



**Office of the  
Ohio Consumers' Counsel**

---

Robert S. Tongren  
Consumers' Counsel

DOCKET FILE COPY ORIGINAL

May 23, 1996

RECEIVED  
MAY 24 1996  
FCC MAIL ROOM

Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

***Re: CC Docket No. 96-61 - Regulatory Forbearance for Tariff Filing Requirements***

Dear Secretary:

Enclosed please find the original and eleven (11) copies of the Office of the Ohio Consumers' Counsel's Reply Comments to be filed in the above referenced proceeding.

Please date-stamp and return the additional copy in the pre-addressed, postage prepaid envelope to acknowledge receipt.

Sincerely,

David C. Bergmann  
Assistant Consumers' Counsel

DCB/pjm

Enclosure

No. of Copies rec'd  
DATE FOR

0+11

---

77 S. High St., 15th Floor, Columbus, Ohio 43266-0550  
614-466-8574/1-800-282-9448 (Ohio only)  
Fax 614-466-9475

*An Equal Opportunity Employer*

**Before The  
FEDERAL COMMUNICATIONS COMMISSION**

REC-11  
MAY 21 1996

In the Matter of

Policy and Rules Concerning the  
Interstate, Interexchange Marketplace.

CC Docket No 96-61

Implementation of Section 254(g) of the  
Communications Act of 1934, as amended

**SUMMARY OF  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S  
REPLY COMMENTS  
ON REGULATORY FORBEARANCE FOR  
TARIFF FILING REQUIREMENTS**

The Office of the Ohio Consumers' Counsel (OCC) offers its reply to a number of the initial comments filed on the Commission's proposal to forbid the filing of tariffs by interexchange carriers (IXCs). In the comments reviewed by OCC, there is unanimous opposition to the Commission's proposal.

The comments filed undercut the Commission's explicit rationale for its proposal. They demonstrate that the harms identified by the Commission as arising from tariff filing will not occur, or will occur regardless of whether tariffs are filed. The comments also demonstrate that tariffs provide definite consumer benefits.

The comments also demonstrate that a mandatory detariffing policy will harm consumers and carriers alike by imposing costs and confusion on the relationship between consumers and their IXCs. Detariffing particularly will harm low-use and casual-use customers.

OCC finds that those parties who support permissive detariffing have not justified their position, given those parties' opposition to mandatory detariffing. In particular, those parties supporting permissive detariffing have ignored the consumer benefits of tariffs.

**Before The  
FEDERAL COMMUNICATIONS COMMISSION**

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

**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S  
REPLY COMMENTS  
ON REGULATORY FORBEARANCE FOR  
TARIFF FILING REQUIREMENTS**

**I. Introduction**

In the Notice of Proposed Rulemaking (NPRM) released in this docket on March 25, 1996, the Commission established two separate schedules for different sections of the Notice. The Office of the Ohio Consumers' Counsel (OCC), having filed initial comments on Sections other than IV, V, and VI on April 25, 1996, now replies to the comments of other parties dealing with those subjects, principally the Commission's tentative conclusion to forbid the filing of tariffs for interstate interexchange services.<sup>1</sup> Some parties

---

<sup>1</sup> Comments reviewed and responded to here include those of Ameritech; Citizens for a Sound Economy Foundation (CSE); Competitive Telecommunications Association (CompTel); Consumer Federation of America and Consumers' Union (CFA); GTE Service Corporation *et al.* (GTE); MCI Telecommunications Corporation (MCI); National Association of Regulatory Utility Commissioners (NARUC); Pennsylvania Office of Consumer Advocate (PaOCA); Sprint Corporation (Sprint); Telecommunications

also commented on the subject of interexchange carrier (IXC) bundling of consumer premises equipment (CPE) with interexchange services.

In the comments reviewed by OCC, selected as a cross-section of the 58 responding parties, the consensus is clear. All parties oppose the Commission's proposed ban on filing tariffs.

## **II. Parties dismiss the rationale for forbidding tariffs**

In the NPRM (at ¶ 27), the Commission indicated that its tentative conclusion here on detariffing is based on its findings in earlier cases.<sup>2</sup> MCI (at 7) "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." Further, CFA denies (at 7) that "concerns about 'inhibiting price competition, service innovation, entry into the market and the ability of carriers to respond quickly to market trends,' are legitimate competitive concerns in this market." (Citing to NPRM at n 76.) And CompTel (at 5) notes that "to the extent that those problems [caused by tariff filing] exist, they are fully addressed by tariff filing rules, such as maximum streamlined regulation, which eliminate unnecessary

---

Research and Action Center (TRAC); and United States Telephone Association (USTA). NARUC and PaOCA discussed these matters in comments filed April 19, 1996.

<sup>2</sup> *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Second Report and Order, 9 FCC 2d 59 (1982); Further Notice of Proposed Rulemaking, 84 F.C.C. 2d 445, 453-455 (1981); Sixth Report and Order, 99 F.C.C. 2d 1020, 1027 (1985).

burdens on carriers and customers.” OCC’s proposal (Initial Comments at 5) was for a zero-day effective tariff. This requirement could hardly be more streamlined.

### **III. Tariffs are needed for consumer protection**

MCI states (at 9) that tariffs are needed for consumer protection, in order to ensure consistent treatment of consumers. *See also* CFA at 4. As CFA states (at 3), “[A]s we are poised to see major additional competitors enter the long distance business, it is more important than ever that consumers are able to evaluate the prices and services being offered by the companies.” And TRAC accurately points out (at 3-4) that “the NPRM takes the position that it is pro-competitive to make it *harder* for consumers to know market prices!” (Emphasis in original.)<sup>3</sup>

On these grounds, OCC opposes two of the proposals made by CompTel (at 6), that the Commission allow carriers to list minimum-maximum rate ranges and “to eliminate rates altogether and file tariffs with only terms and conditions and/or service descriptions.” Neither of these options affords consumers adequate information about the services being offered.

### **IV. Tariff filings do not harm competition**

As MCI states (at 11), “There simply is no basis in fact to support these claims” that tariffing harms competition. AT&T recognizes that “most of [the Commission’s] concerns are a function not of the mere existence of tariffs but of other regulatory requirements -- such as lengthy notice periods and detailed cost support -- that the

---

<sup>3</sup> OCC supports TRAC’s suggestion that carriers be required to file a consumer education plan. *Id.* at 7.

Commission has already discarded. ” Under a streamlined process (as proposed by OCC and others), the Commission’s concerns are substantially reduced, if not eliminated.

#### **V. Price collusion is neither caused by tariffing nor prevented by detariffing**

As noted by PaOCA (at 4), price collusion is possible for IXCs even without tariffs. MCI (at 16) states that the current one-day tariff-filing requirements do not allow price coordination. *See also* AT&T at 14, 23-24; GTE at 8. Ameritech states (at 8) that “the Commission overstates the relationship between tariffs and any tacit collusion that is occurring in the marketplace.” And Sprint notes (at 5) that “the enormous growth of competition -- despite the fact that tariffs were in effect on a voluntary basis since 1983 -- would suggest that collusion has not been a problem.” CompTel notes (at 8-9) that access to the prices in tariffs is actually *pro-competitive*.

The only “support” found for the Commission’s position was USTA (at 3) stating that eliminating tariffs “*may assist* in reducing tacit price coordination.” (Emphasis added.) This is clearly driven by USTA’s focus on increasing local exchange carrier (LEC) entry into the IXCs’ market. *Id.*

#### **VI. Parties have identified numerous problems caused by detariffing**

MCI notes (at 10-11) that without tariffs, contracts would be required. A strict contract regime increases transaction costs, both for carriers (*id.*; *see also* Ameritech at 2, AT&T at 16-18, CompTel at 9-10, GTE at 7) and for consumers. Ameritech at 3-4. AT&T (at 17) also discusses the customer confusion inherent in a transition to a non-tariffed, contact-driven regime.

An exclusive contract regime would foster product delays. MCI at 12, n.17. It would also inhibit rapid response to fraudulent and deceptive practices of, *e.g.*, information providers. Sprint at 16-17.

Sprint states (at 13), “Absent tariffs, the ability of customers to conveniently obtain long distance services is likely to change dramatically.” Sprint also demonstrates the especially negative impacts on infrequent users. Sprint at 15. AT&T (at 19) likewise demonstrates the benefits of tariffs for serving the “casual” user; *see also* Ameritech at 2, Sprint at 3-4.

MCI points out (at 14) that detariffing will complicate dispute resolution. MCI’s point is consistent with OCC’s position (Initial Comments at 6-7) that tariffs should be maintained to facilitate resolution of consumers’ disputes with their carriers.

Ameritech also suggests (at 3) that detariffing “will have a negative impact on interexchange competition.” MCI (at 16) identifies detariffing as an anticompetitive *restraint* on non-dominant carriers. *See also id.* at 18

## **VII. Parties argue that the Commission does not have power of “mandatory forbearance”**

GTE (at 4-7) argues that the power of forbearance under the Act does not include the power to forbid tariff filing. *See also* Sprint at 3, n.1. AT&T states (at 10) that “Congress ... intended to authorize the Commission to do no more than refrain from requiring compliance with the tariffing requirements of Section 203.” *See also* AT&T at 9-12.

### **VIII. Parties propose simplified tariff filing requirements**

As MCI points out (at 5-6), the 1996 Act “grants substantial flexibility to the Commission” in its exercise of forbearance authority. The existence of that flexibility means that the Commission need not take the extreme step proposed in the NPRM.

PaOCA argues that the Commission should maintain price lists. PaOCA at 2. These price lists, not subject to Commission review, are very similar to OCC’s proposal for zero-day effective tariffs. OCC at 5. However, the tariffs proposed by OCC would also include terms and conditions other than price

PaOCA also suggests that the Commission mandate access to the price lists through on-line access. PaOCA at 3; *see also* NARUC at 5, TRAC at 7. TRAC proposes that granting on-line access to rates and conditions would allow carriers to forgo tariff filing. *Id.* at 6-7. OCC submits that, at this point in the development of the information superhighway, on-line access should be a supplement to “traditional” access, not a substitute.

CompTel (at 6) and MCI (at 28) propose detariffing of contracts. GTE correctly notes (at 4) that “service agreements are the product of negotiations between sophisticated parties.” OCC does not disagree. As TRAC states (at 6), “Disclosure of [contract] prices would be anti-competitive. On the other hand, if there were no retail prices posted for cars sold to individual users, it would be impossible for the typical consumer to comparison shop.” AT&T’s discussion of permissive detariffing really does

not conflict with mandatory tariffing “for services offered to large numbers of customers.” AT&T at 7.<sup>4</sup>

GTE, on the other hand, is among those who propose permissive detariffing. GTE at 4. Among the reasons advanced is that tariffing is not necessary to protect consumers against excessive rates. *Id.* at 3-4. As demonstrated by OCC, tariffs are necessary to ensure that consumers are charged *accurate* rates under the correct conditions, as GTE acknowledges. GTE at 8. Permissive detariffing would not assist that public interest. Further, GTE argues (at 3) that tariff regulation is not necessary to ensure that rates are non-discriminatory. This view ignores the point raised by OCC (Initial Comments at 5-6) that under the Act’s averaging requirement, tariffs are necessary to ensure averaged (*i.e.*, “non-discriminatory” under the Act) rates.

At base, neither AT&T nor GTE reconcile their opposition to mandatory detariffing with their support of a permissive detariffing scheme, nor do they explain how the latter is in the public interest. CSE states (at 4) that “[t]he cost of preparing rate filings for the FCC represents simply an additional cost to be passed on to consumers, with no commensurate benefits.” Yet CSE also supports permissive tariff filing. *Id.* at 5-6. CSE, like AT&T and GTE, simply ignores the consumer benefit of having a single source for ascertaining terms, conditions, and prices for interstate interexchange services. CompTel’s rationale that “carriers who felt that the tariffing process was inhibiting their ability to compete would not have to file any tariffs at all. . .” (CompTel at 6-7; *see also* Sprint at 6-

---

<sup>4</sup> We agree with AT&T’s position (at 21-22) that all agreements to provide service other than under tariff should be reduced to writing, and should expressly state that the contract governs over inconsistent tariff provisions.

7) is equally one-sided, and ignores the benefits of tariffs that CompTel also cites. *Id.* at 7-9.

**IX. CPE bundling is acceptable, as long as the unbundled elements are available**

GTE at 11, MCI at 25, Sprint at 28, and USTA at 4 support the Commission's conclusion that CPE bundling should be allowed, but agree with OCC (Initial Comments at 9) that the unbundled services must also be available. AT&T, while supporting bundling, does not address the unbundling issue. AT&T at 26.

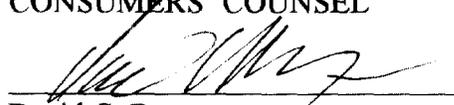
OCC agrees with MCI (at 26-27) that bundling capability should only be granted to non-dominant carriers. MCI refers only to Bell Operating Companies (BOCs) as dominant, but other LECs also may be dominant. These matters were discussed (at length) in the first round of comments on this NPRM. *See, e.g.*, OCC Comments (April 19, 1996) at 2-3; OCC Reply Comments (May 3, 1996) at 2-6.

**X. CONCLUSION**

OCC urges the Commission to reject the proposal for mandatory detariffing. Such is the consensus of the parties whose comments were reviewed by OCC. However, OCC also urges the Commission to reject some parties' proposals for voluntary tariffing (or voluntary detariffing, as the case may be). Having a single source for rate and terms information is important for consumer protection, even in the openly but not completely competitive interexchange market.

Respectfully submitted,

ROBERT S. TONGREN  
CONSUMERS' COUNSEL

  
David C. Bergmann

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel  
77 South High Street, 15th Floor  
Columbus, OH 43266-0550  
(614) 466-8574