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May 24, 1996

**VIA HAND DELIVERY**

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

DOCKET FILE COPY ORIGINAL

**Re: Policy and Rules Concerning the Interstate, Interexchange Marketplace  
(CC Docket 96-61)**

Dear Mr. Caton:

Transmitted herewith on behalf of WinStar Communications, Inc., are an original and eleven (11) copies of its Reply Comments in the above-captioned proceeding.

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

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

Very truly yours,



Morton J. Posner

Enclosures

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cc (w/encl.): Janice Myles (1 copy and 1 diskette by hand)  
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Robert G. Berger  
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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**REPLY COMMENTS OF WINSTAR COMMUNICATIONS, INC.**

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Dated: May 24, 1996

## **SUMMARY**

WinStar Communications, Inc. (“WinStar”), a local telecommunications services provider that utilizes wireless, digital millimeter wave technology, supports a forbearance policy of voluntary compliance with tariff filing requirements or “permissive tariffing.” The Commission should adopt this policy in place of its proposed mandatory detariffing policy because:

- Commenters in the proceeding overwhelmingly favor permissive tariffing.
- Those opposing forbearance either did not propose an alternative to mandatory forbearance or expressed concerns which are in fact addressed by a permissive tariffing.
- No commenting party supported the Commission’s legal rationales for mandatory detariffing.

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

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

**REPLY COMMENTS OF WINSTAR COMMUNICATIONS, INC.**

WinStar Communications, Inc. (“WinStar”), by its undersigned counsel, and pursuant to Section 1.415 of the Federal Communications Commission’s (“FCC” or “Commission”) rules, hereby submits brief reply comments in response to the Commission’s Notice of Proposed Rulemaking (“*NPRM*”) regarding the interstate, interexchange marketplace.<sup>1/</sup> The initial comments overwhelmingly favored a permissive tariffing policy, and comments that did oppose forbearance did so because commenters disagreed with the Commission’s form of proposed forbearance, not with simply *any* type of tariff forbearance. Further, the Commission’s various rationales for mandatory detariffing are largely unsupported by commenters. In sum, a majority of comments support a policy of permissive tariffing, whereby non-dominant carriers should determine, based upon their customer relationships, the level and specificity of detail contained in their interstate, interexchange service tariffs.

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<sup>1/</sup> *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96061, FCC 96-123 (Mar. 25, 1996). WinStar also filed comments in support of permissive tariff filing for competitive access providers. See *Comments of WinStar Communications, Inc., In the Matter of Petition of Hyperion Telecommunications, Inc. for Forbearance from Tariff Filing Requirements for Competitive Access Providers*, DA 96-462 (May 23, 1996).

## **I. PERMISSIVE TARIFFING IS WIDELY FAVORED**

### **A. IXCs and Resellers Favor Permissive Tariffing**

Among interexchange carriers (“IXCs”) and resellers who filed initial comments, permissive tariffing overwhelmingly is favored. As WinStar argued in its opening comments, tariffs are virtually the only means by which IXCs can establish a set of contract terms with literally millions of smaller business and residential customers for long distance service. For this same reason, MCI opposed mandatory detariffing for these customers (although MCI did support mandatory detariffing for negotiated service contract customers). WinStar believes that its permissive tariffing policy responds to MCI’s concerns. Permissive tariffing would allow IXCs selectively to comply with tariff requirements. In practice, IXCs likely will file tariffs which provide a minimum customer-carrier relationship for smaller customers. IXCs would retain the efficiencies tariffs offer without shouldering unnecessary compliance burdens.

### **B. Permissive Tariffing is Consistent With BOC Interests**

This forbearance rulemaking proceeding is problematic for the Bell Operating Companies (“BOCs”) because the Commission has proposed mandatory detariffing for non-dominant IXCs, not BOCs who may someday offer interexchange service. Obviously, if the Commission orders mandatory detariffing, the BOCs believe that it should apply to their future interexchange service.<sup>2/</sup> Consequently, many of the BOCs did not consider whether a permissive tariffing regime would more closely meet the Commission’s and the industry’s deregulatory goals, although Pacific

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<sup>2/</sup> See, e.g., Comments of Bell Atlantic at 4-5; NYNEX at 2; SBC Communications, Inc. at 6; U S West, Inc. at 3. U S West specified that mandatory detariffing should apply to its future in-region and out-of-region long distance service. Comments of U S West, Inc. at 3. Other BOCs seem to take a similar, though not explicit, view

Telesis, like WinStar, supports permissive tariffing.<sup>3/</sup> Ameritech argued against the Commission's proposal,<sup>4/</sup> however, in so doing, Ameritech expressed concerns that WinStar believes argue in favor of permissive tariffing.<sup>5/</sup> Specifically, permissive tariffing offers a continued means of establishing contractual relations with a mass customer base.

The Commission should recognize that the BOCs' comments are the product of their adverse interest to mandatory detariffing of their potential competitors and not simply to *any* type of tariff forbearance. Immediate adoption of permissive tariffing is in the public interest. Should the Commission be persuaded that permissive tariffing is the tariff forbearance policy that is in the public interest, there is no need to wait for the BOCs to enter the interexchange market before implementing it.

#### **C. Permissive Tariffing Prevents Preemption of State Tariffing Requirements**

The Louisiana Public Service Commission expressed concern that a Commission policy of mandatory detariffing of non-dominant IXCs would preempt enforcement of state tariff rules for intrastate interexchange service.<sup>6/</sup> The permissive tariffing policy supported by WinStar adequately responds to this concern. By retaining tariff rules and allowing voluntary compliance, the Commission will encourage efficient use of tariffs. In addition, the states' prerogative to

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<sup>3/</sup> Comments of Pacific Telesis at 10.

<sup>4/</sup> Comments of Ameritech at 2-8.

<sup>5/</sup> Comments of WinStar Communications, Inc. at 5, 7-8.

<sup>6/</sup> Comments of Louisiana Public Service Commission at 3. Section 10(e) of the Communications Act, 47 U.S.C. § 160(e), would prohibit state enforcement of regulations forbore by the Commission.

regulate intrastate telecommunications service -- through a form of tariff filings or otherwise -- is fully and openly preserved.

**D. Permissive Tariffing is Consistent With the Desires of Large Business Customers**

Several large telecommunications customers urged the Commission to order mandatory detariffing of business service only.<sup>27</sup> WinStar agrees with those customers that negotiated service contracts may obviate the need for full blown tariff filings. Nevertheless, there is or can be significant benefit to retaining the ability to file tariffs with some provisions applying to these customers. For example, payment procedures and customer and carrier liability provisions are relatively standard for all customers. IXCs may discover that they can whittle down contract negotiations to prices and services offered and refer simply to tariff provisions with regard to these business-like formalities of the customer-carrier relationship. A Commission policy of mandatory detariffing for all IXC service provided only to contract customers or to all customers will prevent carriers from capturing these efficiencies. Rather, permissive tariffing for all interexchange service will offer efficiencies while, at the same time, eliminate potential filed rate doctrine abuses. In a permissive tariff regime, the individual service agreement and the tariff simply are separate contract documents. Any inconsistencies could be reconciled by ordinary contract principles rather than the filed rate doctrine

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<sup>27</sup> See, e.g., Comments of Ad Hoc Telecommunications Users Committee, *et al.*, at 2-11; Capital Cities/ABC, Inc., *et al.*, at 3-5.

## **II. COMMENTERS DO NOT SUPPORT THE COMMISSION'S STATED RATIONALES FOR TARIFF FORBEARANCE**

### **A. Mandatory Detariffing Will Not Prevent Price Collusion and Will Harm Smaller IXCs Or Their Customers**

A major Commission rationale for tariff forbearance is to prevent explicit or implicit price collusion among IXCs.<sup>8/</sup> BellSouth, a proponent of mandatory detariffing, submitted a body of economic evidence demonstrating that there is no meaningful price competition among the three largest IXCs. According to BellSouth, complete forbearance from tariff filing requirements will prevent some opportunities for price coordination but not eliminate them.<sup>9/</sup>

Eliminating tariffs simply to obstruct opportunities for AT&T, MCI, and Sprint to coordinate prices would harm the public interest and disadvantage the rest of the interexchange industry. Pricing information is frequently disseminated outside the regulatory arena. Some carriers share pricing information simply by providing courtesy copies of rate information to competitors.<sup>10/</sup> This will occur regardless of the Commission's tariffing policies. Some carriers advertise price and service changes in advance. Still other carriers maintain research staffs to obtain price information directly from competitors and competitors' customers. None of these practices will be affected by a mandatory detariffing policy.

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<sup>8/</sup> *NPRM* at ¶ 30.

<sup>9/</sup> *See* Comments of BellSouth at ii.

<sup>10/</sup> *Comments of Pennsylvania Public Utility Commission* at 9 n.2.

Pricing information also is available to the general public and the industry through tariff compilers and consumer rating services, some of whom filed comments in this proceeding.<sup>11/</sup> While these commenters complained that mandatory detariffing (or elimination of specific rates from tariffs) would deprive consumers of critical pricing information, such worries are baseless. Tariff compilers may find their task in collecting pricing information harder, but their industry will endure. It will be the marketplace, however, and not regulation, which dictate the general availability of pricing information. As a practical business matter, carriers still will have to describe their pricing structures to all potential customers, and it will be in their self-interest to do so as broadly as possible.

**B. CMRS Is Not Relevant Precedent for Mandatory Detariffing**

The Commission states in the *NPRM* that mandatory detariffing is warranted for non-dominant IXC's because it was ordered for commercial mobile radio service ("CMRS") in the face of a similar statutory grant of forbearance authority.<sup>12/</sup> No commenter offered any legal support for this rationale. In fact, CMRS is entirely distinguishable from interexchange service. CMRS does not yet substitute for wireline service and CMRS customers sign service contracts (with a general duration of at least one year) before service ever begins.<sup>13/</sup> By contrast, IXC's and resellers daily provide service to "casual" customers who essentially are strangers to the carriers until they

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<sup>11/</sup> See Comments of Fone Saver, LLC; Market Dynamics; Network Analysis Center, Inc.; Telecommunications Information Services; and Telecommunications Management Information Systems Coalition.

<sup>12/</sup> *NPRM*, at ¶ 28, 35.

<sup>13/</sup> Comments of Consumer Federation of America and Consumers Union at 4 n.8.

initiate service<sup>14/</sup>. There are no casual consumers of CMRS. Mandatory detariffing not only would confuse initiation of customer contractual relationships, but would undermine an entire telecommunications industry whose purpose is to inject competition into the long distance market. Mandatory detariffing simply does not correspond with the Commission's pro-competitive goals.

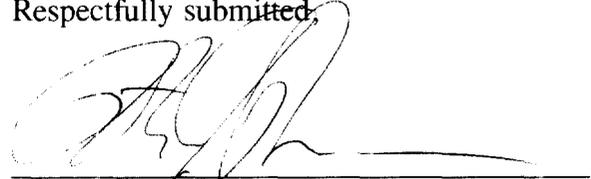
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<sup>14/</sup> Comments of Casual Calling Coalition at 9-10.

#### IV. CONCLUSION

While the Commission's goals of forbearing from tariff regulation are laudable, a mandatory detariffing policy is the wrong approach and is not in the public interest. A permissive detariffing policy has broad support and would increase efficiencies in provision of service and enhance competition in the IXC market. WinStar urges the Commission to forbear from enforcement of its tariff filing requirements to allow voluntary compliance by non-dominant carriers.

Respectfully submitted,



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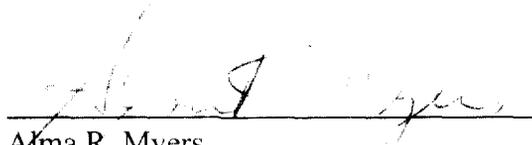
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Dated: May 24, 1996

**CERTIFICATE OF SERVICE**

I hereby certify that on this 24th day of May 1996, copies of the foregoing REPLY COMMENTS OF WINSTAR COMMUNICATIONS, INC., CC Docket No. 96-61, were sent via Messenger\*\* or via First-Class Mail, U.S. postage prepaid, to the parties on the attached service list.

  
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