

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of )

Implementation of Section 402(b)(1)(A) of the )  
Telecommunications Act of 1996 )

CCDocket No. 96-187

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**REPLY COMMENTS  
OF THE  
UNITED STATES TELEPHONE ASSOCIATION**

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## SUMMARY

USTA urges the Commission to implement the streamlining provision of the Act consistent with the recommendations set forth in its comments and replies. The additional restrictions suggested by the competitors of the incumbent LECs must be rejected. These competitors are well aware of the advantage they have in the marketplace if incumbent LECs are hamstrung by burdensome regulatory constraints. The Commission should acknowledge that the removal of regulatory constraints that inhibit or interfere with the operation of the marketplace is just as important in meeting Congress' objective to establish a pro-competitive, deregulatory national policy framework as the creation of new opportunities for entry into established telecommunications markets.

The statutory language does not support the current treatment of LEC tariffs. The clear wording states that LEC tariffs filed on a streamlined basis shall be deemed lawful unless the Commission takes action pursuant to 204(a)(1). If the Commission subsequently finds that a streamlined tariff is unlawful, it cannot retroactively award damages. The Commission's second interpretations of "deemed lawful" does not reflect Congress' intent.

The statutory language also clearly states that all LEC tariffs, including new services and revisions, are eligible for streamlined tariff treatment. The wording is identical to the wording in Section 204(a)(1). In fact, the Part 69 waiver requirement must also be eliminated because it will prevent streamlined treatment since the Commission is not required to act on a waiver request within a specified time frame. The introduction of new services on an accelerated basis has long been a concern of the Commission and was definitely one of the objectives of Congress. There is no reason to exempt new services from streamlined treatment. By the Commission's own

definition new services only add to customer's options. LECs have no incentive to price new services in an uneconomic manner. There is no established market for a new service and customers will not purchase new services that are priced above customer expectations or that will not meet their needs.

Section 204(a)(3) limits the Commission's authority regarding the 120 day notice period under Section 203(b), thus the Commission cannot use its discretionary authority under Section 203(b) to undermine the streamlined notice periods.

Administration of LEC tariffs should be streamlined, not made more burdensome. TRPs should not be filed in advance since the streamlined notice periods apply to all LEC tariff filings and the data would not be available. Detailed descriptions and analyses are not contemplated by the Act. USTA's concerns regarding electronic filings should be addressed before electronic filings are mandated for all LECs.

Finally, the Commission's authority under Section 10 applies to Section 204(a)(3).

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The United States Telephone Association (USTA) respectfully submits its reply to the comments filed October 9, 1996 in the above-referenced proceeding.

**I. INTRODUCTION.**

In its comments, USTA urged the Commission to implement Section 204(a)(3) as written, thereby allowing for streamlined Local Exchange Carrier (LEC) tariff filings, including tariff filings which introduce new services and tariff filings which revise the current rate structure, to be deemed lawful when filed. USTA recommended that the Commission examine all of its rules, including its Part 69 rules which necessitate waivers for new service filings, to ensure that no rule will inhibit the streamlining mandated by statute. The additional measures proposed by the Commission only add to the administrative burdens imposed on LECs and are contrary to the streamlining required by the Act. USTA also recommended some further means to streamline current LEC regulations consistent with the intent of Congress to reduce the unnecessary regulatory requirements currently imposed on LECs by allowing any LEC with

fewer than two percent of the Nation's subscriber lines installed in the aggregate nationwide to file simplified, historically-based access tariffs under Section 61.39 of its rules by forbearing from enforcement of both the Subset 3 and the 50,000 access line study area restrictions found in those rules. The Commission should also approve the petition filed by NECA to allow companies which have submitted their own costs, or filed their own tariffs, to return to average schedule status after a reasonable period. Finally, the Commission should streamline the study area waiver process by allowing companies to certify that the Commission's criteria has been met and, absent any objections, allowing the waivers to take effect within thirty days.

LEC competitors, most of which file tariffs on one day's notice with no cost support and which are considered to be *prima facie* lawful, predictably suggested that the Commission impose additional restrictions on LEC tariff filings. Such suggestions, as will be explained herein, must be rejected. The pro-competitive, deregulatory telecommunications environment clearly intended by Congress cannot be established until there is greater parity in the regulatory treatment among LECs and their competitors.

## **II. THE 1996 ACT ESTABLISHES A STATUTORY STANDARD FOR STREAMLINED LEC TARIFF FILINGS.**

As USTA and many parties pointed out, the 1996 Act establishes a statutory standard for streamlined LEC tariff filings.<sup>1</sup> The statutory language does not support continuation of the

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<sup>1</sup>USTA at 3-4, BellSouth at 3-7, Pacific at 2-8, ALLTEL at 3, and U S WEST at 4.

current treatment of LEC tariff filings. The clear wording of the statutory language states that LEC tariffs filed on a streamlined basis shall be deemed lawful *unless* the Commission takes action pursuant to Section 204(a)(1). Thus, such tariffs are lawful by operation of statute and have the same status which previously was acquired through a Commission determination or adjudication. This interpretation is consistent with the intent of Congress to reduce the regulatory oversight of LEC tariffs and to permit the marketplace to provide the necessary oversight. Such an interpretation must be followed for it is the only way to ensure that streamlining will be implemented. It will also serve the public interest. Streamlining benefits customers by reducing the administrative costs of providing service. It will permit LECs to respond more quickly to market conditions. It encourages the introduction of new services to meet customer needs. It limits the ability of competitors to use the regulatory process to distort competition.

Further, if the Commission subsequently finds that a streamlined tariff is unlawful, it cannot retroactively award damages. As BellSouth explains, the Commission incorrectly believes that a tariff which is declared lawful by operation of statute is not the equivalent of a Commission finding of lawfulness.<sup>2</sup> Thus, the Commission's effort to distinguish Arizona Grocery in order to award damages is also incorrect. The Supreme Court found that the agency prescribing a lawful rate was acting in a legislative capacity. In the 1996 Act, Congress established the condition for lawful tariff filings and did not delegate any legislative authority to

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<sup>2</sup>BellSouth at 6. See, also GTE at 11 and Southwestern Bell at 2-5.

the Commission. Where the LECs' conduct conforms to the legislative mandate, such conduct cannot subsequently be challenged.

It is certainly not surprising that competitors of incumbent LECs suggested various creative interpretations of the statutory language to eviscerate the intent of the Act and to increase regulatory burdens on incumbent LECs. These competitors are well aware of the advantage they have in the marketplace if incumbent LECs are hamstrung by burdensome regulatory constraints. The Commission should acknowledge that the removal of regulatory constraints that inhibit or interfere with the operation of the marketplace is just as important in meeting Congress' objective to establish a pro-competitive, deregulatory national policy framework as the creation of new opportunities for entry into established telecommunications markets.

**A. The Commission's Second Interpretation of "Deemed Lawful" is Contrary to the Act.**

As noted above, it is not surprising that many incumbent LEC competitors preferred the Commission's second proposed interpretation of "deemed lawful".<sup>3</sup> The Commission's second approach would only modify the suspension and investigation burdens on the Commission and complainants and would not impact the legal status of LEC tariffs. Thus, this interpretation will

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<sup>3</sup>CompTel at 3, Time Warner at 3, Telecommunications Resellers Association (TRA) at ii, America's Carriers Telecommunications Association (ACTA) at 8, ALTS at 3, MFS at 7, MCI at 3, AT&T at 6, Sprint at 3, Capital Cities, ABC, CBS, NBC and Turner (Capital Cities) at 5 and McLeod Telemanagement (McLeod) at 2.

not provide the certainty which customers demand as to the status of LEC tariffs that the first interpretation provides. The second interpretation is contrary to the clear wording of the Act and will not effectuate the streamlining required by the Act. There is nothing in the Act to support such a limited interpretation.<sup>4</sup>

**B. All LEC Tariffs are Eligible for Filing on a Streamlined Basis.**

There is nothing in the Act to support the interpretation by some parties that Section 204(a)(3) only applies to existing services and does not apply to new services or to revisions of the current rate structure.<sup>5</sup> The plain language of the Section specifically refers to a new or revised charge, classification, regulation or practice.<sup>6</sup> It is identical to the wording in Section 204(a)(1) in which the Commission is given the authority to suspend “any new or revised charge, classification, regulation or practice” and conduct a hearing to determine its lawfulness. If these parties are correct that Section 204(a)(3) does not include tariff filings that introduce new services or which revise the current rate structure, then such tariff filings should not be subject to Commission review pursuant to Section 204(a)(1). It is unlikely that Congress intended such a result, yet that is precisely what these parties are suggesting. Imposing such limits which are

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<sup>4</sup>USTA at 4, U S WEST at 6-7, Ameritech at 7, BellSouth at 7, Pacific at 8, Cincinnati Bell at 5 and Southwestern Bell at 2-5.

<sup>5</sup>CompTel at 3-4, Time Warner at 7, MCI at 15, AT&T at 9, and Sprint at 4,

<sup>6</sup>USTA at 5, GTE at 15, ALLTEL at 3, Cincinnati Bell at 7, Bell Atlantic at 2, BellSouth at 8, NYNEX at 12-13, Southwestern Bell at 6, U S WEST at 9-10 and Ameritech at 3.

clearly contrary to the specific wording of the statute cannot be justified.<sup>7</sup>

In fact, as USTA and others pointed out, the Commission must also eliminate the Part 69 waiver requirement for LECs that seek to introduce new or revised Switched Access rate elements.<sup>8</sup> The waiver requirement will preclude the operation of the streamlining provisions of the Act by necessarily extending the statutory seven or fifteen day notice period since the Commission is not required to act on a waiver request within any specified time frame. As USTA stated in its comments, the Commission has long been concerned about the delay and burden its current rules impose on the introduction of new services and has consistently held that the introduction of new services is in the public interest. A waiver is required because the switched access charge elements and subelements underlying many new services and revised rate structure filings do not fit into the rate structure codified in Part 69 of the Commission's rules. The Act establishes statutory notice periods which cannot be eviscerated by current Commission rules. Congress itself stated that the purpose of the Act is "to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans..."<sup>9</sup>

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<sup>7</sup>Time Warner also suggests that Section 203(a)(3) only applies to incumbent LECs. Again, there is no such limitation in the wording of that Section. BellSouth at 3. The Commission can permit shorter notice periods or can forbear from applying this section to a carrier or group of carriers if the criteria necessary to justify forbearance can be met in accordance with Section 10 of the Act.

<sup>8</sup>USTA at 5-6, NYNEX at 7, Bell Atlantic at 3, GTE at 8 and ALLTEL at 6-7.

<sup>9</sup>Joint Statement of Managers, S.Conf.Rep. No. 104-230, 104th Cong., 2d Sess. Preamble (1996).

Congress intended to hasten the delivery of new services. The Commission must include new and revised tariff filings as specified by the statute and eliminate the waiver process to ensure that the statute is fully implemented and new services can be delivered quickly to all customers.

Further, there is no reason to exempt new service filings from streamlined treatment. By the Commission's own definition, new services only add to customers' options. LECs have no incentive to price such services in an uneconomic manner. There is no established market for a new service and customers will not purchase new services that are priced above customer expectations or that will not meet their needs. Regulatory constraints on new services are not necessary. Finally, the provisions of Section 251 of the Act will quickly open all telecommunications markets to competition. There will be no need for the Commission to ensure that LEC networks are accessible to other telecommunications providers through mandated tariff offerings.

**C. Section 204(a)(3) Limits the Commission's Authority Regarding the 120 Day Notice Period Under Section 203(b).**

As noted above, the Act establishes statutory notice periods which cannot be eviscerated by current Commission rules. In addition, the Commission cannot use its discretionary authority conferred under Section 203(b) to render the streamlined notice periods meaningless.<sup>10</sup> The

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<sup>10</sup>TRA at 6.

discretionary notice period only applies to Section 203 and is not applicable to Section 204.<sup>11</sup>

The Commission may not defer streamlined LEC tariffs pursuant to Section 203(b).

**III. ADMINISTRATION OF LEC TARIFFS SHOULD BE STREAMLINED, NOT MADE MORE BURDENSOME.**

Some parties supported the Commission's proposals for pre-effective tariff review of streamlined tariff filings which would add to the administrative burdens currently imposed on LEC tariff filings.<sup>12</sup> As USTA and others argued, these proposals must be rejected as contrary to the Act. The Commission should be seeking ways to streamline LEC tariffing procedures, not seeking ways to increase the administrative burdens imposed on LECs. The Commission's Order ultimately released should eliminate the rules which are inconsistent with streamlining and adopt the administrative reforms suggested by USTA.

First, there is simply no justification to require that the TRPs be filed in advance of the annual access tariff filing.<sup>13</sup> The statutory notice periods apply to all LEC tariff filings. As USTA and Sprint explain, the TRP cannot be filed in advance since the data would not be

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<sup>11</sup>USTA at 10, Ameritech at 5, BellSouth at 3-4, ALLTEL at 3, GTE at 7, Cincinnati Bell at 4, and Southwestern Bell at 2.

<sup>12</sup>USTA reiterates its view that post effective tariff review is inconsistent with the wording of the statute which states that streamlined tariffs are deemed lawful *unless* the Commission takes action. If the Commission does not take action, these tariffs are lawful upon their effective date by operation of law.

<sup>13</sup>MCI at 27, and AT&T at 16.

available to complete the TRP.<sup>14</sup> Sprint observes that requiring the TRPs to be filed in advance will only increase the administrative burden on LECs by forcing them to prepare the tariff filing twice. Such duplication of resources, effort and expense is contrary to the intent of the statute and must not be adopted.

Second, AT&T proposes that certain categories of tariffs automatically be subject to suspension and that detailed descriptions and analyses accompany LEC tariff filings.<sup>15</sup> Again, attempts to evade the statutory notice periods cannot be adopted. All such attempts are contrary to the Act.

Third, requiring that LEC tariff filings which are not made under the streamlined provisions be subject to additional scrutiny does not make sense.<sup>16</sup> This will only serve as a disincentive to file tariffs with longer notice periods, even when a longer notice period may be appropriate. As USTA pointed out, the LEC has the discretion to utilize the streamlined filing provision of the Act.<sup>17</sup> The Commission does not have the discretion to force LECs to use this provision or to evade or eviscerate this provision. Moreover, as GTE explains, the statute does not state that tariffs are deemed lawful “only if” filed on seven or fifteen days’ notice.<sup>18</sup> The

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<sup>14</sup>USTA at 13-14, Sprint at 8. See, also, GTE at 8, BellSouth at 17, U S WEST at 17

<sup>15</sup>AT&T at 12.

<sup>16</sup>TRA at iii.

<sup>17</sup>USTA at 7.

<sup>18</sup>GTE at 19.

statute clearly states that “any” such new or revised charge shall be deemed lawful.

Fourth, while many parties supported the Commission’s proposal to permit electronic filing of tariffs, USTA does not believe that such filings can be mandated until the concerns raised in its comments as well as the concerns of other parties are resolved.<sup>19</sup> USTA supports the suggestions of several parties that an industry group work with the Commission to address these issues and to establish the necessary procedures.

Finally, the Act does not support some parties’ suggestion that the Commission’s forbearance authority does not apply to LEC tariff filings under Section 204(a)(3).<sup>20</sup> Section 10 clearly states that the Commission shall forbear from applying “any regulation or any provision of this Act” if the criteria are met.<sup>21</sup> The only limits on that authority are specified in Section 10(d) which prevents the Commission from forbearing from the application of the requirements of Sections 251(c) and 271 until a Commission determination that those requirements have been fully implemented. Thus, the Commission has the authority under Section 10 of the Act to establish detariffing policies for LECs.

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<sup>19</sup>USTA at 8-9, and BellSouth at 9.

<sup>20</sup>CompTel at 4-5, and ACTA at 9.

<sup>21</sup>USTA at 7, GTE at 19, U S WEST at 12, Southwestern Bell at 8, NYNEX at 15, Pacific at 14 and AT&T at footnote 21.

*October 24, 1996*

**IV. CONCLUSION.**

Removing regulatory constraints on LECs is just as important as creating new opportunities for entry into the telecommunications markets in order to meet the intent of Congress. The Commission should implement the streamlining provision of the Act consistent with the recommendations set forth in USTA's comments and replies.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, David L. Anderson, do certify that on October 24, 1996 Petition for Clarification of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

  
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