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Federal Communications Commission
Office of Secretary


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:

Today the undersigned, Henry D. Levine and James S. Blaszak, 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 James L. Casserly of Commissioner Ness's office to discuss the above-referenced docket. The substance of the discussion at the meeting is reflected on the enclosure hereto, which was distributed to Mr. Casserly at the meeting.

Sincerely,

Ellen G. Block

Ellen G. Block

Enclosure

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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 only by adopting mandatory forbearance.

- 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.

The Commission should protect customers during any transition period by

- Preventing carriers from filing tariff provisions adverse to customer interests during the period between an order requiring carriers to withdraw their tariffs and the actual date of withdrawal.

- Preventing carriers from incorporating any tariffs maintained for residential and small business users wholesale into their untariffed agreements with large users.