publication of charges,”^{6/} a tariff represents a rapid and efficient way for a carrier to adjust services and prices for all customers. In the absence of tariffs, the introduction of varied services and price changes might have to be renegotiated with all customers. It would be impossible to quickly respond to market changes. Moreover, small interexchange

^{6/} *NPRM* at ¶ 21 (citation omitted).

carriers (particularly resellers) rely on the tariffs of larger carriers for market pricing information to offer more competitive rates. The Commission's existing regulations both ensure the availability of service and pricing information through tariffs, and the ability to change services and prices quickly to respond to competition. Non-dominant interexchange carriers now file tariffs on one day's notice without cost support data. This regulation demonstrates the Commission's understanding that this market is robust and fast-changing and that its regulations can accommodate the marketplace.

Lastly, should the Commission impose mandatory detariffing, small carriers such as Eastern Tel will be at risk; specifically, regional resellers such as Eastern Tel will encounter substantial and, likely, insurmountable problems with collecting for its services from recalcitrant customers, and it would, therefore, be incumbent upon the Commission to work with industry to create a uniform contract for service similar in nature to the form contracts utilized in the real estate industry. This "standard" contract should be optimal for carriers. To carriers that rely upon the contract terms, one substantial benefit might be that it could include provisions that specifically determine the circumstances under which carriers can collect from the customers and the processes that can be utilized. In addition to the extent that the Commission prohibits tariffs or requires carriers to withdraw their tariffs, it will be unclear what law applies to the services offered by the carrier. Therefore, in the event mandatory detariffing is imposed, the Commission should establish some transition period that enables carriers a minimum period in which to obtain contracts from their customers. This period should be no less than one (1) year.

C. A Policy of Mandatory Detariffing is Premature

Since the public interest standard of Section 10(a) has not yet been met, it is too soon for the Commission to require forbearance from tariff filing requirements for non-dominant interexchange carriers. Rather, prudence requires that the Commission revisit the issue after the new regulatory paradigm imposed by the Act (including regulations imposed by the Commission in this and related rulemakings) takes effect. Then the Commission would have the benefit of experience in the interaction between the Act and competition in the interstate marketplace. Until such time as the Commission, the industry, and consumers gain that experience, a permissive tariffing regime would best serve the public interest.

III. PERMISSIVE TARIFF FILINGS ARE IN THE PUBLIC INTEREST AND WILL SERVE TO REDUCE ADMINISTRATIVE BURDENS ASSOCIATED WITH CURRENT TARIFF FILING REGULATIONS

A. Permissive Tariffing (*i.e.*, Forbearance) Allows Carriers Maximum Flexibility In Defining Their Customer Relationships

Institution of permissive tariffing will afford carriers maximum flexibility to serve their customers. It is not cost effective for every carrier (especially providers of resold interexchange long distance service) to execute a service contract with every customer, and not every carrier-customer relationship requires a individualized contractual relationship. Similarly, price competition is so fierce that carriers need to be able to react to changes in the market. By the same token, carriers need the flexibility to protect their customers and themselves by filing rates and/or terms in tariffs when appropriate. Tariff filings allow carriers to respond to the market while providing certainty of terms and prices. As the Commission well knows, traditional long distance service is provided to a mass market. Permissive tariffing would allow carriers, through

the benefit of real world experience, to evaluate which tariff elements promote economic efficiencies and to capture those efficiencies. Experience may show that filing of rate ranges, simple contract terms, or some other tariff components are what is necessary in a competitive environment. Accordingly, the Commission should impose modest tariff rules (perhaps requiring only that tariffs, if filed, are to take effect on one day's notice) that provide each carrier maximum flexibility to determine over time the manner in which it will tariff its services. Some carriers might determine that a range of rate tariff is appropriate, while others may determine that exact rates are more appropriate for their service offerings or customer base. In other words, the Commission should allow experimentation to take place. Imposition of mandatory detariffing would needlessly foreclose such experimentation.

B. The Commission's Complaint Process Is Substantially Supported By Evidence of Anticompetitive Activities Or Unjust and Unreasonable Charges Obtained From Carriers' Tariff Filings

Tariff filings are part of a statutory scheme in which unjust and unreasonable charges may be investigated through a complaint process.²¹ This complaint process necessarily requires reliable information about services and rates which are included in tariffs. In the absence of tariff filings, carriers may be subject to claims of anti-competitive conduct or unjust or unreasonable charges which would be foreclosed by the information in a publicly filed tariff. Moreover, carriers would unnecessarily have to adduce evidence in a complaint proceeding that might otherwise be readily available in a tariff. The Commission, the competitive marketplace, and ultimately consumers, would be burdened by the result.

²¹ See 47 U.S.C. §§ 206-08.

C. Permissive Tariffing Reduces the Present Administrative Burdens

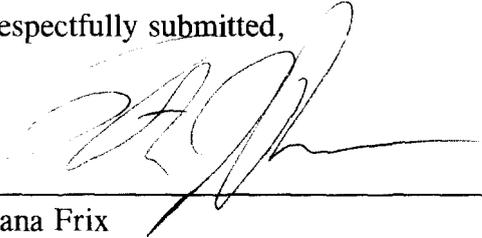
Permissive tariffing would substantially reduce administrative burdens on both the Commission and carriers. Tariffs are expensive to draft, file, and maintain. Elimination of these costs would benefit consumers in the form of lower prices for service. The Commission scarcely needs to be told that tariff filings burden its staff and its resources. Permissive tariffing will afford carriers the opportunity to gain experience into what sorts of tariff publications are necessary in the competitive marketplace. The immediate benefit to the Commission will be to reduce the enormous flow of tariff filings to that amount which gives the Commission necessary information.

CONCLUSION

While the Act empowers the Commission to undertake forbearance of tariff filing requirements, it does not authorize outright elimination of tariff filings. Mandatory detariffing is not forbearance, and it is not in the public interest. The Commission should adopt a tariffing policy which imposes minimum tariffing rules, and allows carriers the flexibility to determine whether to tariff their services, and if so, the manner in which to do so. Such a policy is consistent with the new (de)regulatory regime of the Telecommunications Act of 1996. At the very minimum, mandatory detariffing is premature, and must await until consumers, carriers, and the Commission gain experience in the post-Telecommunications Act marketplace. Tariffs can serve numerous public interest functions including protection of consumers and enhancement of

the competitive marketplace. A true policy of forbearance (permissive tariffing) would allow carriers the flexibility to capture those public interest benefits in the changing marketplace, while reducing the administrative burden of filings on the Commission.

Respectfully submitted,



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