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FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Secretary
Federal Communications Commission
1919 M. Street, N.W.
Washington D.C. 20554

Re: Ex parte contact in CC Docket No. 96-61

Dear Mr. Caton:

During the morning of June 26, 1996, the undersigned, on behalf of the Ad Hoc Telecommunications Users Committee, the California Bankers Clearing House Association, the New York Clearing House Association, ABB Business Services, Inc., and the Prudential Insurance Company of America, met with Melissa Waksman, Christopher Heiman, Jordan Goldstein, and Patrick DeGraba, members of the Policy and Program Planning Division of the Common Carrier Bureau to discuss the above-referenced docket. The substance of the discussion at the meeting is reflected on the enclosure hereto, which was distributed to Commission personnel at the meeting.

Sincerely,



Ellen G. Block

Enclosure

200.04/forbexp3

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**THE COMMISSION SHOULD ADOPT
A MANDATORY FORBEARANCE POLICY
FOR INDIVIDUALLY NEGOTIATED SERVICE ARRANGEMENTS**

The Commission has statutory authority to adopt a mandatory de-tariffing regime.

- The Act's reference to forbearance must be read in light of industry usage.
- The D.C. Circuit has ruled that similar language gave rise to agency authority to require carriers to withdraw their filings.

The application of vendor-controlled tariffs to negotiated service arrangements creates problems that can be solved by adoption of a mandatory forbearance policy for such arrangements.

- Without mandatory forbearance, carriers will continue to incorporate into service arrangements terms to which customers would not knowingly consent. Carriers accomplish this via the seemingly innocent act of incorporating their generic tariffs into customer-specific tariffs.
- Without mandatory forbearance, carriers will continue to unilaterally alter the terms of customer-specific arrangements by:
 - adding to the underlying generic tariffs new terms that the customer has neither reviewed nor approved;
 - changing previously agreed-upon terms in underlying generic tariffs without seeking the customer's review of or consent to the change; and
 - retaining the right to change even the customer-specific tariff without consent.

Only a mandatory forbearance policy for customer-specific arrangements will solve these problems.

- It is not clear that the filed rate doctrine would (or could) be eliminated by a permissive forbearance policy.
- Eliminating the filed rate doctrine without eliminating tariffs would not solve the problem of phonebook-sized tariffs full of user-unfriendly provisions.