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June 28, 1996

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

EX PARTE OR LATE FILED

Re: Ex Parte Presentation of the Telecommunications Resellers Association on CC Docket Nos. 96-98 and CC Docket No. 96-61

Dear Mr. Caton:

Today, Mr. Ernest B. Kelly, III, the Executive Director of the Telecommunications Resellers Association, and the undersigned met with Mr. James Schlicting, Chief of the Common Carrier Bureau's Competitive Pricing Division, to discuss matters raised in TRA's Comments and Reply Comments in CC Docket Nos. 96-98 and 96-61.

Two copies of materials distributed at that meeting are attached hereto.

Respectfully submitted,

Charles C. Hunter

Attachment
cc (w/o attach.): James Schlicting

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TELECOMMUNICATIONS RESELLERS ASSOCIATION

EX PARTE PRESENTATION

Who are the Members of the Telecommunications Resellers Association?

- ✓ 450 companies engaged in the resale of interexchange, international, local, wireless and other telecommunications services and/or in the provision of products and services associated with such resale
- ✓ Small and mid-sized carriers serving primarily small business and residential customers
- ✓ Provide rates, features and customer service to small businesses that are generally reserved for large-volume corporate users
- ✓ Operate full-featured "virtual networks"
- ✓ Five to ten percent share of the interexchange market

TELECOMMUNICATIONS RESELLERS ASSOCIATION

CC DOCKET NO. 96-98

TRA's Resale Carrier Members and Local Telecommunications Competition

- ✓ **Goal:** Enter the local telecommunications market; offer integrated total telecommunications solutions to customers
- ✓ **Result:** Availability at the local level of the affordably priced, feature rich, personalized service that resale carriers have provided to small business customers and residential users in the interexchange market
- ✓ **Need:** A viable business opportunity – *e.g.*, adequate margins, necessary operational support and a full and fair opportunity to compete

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Market Entry Vehicles TRA's Resale Carriers Will Use to Provide Local Telecommunications Services

✓ Traditional "Total Service" Resale

- Principal entry mode; means of providing integrated service package to existing customer base; maintenance of competitive viability

✓ Deployment of "Virtual Networks" comprised of unbundled network elements

- Targeted entry mode; to be utilized in markets where switching facilities have been installed or in which heavy concentrations of customers are located

✓ Installation of Physical Facilities

- Long-term option; follows trend in interexchange market

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Viable Business Opportunities: Traditional "Total Service" Resale

✓ Minimal Restrictions on Resale

- Experience in the interexchange market confirms that restrictions will be manipulated and abused to curtail lawful resale opportunities

✓ Adequate Margins

- Traditionally at least 30 percent margins have been necessary; expansive assessment of "avoided costs"

✓ Operational Support

- Timely provisioning of service orders and prompt availability of complete and accurate billing and service data, among other things

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Viable Business Opportunities: Deployment of " Virtual Networks"

✓ Unrestricted Access to Unbundled Network Elements

- Facilities requirement unnecessarily limits market entry opportunities; " virtual network" deployment and traditional " total service" resale are differentiated by levels of attendant risk

✓ Meaningful Unbundling

- Network unbundling should be as extensive as technically feasible; burden should be on incumbent LECs to justify technical constraints of unbundling

✓ Legitimate " Cost-Based" Pricing

- " Forward-looking," efficient, incremental costing and pricing of unbundled network elements

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Principal Concern: Resistance by Incumbent LECs

✓ Lessons Learned from Long Experience

- Monopolists will not willingly relinquish market power
- Carriers with large market shares will resist resale

✓ Obstructionist Tactics

- "Gaming" of the system by incumbent LECs in 50 state regulatory arenas and in hundreds/thousands of individual negotiations, as well as in the marketplace

✓ Of Critical Importance to Smaller Carriers with Limited Resources

- Develop comprehensive national " blueprint" with detailed implementing regulations to minimize "gaming" opportunities

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CC DOCKET NO. 96-61

Mandatory "Detariffing" of the Domestic Offerings of Nondominant Interexchange Carriers

✓ Undermines Resale, "General Availability," and Nondiscrimination Policies

- Tariffs are the only effective means of enforcing these pro-competitive policies

✓ Adversely Impacts Competition

- For all but the largest users, tariffs serve as a pro-competitive informational source regarding rate and service option availability

✓ Increases Carrier Cost and Administrative Burdens

- Tariffs greatly simplify contract and notice requirements

TELECOMMUNICATIONS RESELLERS ASSOCIATION

CC DOCKET NO. 96-61

Permissive "Detariffing" of the Domestic Offerings of Nondominant Interexchange Carriers

✓ Worst of All Worlds for Resale Carriers

- Network providers will refrain from filing tariffs reflecting their service arrangements with their largest corporate customers, thereby denying resale carriers access to preferred rates and service offerings afforded such users

- Network providers may file tariffs reflecting their service arrangements with resale carriers, thereby potentially reserving to themselves the opportunity to unilaterally alter the rates, terms and conditions specified therein in accordance with the "filed tariff" doctrine

- If "permissively-filed" tariffs lack the "force of law" of mandatory tariffs (and hence do not activate the "filed-tariff" doctrine), they will not relieve the increased cost and administrative burdens on carriers that arise from detariffing

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Recommended Alternatives

✓ Bifurcated Tariffing Regime

- IXCs with less than a 5 percent market share could file "range of rates" or "maximum" rates tariffs
- IXCs with a 5 percent or greater market share and IXCs affiliated with incumbent LECs would continue to file tariffs detailing all available rates and service offerings

✓ Strengthened "Substantial Cause" Test and Mobile-Sierra Doctrine

- All unilateral tariff revisions which alter long-term service arrangements would be declared unjust and unreasonable and hence unlawful
- Unilateral revisions to carrier-to-carrier arrangements would be prohibited

CC Docket No. 96-61:
Proposal to Adopt "Mandatory Detariffing" Policy

The Resale Industry

The emergence, growth and development of a vibrant telecommunications resale industry is a direct product of a series of pro-competitive initiatives undertaken, and pro-competitive policies adopted, by the Commission over the past decade. Chief among these initiatives is the requirement that "all common carriers . . . permit unlimited resale of their services," supported by the complementary policy that "[a]ctions taken by a carrier that effectively obstruct the Commission's resale requirements are inherently suspect." Also of critical importance are the twin Commission mandates that all contract-based service offerings "must be filed with the Commission and made available to all similarly-situated customers" and that carriers may not unreasonably discriminate among their resale and other customers. As the U.S. Supreme Court has recognized, tariffs are "utterly central" to these purposes; "[w]ithout [tariffs] . . . it would be monumentally difficult to enforce the requirement that rates be reasonable and nondiscriminatory . . . and virtually impossible for the public to assert its right to challenge the lawfulness of existing proposed rates."

The relationship between resale carriers and their underlying network providers is at best an awkward one, given that resale carriers are not just large customers, but aggressive competitors, of their network providers. While resale carriers, like large corporate and other major users of telecommunications services, provide very substantial revenues to network providers, they use whatever "price breaks" they secure as a result of their massive usage levels to provide rate reductions to the small and mid-sized accounts that would otherwise provide the network providers with their highest "margins." The greater the market share of the network provider, the greater the degree of awkwardness that permeats the relationship.

The largest carriers often deny resale carriers access to the superior service offerings and preferred price points they make available to large corporate users with commensurate (and in far too many instances, substantially lower) traffic volumes. Resale carriers have been able to overcome such "refusals to deal" by taking "off-the-shelf" customer-specific large corporate offerings which the Commission now requires to be filed as tariffs. Where resale carriers have been able to forge their own deals with network providers, they have been able to drive rates downward by referencing large corporate rates on file with the Commission.

In a detariffed (mandatory or permissive) environment, the Commission's resale, "general availability" and non-discrimination policies will be rendered "toothless." Resale carriers will not be able to select large corporate offerings "off-the-shelf" because such offerings will no longer be filed as tariffs and without filed tariffs, only the network provider (and not the resale carrier) will know how far large corporate rates have been reduced. Network providers will be able to discriminate at will against resale carriers, unlawfully denying them, and ultimately, their small business and residential users, access to the rates and services to which they are legally entitled.

Merely making detariffing permissive rather than mandatory fails to remedy these concerns; indeed, permissive detariffing would potentially create the worst of all worlds for resale carriers. Underlying carriers could refrain from filing as tariffs the highly attractive offerings they make available to large corporate users, thereby denying resale carriers the opportunity to avail themselves of these preferred services and price points, while at the same time filing as tariffs their service arrangements with resale carriers, thereby reserving to themselves the right, at least potentially, to unilaterally modify these arrangements through tariff revisions. Moreover, given that it is by no means certain that voluntarily-filed tariffs would have the same "force of law" as statutorily-mandated tariffs, it is not at all clear that permissive detariffing would relieve carriers of the administrative burdens that would arise in the absence of filed tariffs.