

NOV 5 9 59 PM '96

DISPATCHED BY 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 )
Implementation of Section 254(g) of the )
Communications Act of 1934, as amended )

SECOND REPORT AND ORDER

Adopted: October 29, 1996

Released: October 31, 1996

By the Commission: Commissioner Chong issuing a separate statement.

TABLE OF CONTENTS

Table with 2 columns: Content and Paragraph. Includes sections like I. INTRODUCTION, II. FORBEARANCE FROM TARIFF FILING REQUIREMENTS FOR NONDOMINANT INTEREXCHANGE CARRIERS, and sub-sections A, B, 1, 2, a, b.

	Interexchange Carriers Necessary for the Protection of Consumers? . . . . .	29
c.	Is Forbearance From Applying Section 203 Tariff Filing Requirements to the Interstate, Domestic, Interexchange Services Offered By Nondominant Interexchange Carriers Consistent With the Public Interest? . . . . .	44
3.	Authority to Eliminate Tariff Filings . . . . .	67
4.	Summary of Findings and Conclusions . . . . .	77
C.	Maintenance and Disclosure of Price and Service Information; Certifications . . . . .	78
D.	Transition . . . . .	88
E.	Tariff Filing Requirements for the International Portion of Bundled Domestic and International Services . . . . .	94
F.	Effect of Forbearance on AT&T's Commitments . . . . .	101
G.	Additional Forbearance Issues . . . . .	110
III.	BUNDLING OF CUSTOMER PREMISES EQUIPMENT . . . . .	113
IV.	OTHER ISSUES . . . . .	119
A.	Pricing Issues . . . . .	119
B.	Contract Tariff Issues . . . . .	126
V.	FINAL REGULATORY FLEXIBILITY ANALYSIS . . . . .	129
VI.	FINAL PAPERWORK REDUCTION ANALYSIS . . . . .	159
VI.	ORDERING CLAUSES . . . . .	162
APPENDIX A	List of Commenters	
APPENDIX B	Final Rules	

## I. INTRODUCTION

1. On February 8, 1996, the Telecommunications Act of 1996 (1996 Act) was enacted.<sup>1</sup> The goal of the 1996 Act is to establish "a pro-competitive, de-regulatory national policy framework" in order to make available to all Americans advanced telecommunications and information technologies and services "by opening all telecommunications markets to

<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq. Hereinafter, all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

competition."<sup>2</sup> An integral element of this framework is the requirement in Section 10 of the Communications Act of 1934, as amended (Communications Act), that the Commission forbear from applying any provision of the Communications Act, or any of the Commission's regulations, to a telecommunications carrier or telecommunications service, or class thereof, if the Commission makes certain specified findings with respect to such provisions or regulations.<sup>3</sup>

2. On March 25, 1996, the Commission released a Notice of Proposed Rulemaking<sup>4</sup> initiating a review of its regulation of interstate, domestic, interexchange telecommunications services in light of the passage of the 1996 Act and the increasing competition in the interexchange market over the past decade. In this Report and Order (Order), we consider issues raised in the Notice relating to tariff forbearance. We also consider, but decline to act at this time on, the Commission's proposal in the Notice to allow nondominant interexchange carriers to bundle customer premises equipment (CPE) with interstate, interexchange telecommunications services.<sup>5</sup>

3. For the reasons set forth below, we conclude that the statutory forbearance criteria in Section 10 are met for the Commission to no longer require or allow nondominant interexchange carriers to file tariffs pursuant to Section 203 for their interstate, domestic, interexchange services. We conclude that a policy of complete detariffing (*i.e.*, not permitting nondominant interexchange carriers to file tariffs) for such services would further advance the

---

<sup>2</sup> Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113 (1996) (Joint Explanatory Statement).

<sup>3</sup> 47 U.S.C. § 160(a).

<sup>4</sup> Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, Notice of Proposed Rulemaking, 11 FCC Rcd 7141 (1996) (Notice).

<sup>5</sup> In the Notice, the Commission also raised issues relating to: market definition; separation requirements for nondominant treatment of local exchange carriers in their provision of certain interstate, interexchange services; and implementation of the rate averaging and rate integration requirements in new section 254(g) of the Communications Act. On August 7, 1996, the Commission issued a Report and Order implementing the rate averaging and rate integration requirements. See Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, Report and Order, 11 FCC Rcd 9564 (1996) (Geographic Rate Averaging Order). We will address the market definition and separation requirements in an upcoming order.

In the Notice, the Commission established two pleading cycles for the issues considered in this proceeding. Notice, 11 FCC Rcd at 7194. While many parties filed comments and reply comments in both phases, numerous parties filed only one set of comments and reply comments for both phases. See infra Appendix A. Comments and reply comments cited throughout this Order refer to unified comments and reply comments filed for both phases of this proceeding, or to those filed only in Phase 2 unless specifically noted as Phase 1 comments or reply comments.

statutory objectives of the forbearance provision, Section 10. We therefore order all nondominant interexchange carriers to cancel their tariffs for interstate, domestic, interexchange services within nine months from the effective date of this Order. In addition, we conclude that our decision to order complete detariffing renders moot the contract tariff and reseller issues raised in the Notice.

4. The actions we take here will further the pro-competitive, deregulatory objectives of the 1996 Act by fostering increased competition in the market for interstate, domestic, interexchange telecommunications services. Since the early 1980's, the Commission has gradually adapted its regulatory regime for such services from one in which all interexchange carriers were subject to the full panoply of Title II regulatory requirements, including Section 203 tariff filing requirements, to one in which pricing and other regulatory requirements have been replaced by market forces.<sup>6</sup> Our decision in this proceeding marks the end of the transformation of the regulatory regime governing interstate, domestic, interexchange services. After our policy of complete detariffing has been implemented, carriers in the interstate, domestic, interexchange marketplace will be subject to the same incentives and rewards that firms in other competitive markets confront. We seek ultimately to accomplish the same result in every telecommunications market, because we believe that effectively competitive markets produce maximum benefits for consumers, carriers and the nation's economy.

5. Our decision to forbear from applying the statutory requirement that compels nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services and to implement a policy of complete detariffing does not signify in any way a departure from our historic commitment to protecting consumers of interstate telecommunications services against anticompetitive practices. We reaffirm our pledge to use our complaint process to enforce vigorously our statutory and regulatory safeguards against carriers that attempt to take unfair advantage of American consumers. Moreover, when interstate, domestic, interexchange services are completely detariffed, consumers will be able to take advantage of remedies provided by state consumer protection laws and contract law against abusive practices.

6. We note that the California Public Utilities Commission recently adopted a complete detariffing regime for intrastate long-distance services offered in California.<sup>7</sup> We encourage other state regulatory commissions to seek the legislative authority necessary to enable them to adopt a complete detariffing policy when they find, as the California Commission did, that competition is sufficient to obviate the need for tariffing of intrastate long-distance services.

---

<sup>6</sup> See infra section II.A.2.

<sup>7</sup> Public Utilities Commission of the State of California, Rulemaking on the Commission's Own Motion to Establish a Simplified Registration Process for Non-Dominant Telecommunications Firms, R. 94-02-003, Interim Opinion, at Appendix A, Rule 7 (rel. Sep. 20, 1996) (California Detariffing Interim Opinion).

## II. FORBEARANCE FROM TARIFF FILING REQUIREMENTS FOR NONDOMINANT INTEREXCHANGE CARRIERS

### A. Background

#### 1. The Telecommunications Act of 1996

7. The 1996 Act provides for regulatory flexibility by requiring the Commission to forbear from applying any regulation or any provision of the Communications Act, to telecommunications carriers or telecommunications services, or classes thereof, if the Commission determines that certain conditions are satisfied.<sup>8</sup> Specifically, the 1996 Act amends the Communications Act to provide that:

[T]he Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that --

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.<sup>9</sup>

In making the public interest determination, the 1996 Act requires the Commission to consider whether forbearance will promote competitive market conditions, including the extent to

---

<sup>8</sup> 47 U.S.C. § 160. Section 10 of the Communications Act provides, however, that, except as provided in Section 251(f), the Commission may not forbear from applying the requirements of new Section 251 and new Section 271 until the Commission determines that those requirements have been fully implemented. Id.

<sup>9</sup> Id.

which forbearance will enhance competition among providers of telecommunications services.<sup>10</sup>

## 2. The Competitive Carrier Proceeding

8. In the Competitive Carrier proceeding, the Commission pursued pro-competitive and deregulatory goals similar to those underlying the 1996 Act.<sup>11</sup> The Commission examined how its regulations should be adapted to reflect and promote increasing competition in interexchange telecommunications markets, and sought to reduce or eliminate its tariff filing and facilities authorization requirements for nondominant interexchange carriers.

9. In a series of orders beginning in 1982, the Commission established a permissive detariffing policy for nondominant carriers, pursuant to which such carriers were permitted, although not required, to file tariffs with the Commission.<sup>12</sup> The Commission found that "there was no evidence that it is in the public interest for us to continue receiving streamlined tariff and Section 214 filings from certain specialized common carriers to prevent

---

<sup>10</sup> 47 U.S.C. § 160(b). New Section 10(b) also provides that, "[i]f the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest." Id.

<sup>11</sup> Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979) (Competitive Carrier NPRM); First Report and Order, 85 FCC 2d 1 (1980) (First Report and Order); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981) (Competitive Carrier Further NPRM); Second Further Notice of Proposed Rulemaking, FCC 82-187, 47 Fed. Reg. 17,308 (1982); Second Report and Order, 91 FCC 2d 59 (1982); Order on Reconsideration, 93 FCC 2d 54 (1983); Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28,292 (1983); Third Report and Order, 48 Fed. Reg. 46,791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983) (Fourth Report and Order), vacated AT&T Co. v. FCC, 978 F.2d 727 (D.C. Cir. 1992), cert. denied, MCI Telecommunications Corp. v. AT&T Co., 509 U.S. 913 (1993); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 1191 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984) (Fifth Report and Order); Sixth Report and Order, 99 FCC 2d 1020 (1985) (Sixth Report and Order), vacated MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985) (collectively referred to as the Competitive Carrier proceeding). In Competitive Carrier, the Commission distinguished two kinds of carriers -- those with market power (dominant carriers) and those without market power (nondominant carriers). First Report and Order, 85 FCC 2d at 20-21. See also 47 C.F.R. § 61.3(o) ("[D]ominant carrier" is defined as a "carrier found by the Commission to have market power (i.e., the power to control prices)").

<sup>12</sup> See Second Report and Order, 91 FCC 2d 59 (applying permissive detariffing to resellers of terrestrial common carrier services); Fourth Report and Order, 95 FCC 2d 554 (applying permissive detariffing to all other resellers and specialized common carriers, including MCI and GTE Sprint); Fifth Report and Order, 98 FCC 2d 1191 (applying permissive detariffing to domestic satellite carriers, miscellaneous common carriers, carriers providing domestic, interstate and interexchange digital transmission services, and certain affiliates of exchange carriers offering interstate, interexchange services).

them from charging unjust and unreasonable rates or making service unavailable."<sup>13</sup> The Commission concluded that market forces, together with the Section 208 complaint process and the Commission's ability to reimpose tariff-filing and facilities-authorization requirements, were sufficient to protect the public interest with respect to nondominant interexchange carriers subject to forbearance.<sup>14</sup> The Commission also noted that firms lacking market power could not charge unlawful rates because customers could always turn to competitors.<sup>15</sup>

10. In 1985, in the Sixth Report and Order, the Commission established a mandatory detariffing policy for all carriers subject to the Commission's forbearance policy,<sup>16</sup> because it concluded that policy would further its objectives of ensuring just and reasonable rates, and that it could rely instead on market forces, the complaint process, and its ability to reimpose tariff requirements, if necessary, to fulfill its mandate under the Communications Act.<sup>17</sup> In order to facilitate the complaint process and its enforcement of statutory requirements that carriers charge just and reasonable rates, the Commission also ordered carriers to maintain price and service information on file in their offices that could be produced readily upon inquiry from the Commission in order to substantiate the lawfulness of the carriers' rates, terms and conditions for service.<sup>18</sup>

11. The Sixth Report and Order subsequently was vacated and remanded by the U.S. Court of Appeals for the D.C. Circuit,<sup>19</sup> on the ground that the Commission lacked the statutory authority to prohibit carriers from filing tariffs.<sup>20</sup> The court, however, did not reach the issue of whether the Commission's earlier permissive detariffing orders were valid.<sup>21</sup> The Commission, accordingly, continued to apply its permissive detariffing policy to nondominant

---

<sup>13</sup> Fourth Report and Order, 95 FCC 2d at 578.

<sup>14</sup> Id. at 579.

<sup>15</sup> Sixth Report and Order, 99 FCC 2d at 1028 n.29.

<sup>16</sup> Id. at 1021-22. Carriers subject to forbearance were required to "file supplements to cancel their tariffs on file with the Commission within six months of the effective date of [the Sixth Report and Order]." Id. at 1034.

<sup>17</sup> Id. at 1029. The Commission stated: "Throughout this rulemaking, we have determined that enforcement of Sections 201 and 202 objectives of just and reasonable rates could be effectuated for certain carriers without the filing of tariffs and through market forces and the administration of the complaint process." Id. at n.33.

<sup>18</sup> Id. at 1028, 1034-35.

<sup>19</sup> MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985).

<sup>20</sup> Id. at 1192.

<sup>21</sup> Id. at 1196.

interexchange carriers until 1992, when the U.S. Court of Appeals for the D.C. Circuit vacated the Commission's permissive detariffing regime in AT&T Co. v. FCC.<sup>22</sup> The court, in reviewing an FCC decision disposing of a complaint filed by AT&T against MCI, vacated the Commission's Fourth Report and Order, thereby invalidating the Commission's permissive detariffing policy for nondominant carriers.<sup>23</sup> While stating that it did "not quarrel with the Commission's policy objectives," the court found that the Communications Act as it existed at that time did not give the Commission authority to adopt such a policy.<sup>24</sup>

12. Prior to the issuance of the U.S. Court of Appeals' decision invalidating the permissive detariffing policy, the Commission adopted a Report and Order in a rulemaking proceeding commenced in response to AT&T's complaint.<sup>25</sup> The Commission again determined that permissive detariffing was within its authority under the Communications Act.<sup>26</sup> The U.S. Court of Appeals for the D.C. Circuit granted summary reversal of the Commission's order based on the court's earlier AT&T v. FCC decision.<sup>27</sup> In affirming the U.S. Court of Appeal's ruling, the Supreme Court found that Section 203(b)(2) of the Communications Act gives the Commission authority to modify the Communications Act's tariff filing requirement, but not to eliminate it entirely.<sup>28</sup> The Commission thereafter modified the tariff filing requirements and established a one-day tariff notice period for all nondominant interexchange carriers after again concluding that traditional tariff regulation of nondominant interexchange carriers is not necessary to ensure just and reasonable rates.<sup>29</sup>

---

<sup>22</sup> AT&T Co. v. FCC, 978 F.2d 727 (D.C. Cir. 1992), cert. denied, MCI Telecommunications Corp. v. AT&T Co., 509 U.S. 913 (1993).

<sup>23</sup> Id. at 737.

<sup>24</sup> Id. at 736.

<sup>25</sup> See Tariff Filing Requirements for Interstate Common Carriers, CC Docket No. 92-13, Report and Order, 7 FCC Rcd 8072 (1992). While adopted prior to the court's finding that the Commission's permissive detariffing policy exceeded the Commission's statutory authority, the order was released after the court vacated the Fourth Report and Order.

<sup>26</sup> Id. at 8074.

<sup>27</sup> AT&T Co. v. FCC, Nos. 92-1628, 92-1666, 1993 WL 260778 (D.C. Cir. June 4, 1993) (per curiam), aff'd, MCI Telecommunications Corp. v. AT&T Co., 114 S. Ct. 2223 (1994).

<sup>28</sup> MCI Telecommunications Corp. v. AT&T Co., 114 S. Ct. 2223, 2229-31 (1994).

<sup>29</sup> Tariff Filing Requirements for Nondominant Common Carriers, CC Docket No. 93-36, Memorandum Opinion and Order, 8 FCC Rcd 6752, 6756-57 (1993) (Nondominant Filing Order), vacated on other grounds, Southwestern Bell Corp. v. FCC, 43 F.3d 1515 (D.C. Cir. 1995) (finding the range of rates provision in the Nondominant Filing Order violated Section 203(a) of the Communications Act). The Commission subsequently eliminated the range of rates provision and reinstated the other tariff filing requirements, including the one-day notice period, adopted in the Nondominant Filing Order. Tariff Filing Requirements for Nondominant Common Carriers, CC Docket No. 93-36, Order, 10 FCC Rcd 13653 (1995) (Nondominant Filing Order II). In addition,

13. Against this background, Congress enacted Section 401 of the 1996 Act, adding Section 10 to the Communications Act.<sup>30</sup> As discussed below,<sup>31</sup> we find that this section provides the Commission with the forbearance authority that the courts had previously concluded was lacking.<sup>32</sup> The Commission now has express authority to eliminate unnecessary regulation and to carry out the pro-competitive, deregulatory objectives that it pursued in the Competitive Carrier proceeding for more than a decade.

## B. Analysis of Statutory Requirements

### 1. Introduction

14. In the Notice, the Commission tentatively concluded that it could make the determinations necessary to forbear from applying the provisions of Section 203 to nondominant carriers with respect to their interstate, domestic, interexchange services.<sup>33</sup> Specifically, the Commission tentatively found that enforcement of the Section 203 tariff filing requirements with respect to nondominant interexchange carriers: (1) is not necessary to ensure that such carriers' charges, practices, or classifications are just and reasonable, and are not unjustly or unreasonably discriminatory; and (2) is not necessary for the protection of consumers.<sup>34</sup> The Commission also tentatively found that forbearing from applying Section 203 to nondominant interexchange carriers is consistent with the public interest.<sup>35</sup> The Commission therefore tentatively concluded that it must forbear from applying Section 203 tariff filing requirements to nondominant interexchange carriers with respect to their interstate, domestic, interexchange services.<sup>36</sup> The Commission also tentatively concluded that it should not permit nondominant interexchange carriers to file tariffs for such services (that is, that it should adopt a policy of complete detariffing), because it found that allowing nondominant

---

under the streamlined regulatory procedures for nondominant carriers established in the Competitive Carrier proceeding, such carriers are not subject to price cap regulation, and their tariff filings are presumed to be lawful and do not require cost support data. See First Report and Order, 85 FCC 2d at 31-34. Nondominant carriers also are subject to streamlined Section 214 procedures for the construction, extension or operation of new transmission facilities, as well as for the proposed reduction or discontinuance of service. See id. at 39-49.

<sup>30</sup> 47 U.S.C. § 160.

<sup>31</sup> See infra section II.B.3.

<sup>32</sup> See MCI Telecommunications Corp. v. AT&T Co., 114 S. Ct. at 2229-31; MCI Telecommunications Corp. v. FCC, 765 F.2d at 1195.

<sup>33</sup> Notice, 11 FCC Rcd at 7157.

<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</sup> Id.

interexchange carriers to file tariffs on a voluntary basis would not be in the public interest, and that complete detariffing would promote competition in the interstate, domestic, interexchange market, deter price coordination, and better protect consumers.<sup>37</sup>

15. In this section, we consider whether the complete detariffing policy proposed in the Notice satisfies each of the statutory forbearance criteria. We note that our analysis under the first two criteria does not differentiate between our proposal in the Notice to adopt a complete detariffing policy and other detariffing options, such as detariffing on a permissive basis (that is, allowing, but not requiring, nondominant interexchange carriers to file tariffs with respect to their interstate, domestic, interexchange services). Based on the language of the first two statutory criteria, the analysis of all detariffing proposals under the first two forbearance criteria would be the same, because in each case the relevant inquiries are whether tariff filings are necessary to ensure that nondominant interexchange carriers' charges, practices, or classifications are just and reasonable, and are not unjustly or unreasonably discriminatory, and whether tariff filings are necessary to protect consumers. However, the third statutory forbearance criterion, which requires an analysis of whether the proposed forbearance is consistent with the public interest, necessitates an analysis specific to the type of forbearance at issue. Accordingly, in addressing the third criterion, we consider whether adoption of a complete, or permissive, detariffing policy is consistent with the public interest.

## 2. Statutory Criteria for Forbearance

- a. **Are Tariff Filing Requirements Necessary to Ensure that the Charges, Practices, Classifications or Regulations for the Interstate, Domestic, Interexchange Services of Nondominant Interexchange Carriers Are Just and Reasonable, and Are Not Unjustly or Unreasonably Discriminatory?**

### (1) Background

16. As noted above, the 1996 Act requires the Commission to forbear from applying Section 203 tariff filing requirements to interstate, domestic, interexchange services offered by nondominant interexchange carriers if the Commission determines that the three statutory forbearance criteria are satisfied.<sup>38</sup> With respect to the first criterion, the Commission in the Notice tentatively concluded that tariff filing requirements are not necessary to ensure that nondominant interexchange carriers' charges, practices, classifications or regulations for interstate, domestic, interexchange services are just and reasonable, and are not unjustly or unreasonably discriminatory.<sup>39</sup> The Commission also tentatively concluded

---

<sup>37</sup> Id. at 7159-61.

<sup>38</sup> See supra para. 7.

<sup>39</sup> Notice, 11 FCC Rcd at 7157-58.

that the Communications Act's objectives of just, reasonable, and not unjustly or unreasonably discriminatory rates could be achieved effectively through other means, specifically through market forces and the administration of the complaint process. The Commission therefore tentatively concluded that elimination of tariff filing requirements for nondominant interexchange carriers for their interstate, domestic, interexchange offerings would satisfy the first statutory prerequisite for forbearance.<sup>40</sup>

## (2) Comments

17. Many commenters concur with the Commission's tentative conclusion that requiring nondominant interexchange carriers to file tariffs for their interstate, domestic, interexchange service offerings is unnecessary to ensure that charges, practices, and classifications for such services are just and reasonable, and are not unjustly or unreasonably discriminatory.<sup>41</sup> These parties claim that nondominant carriers cannot rationally impose prices or terms that are unjust, unreasonable, or unjustly or unreasonably discriminatory, because any attempt to do so would result in a loss of market share.<sup>42</sup> Several of these parties add that the Section 208 complaint process is adequate to remedy any illegal carrier conduct that does occur.<sup>43</sup> Thus, they conclude that market forces and the administration of the

---

<sup>40</sup> Id.

<sup>41</sup> As discussed above, the analysis of this statutory criterion is the same for both complete and permissive detariffing. Consequently, some commenters that argue that this criterion is met support complete detariffing. See BellSouth Comments at 19; Florida PSC Comments at 2-3 (supporting complete detariffing, but arguing that the Commission should use its general regulatory authority to detariff, rather than its authority under Section 10, which Florida PSC asserts might have repercussions at the state level); Ad Hoc Users Comments at 2-3; API Comments at 4; Cato Institute Comments at 1-2. Other commenters arguing that this criterion is met, however, support detariffing on a permissive basis. See AT&T Comments at 6; LDDS Comments at 4-5; NYNEX Comments at 2-3; Frontier Comments at 2-3; GTE Comments at 3-4; Cable & Wireless Comments at 3-4; UTC Comments at 3-4; Corporate Managers Comments at 2-3 (arguing that the Commission should eliminate tariffing for all carriers, including the BOCs). Sprint urges the Commission to adopt permissive detariffing, and therefore, by implication, suggests that this criterion is met. Sprint Comments at 10. Other commenters agree with the Commission's tentative conclusion only with respect to certain segments of the market. See, e.g., MCI Reply at 9 (individually-negotiated service arrangements); Television Networks Comments at 3 (focusing solely on business customers).

<sup>42</sup> AT&T Comments at 6; LDDS Comments at 4-5; NYNEX Comments at 2-3; Frontier Comments at 2; GTE Comments at 3-4; Florida PSC Comments at 2-3; UTC Comments at 2-3; API Comments at 4.

<sup>43</sup> LDDS Comments at 4-5; NYNEX Comments at 2-3; Florida PSC Comments at 2-3; API Comments at 4. BellSouth contends that detariffing will not adversely affect the Commission's ability to ensure that rates, terms, and conditions are just, reasonable, and not unreasonably discriminatory, because a determination regarding the reasonableness of a particular rate, term, or condition is better suited to the complaint process. BellSouth Comments at 19-20.

complaint process will prevent nondominant interexchange carriers from behaving anticompetitively in violation of Sections 201(b) and 202(a) of the Communications Act.<sup>44</sup>

18. Other commenters, however, argue that market forces are currently inadequate to ensure that the charges, practices, classifications or regulations of nondominant interexchange carriers are just and reasonable, and are not unjustly or unreasonably discriminatory, because the market for interstate, domestic, interexchange services is not yet fully competitive.<sup>45</sup> In addition, the Tennessee Attorney General and ACTA argue that AT&T is able profitably to charge higher rates than its competitors, demonstrating that existing competition alone does not constrain AT&T's prices, and therefore is not sufficient to regulate the marketplace.<sup>46</sup>

19. Several commenters, including a number of state commissions, argue that in the absence of tariffs, the Section 208 complaint process would not be adequate to ensure that the charges, practices, and classifications of nondominant interexchange carriers are just and reasonable, and not unjustly or unreasonably discriminatory.<sup>47</sup> These commenters insist that tariffs provide information necessary to enforce Sections 201 and 202 and to investigate fraudulent practices.<sup>48</sup> In addition, they argue that tariffs ensure accurate information in the

---

<sup>44</sup> LDDS Comments at 4-5; NYNEX Comments at 2-3; Florida PSC Comments at 2-3; UTC Comments at 3; API Comments at 4.

<sup>45</sup> Tennessee Attorney General Comments at 3; Alabama PSC Comments at 2; National Association of Development Organizations Comments at 5-6; National Association of Attorneys General Telecommunications Subcommittee Comments at 2-3; TRA Comments at 10-14. Some BOCs also argue that the interexchange market is not fully competitive, alleging that the three largest interexchange carriers have coordinated their price changes. See *infra* section IV.A (discussing price coordination in the interstate, domestic, interexchange market). These BOCs, however, nevertheless maintain that the first statutory prerequisite for forbearance is met, because it is not the existence of publicly-filed tariffs that enables interexchange carriers to coordinate their prices and raise their rates. BellSouth Comments at 19-20; PacTel Comments at 4.

<sup>46</sup> Tennessee Attorney General Comments at 3; ACTA Comments at 7-8.

<sup>47</sup> Alaska Comments at 5-6; Pennsylvania PUC Comments at 8; Louisiana PSC Comments at 4-5; Alabama PSC Comments at 2-5; Ohio Consumers' Counsel Comments at 6; Iowa Utilities Board Comments at 2-3; Tennessee Attorney General Comments at 4; National Association of Attorneys General Telecommunications Subcommittee Comments at 3, 5; CFA/CU Comments at 4; GCI Comments at 2-3; ACTA Comments at 6-7; TRA Comments at 6-7; Telecommunications Information Services Comments at 2; GSA Comments at 6; Excel Comments at 2-3; Casual Calling Coalition Comments at 5-8.

<sup>48</sup> Alaska Comments at 5-6; Pennsylvania PUC Comments at 8-9; Louisiana PSC Comments at 4-6; Alabama PSC Comments at 2-3; Ohio Consumers' Counsel Comments at 6; Iowa Utilities Board Comments at 2-3; Tennessee Attorney General Comments at 3-5; National Association of Attorneys General Telecommunications Subcommittee Comments at 3, 5; CFA/CU Comments at 4, 6-7; GCI Comments at 2-5; ACTA Comments at 6-7; TRA Comments at 6-7; Telecommunications Information Services Comments at 2; GSA Comments at 6; Excel Comments at 2-3; Casual Calling Coalition Comments at 6-7.

event of a dispute.<sup>49</sup> They conclude that, without tariffs, consumers and other interested parties will lack adequate information to bring a complaint.<sup>50</sup> TRA adds that the complaint process is too limited because it focuses only on legal issues, while the tariff review process allows policy analysis as well.<sup>51</sup>

20. TRA argues that eliminating tariff filing requirements in a market that is less than perfectly competitive will enable carriers to discriminate against resellers, many of which are small and mid-sized businesses.<sup>52</sup> TRA claims that the resale market will not survive detariffing, and that such a result is contrary to the objectives of the Communications Act and Commission policy, which recognizes that a vibrant resale market provides residential and small business customers with access to lower rates, puts downward pressure on prices, and helps prevent discriminatory pricing by increasing the number of parties offering similar services.<sup>53</sup>

### (3) Discussion

21. We adopt the tentative conclusion in the Notice that tariffs are not necessary to ensure that the rates, practices, and classifications of nondominant interexchange carriers for interstate, domestic, interexchange services are just and reasonable and not unjustly or unreasonably discriminatory. We conclude, consistent with the AT&T Reclassification Order, that the high churn rate among consumers of interstate, domestic, interexchange services indicates that consumers find the services provided by interexchange carriers to be close substitutes, and that consumers are likely to switch carriers in order to obtain lower prices or more favorable terms and conditions.<sup>54</sup> In addition, as we found in the AT&T

---

<sup>49</sup> Eastern Tel Comments at 7; Pennsylvania Office of Consumer Advocate Comments at 3; Iowa Utilities Board Comments at 2; Casual Calling Coalition Comments at 11.

<sup>50</sup> Alaska Comments at 5-6; Alabama PSC Comments at 2-3; Ohio Consumers' Counsel Comments at 6; Pennsylvania Office of Consumer Advocate Comments at 3; Tennessee Attorney General Comments at 4; CFA/CU Comments at 4, 6-7; GCI Comments at 3-5; ACTA Comments at 7; TRA Comments at 6-7; Telecommunications Information Services Comments at 2; GSA Comments at 6.

<sup>51</sup> TRA Comments at 21.

<sup>52</sup> TRA Comments at 10-14; TRA Reply at 13.

<sup>53</sup> TRA Comments at 7-8, 13-14 (citing previous Commission statements on the public benefits that resale of telecommunications generates).

<sup>54</sup> See Motion of AT&T Corp. to be Reclassified as a Nondominant Carrier, Order, 11 FCC Rcd 3271, 3305-07 (1995) (AT&T Reclassification Order), recon. pending; see also AT&T Comments at 18 n.17 (indicating that in 1994, nearly 30 million customers changed their presubscribed carriers).

Reclassification Order, residential and small business customers are highly demand-elastic,<sup>55</sup> and will switch carriers in order to obtain price reductions and desired features.<sup>56</sup> Because of the high elasticity of demand for interstate, domestic, interexchange services, we find it is highly unlikely that interexchange carriers that lack market power could successfully charge rates, or impose terms and conditions, for interstate, domestic, interexchange services that violate Section 201 or 202 of the Communications Act, because any attempt to do so would cause their customers to switch to different carriers.<sup>57</sup> Thus, we believe that market forces will generally ensure that the rates, practices, and classifications of nondominant interexchange carriers for interstate, domestic, interexchange services are just and reasonable and not unjustly or unreasonably discriminatory. Moreover, if nondominant interexchange carriers service offerings violate Section 201 or Section 202 of the Communications Act, we have other, more effective means of remedying such conduct. Specifically, we can address any illegal carrier conduct through the exercise of our authority to investigate and adjudicate complaints under Section 208.<sup>58</sup>

22. We also reject the unsupported suggestion that current levels of competition are inadequate to constrain AT&T's prices.<sup>59</sup> In the AT&T Reclassification Order, we found that AT&T cannot unilaterally exercise market power in the interstate, domestic, interexchange market.<sup>60</sup> We based this finding on, *inter alia*, AT&T's declining market share,<sup>61</sup> the supply elasticity in this market,<sup>62</sup> the fact that both residential and business customers are highly

---

<sup>55</sup> The own-price elasticity of demand of a firm measures the responsiveness in the demand for that firm's services to changes in that firm's prices, given that competitors' prices are held constant. See, e.g., James W. Henderson & Richard E. Quandt, Microeconomic Theory: A Mathematical Approach 210-11 (3d ed. 1980).

<sup>56</sup> AT&T Reclassification Order, 11 FCC Rcd at 3305-07.

<sup>57</sup> See AT&T Comments at 6; LDDS Comments at 4-5; NYNEX Comments at 2-3; BellSouth Comments at 19-20; Frontier Comments at 2-3; GTE Comments at 3-4; Cable & Wireless Comments at 4; Florida PSC Comments at 2-3; Ad Hoc Users Comments at 2-3; UTC Comments at 3; Corporate Managers Comments at 3; API Comments at 4; Cato Institute Comments at 2; see also First Report and Order, 85 FCC 2d at 20-21.

<sup>58</sup> 47 U.S.C. § 208.

<sup>59</sup> See Tennessee Attorney General Comments at 3; ACTA Comments at 7-8.

<sup>60</sup> AT&T Reclassification Order, 11 FCC Rcd at 3346-47.

<sup>61</sup> Id. at 3307-08; see also Report, Long Distance Market Share, First Quarter 1996, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission at 9 (rel. July 12, 1996) (showing that AT&T's share of all minutes has declined from 84.2 percent in the third quarter of 1984 to 55.3 percent in the first quarter of 1996).

<sup>62</sup> AT&T Reclassification Order, 11 FCC Rcd at 3303-05.

demand-elastic,<sup>63</sup> and an analysis of AT&T's cost, structure, size, and resources.<sup>64</sup> The Tennessee Attorney General and ACTA offer no new evidence that would lead us to alter our conclusion that AT&T lacks market power in this market.

23. We also are not persuaded that tariffs are necessary to constrain the prices and practices of nondominant interexchange carriers with respect to interstate, domestic, interexchange services. As discussed below, we find that evidence of tacit price coordination in the market for interstate, domestic, interexchange services is inconclusive.<sup>65</sup> Moreover, we find that tariff filings by nondominant interexchange carriers for interstate, domestic, interexchange services may facilitate, rather than deter, price coordination, because under a tariffing regime, all rate and service information is collected in one, central location.<sup>66</sup> Therefore, we believe that complete detariffing, along with additional, competitive, facilities-based entry into the interstate, domestic, interexchange market, will help deter attempts to increase rates for interstate, domestic, interexchange services through tacit price coordination. We therefore conclude that complete detariffing of interstate, domestic, interexchange services offered by nondominant interexchange carriers will further the Communications Act's objective that carriers' rates, practices, classifications, and regulations be just, reasonable and not unjustly or unreasonably discriminatory.

24. In the Notice, the Commission acknowledged that the Commission initially relaxed its regulation of nondominant carriers in the Competitive Carrier proceeding in part because it concluded that the availability of service from a nationwide dominant carrier subject to full Title II regulation would further constrain nondominant carriers.<sup>67</sup> We therefore sought comment on whether the absence of a nationwide dominant carrier should affect our determination to forbear from requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services.<sup>68</sup> No commenter addressed this issue, and we conclude that the absence of a dominant interexchange carrier in today's competitive interstate, domestic, interexchange market should not alter our analysis, because nondominant

---

<sup>63</sup> See id. at 3305 (finding that the "high churn rate among residential consumers . . . demonstrates that these customers find the services provided by AT&T and its competitors to be very close substitutes"); see also AT&T Comments at 18 n.17 (indicating that 17-20 percent of consumers change their presubscribed carriers each year).

<sup>64</sup> AT&T Reclassification Order, 11 FCC Rcd at 3309.

<sup>65</sup> See infra section IV.A.3.

<sup>66</sup> See infra paras. 53, 61.

<sup>67</sup> Notice, 11 FCC Rcd at 7163 (citing First Report and Order, 85 FCC 2d at 28).

<sup>68</sup> Id.

interexchange carriers cannot successfully price their services anticompetitively in this market.<sup>69</sup> In addition, the Commission has previously found that market forces effectively discipline nondominant carriers even in the absence of a dominant carrier.<sup>70</sup>

25. We also reject the claim that, without tariffs, consumers and other parties will lack sufficient information to challenge the lawfulness of nondominant interexchange carriers' rates, terms and conditions for domestic service, in particular on the ground that such carriers' rates, practices, and classifications are unjustly or unreasonably discriminatory. In the absence of tariffs, customers will still receive rate information in the same manner they always have, through the billing process. In addition, carriers likely will be obligated to notify their customers of any changes in their rates, terms and conditions for service as part of their contractual relationship.<sup>71</sup> Moreover, tariffs may not be the best vehicle for disclosure of rate and service information for nondominant interexchange carriers to residential and small business customers, because such end-users rarely, if ever, consult these tariff filings, and few of them are able to understand tariff filings even if they do examine them.<sup>72</sup> We further believe that nondominant interexchange carriers will generally provide customers rate and service information that currently is contained in tariffs, in an accessible format in order to market their services and to retain customers.<sup>73</sup> Nevertheless, we acknowledge that, even in a competitive market, nondominant interexchange carriers might not provide complete information concerning all of their interstate, domestic, interexchange service offerings to all

---

<sup>69</sup> AT&T Comments at 6; LDDS Comments at 4-5; NYNEX Comments at 2-3; Frontier Comments at 2-3; GTE Comments at 3-4; Florida PSC Comments at 2-3; UTC Comments at 3; API Comments at 4.

<sup>70</sup> See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1478-79 (1994) (Regulatory Treatment of Mobile Services Order) (citing Competitive Carrier First Report and Order, 85 FCC 2d at 31); Erratum, 9 FCC Rcd 2035 (1994); Erratum, 9 FCC Rcd 2156 (1994); Further Notice of Proposed Rulemaking, 9 FCC Rcd 2863 (1994); Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services; Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band; Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool; GN Docket No. 93-252, PR Docket Nos. 93-144, 89-553, Third Report and Order, 9 FCC Rcd 7988 (1994).

<sup>71</sup> MCI Comments at 16-17; Sprint Comments at 16-19; AT&T Comments at 19; Ameritech Comments at 4; Casual Calling Coalition Comments at 8-9; American Telegram Comments at 2-3; Business Telecom Comments at 5-6; Eastern Tel Comments at 4; Ursus Comments at 7. It is also possible that such notification could be required as a matter of state consumer protection law. Cf. California Detariffing Interim Opinion at Appendix A, Rule 7 (providing for consumer notification upon written request).

<sup>72</sup> BellSouth Comments at 20; Ad Hoc Users Reply at 12-13; CFA/CU Comments at 8; see also GSA Comments at 10.

<sup>73</sup> See BellSouth Comments at 20; Ad Hoc Users Reply at 12-13; cf. National Small Shipments Traffic Conference, Inc. v. Civil Aeronautics Board, 618 F.2d 819, 824 (D.C. Cir. 1980) (quoting the Civil Aeronautics Board's finding that "a carrier's ability to successfully market its services to the public depends in part on its success in informing potential customers what its charges will be and what services it offers").

consumers, and that some consumers may not be able to determine the particular rate plans that are most appropriate for them, based on their individual calling patterns.<sup>74</sup> Accordingly, and in light of considerations regarding the enforcement of the 1996 Act's geographic rate averaging and rate integration requirements, we will require carriers to provide rate and service information to the public, as we discuss below.<sup>75</sup> In addition, as the Commission did in the Sixth Report and Order, we will require nondominant interexchange carriers to maintain price and service information and to make such information available on a timely basis to the Commission upon request.<sup>76</sup> We therefore conclude that, in the absence of tariffs for nondominant carriers' interstate, domestic, interexchange services, consumers and other parties will have access to sufficient information about such services for purposes of bringing complaints.

26. We reject TRA's claim that the complaint process is inadequate to protect consumers. TRA maintains that the Commission addresses only legal issues in a complaint proceeding, whereas in the tariff review process, the Commission can address policy issues as well.<sup>77</sup> TRA is incorrect, however. Regardless of whether the inquiry is part of a complaint or a tariff review proceeding, the Commission can address all relevant legal and policy issues. In the particular context of Section 208 complaint proceedings, we will continue to examine legal, and, where appropriate, policy matters to give full effect to the requirements that a carrier's rates, terms, and conditions are just, reasonable, and not unreasonably discriminatory, as well as the requirements of our rules and orders.

27. Contrary to TRA's assertions that the resale market will not survive in the absence of tariffs,<sup>78</sup> we conclude that our decision to forbear from requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services will not

---

<sup>74</sup> For example, nondominant interexchange carriers might engage in targeted advertising concerning particular discounts and rate plans that might be the least costly, and most appropriate, plan for some, but not all, consumers.

<sup>75</sup> In reviewing the proposed information collection requirements in the Notice, including the proposal to eliminate tariff filing requirements by nondominant interexchange carriers for interstate, domestic, interexchange services, the Office of Management and Budget "strongly recommend[ed] that the [Commission] investigate potential mechanisms to provide consumers, State regulators, and other interested parties with some standardized pricing information." Notice of Office of Management and Budget Action, OMB No. 3060-0704 (June 12, 1996).

<sup>76</sup> See infra para. 87; see also Sixth Report and Order, 99 FCC 2d at 1028, 1034-35. On June 12, 1996, the Office of Management and Budget approved the Commission's proposal in the Notice, 11 FCC Rcd at 7162-63, to require nondominant interexchange carriers to maintain at their premises price and service information regarding their interstate, interexchange offerings that they can submit to the Commission upon request. Notice of Office of Management and Budget Action, OMB No. 3060-0704 (June 12, 1996).

<sup>77</sup> TRA Comments at 21.

<sup>78</sup> Id. at 13-14.

affect such carriers' obligations under Sections 201 and 202 to charge rates, and to impose practices, classifications and regulations, that are just and reasonable and not unjustly or unreasonably discriminatory. In addition, as discussed below, we will require nondominant interexchange carriers to provide rate and service information on all of their interstate, domestic, interexchange services to consumers, including resellers.<sup>79</sup> Thus, resellers will be able to determine whether nondominant interexchange carriers have imposed rates, practices, classifications or regulations that unreasonably discriminate against resellers, and to bring a complaint, if necessary.<sup>80</sup>

28. For the reasons discussed herein, we conclude that tariffs are not necessary to ensure that the rates, practices, classifications, and regulations of nondominant interexchange carriers for interstate, domestic, interexchange services are just and reasonable and not unjustly or unreasonably discriminatory. We therefore conclude that the proposal to adopt complete detariffing meets the first of the statutory forbearance criteria.

**b. Are Tariff Filing Requirements for the Interstate, Domestic, Interexchange Services of Nondominant Interexchange Carriers Necessary for the Protection of Consumers?**

**(1) Background**

29. In the Notice, the Commission tentatively concluded that requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services is not necessary to protect consumers, and that such tariff filing requirements could harm consumers by undermining the development of vigorous competition.<sup>81</sup>

**(2) Comments**

30. A number of parties support the Commission's tentative conclusion that requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange service offerings is not necessary to protect consumers.<sup>82</sup> Several of these

---

<sup>79</sup> See infra paras. 84-86.

<sup>80</sup> See AT&T Comments at 37-38 (arguing that the market will discipline any carrier that attempts to harm consumers and that the complaint process will serve as an additional safeguard for customers to challenge revisions to long-term service arrangements).

<sup>81</sup> Notice, 11 FCC Rcd at 7159.

<sup>82</sup> As discussed above, the analysis of this statutory criterion is the same for both complete and permissive detariffing. Consequently, some commenters arguing that this criterion is met, support complete detariffing. See BellSouth Comments at 20-21; Florida PSC Comments at 1-3 (supporting complete detariffing, but arguing that the Commission should use its general regulatory authority, rather than its authority under Section 10, to detariff); Ad Hoc Users Comments at 2-3; API Comments at 4; Cato Institute Comments at 2; Television

parties claim that nondominant interexchange carriers cannot rationally charge prices, or impose terms and conditions that harm consumers without losing customers.<sup>83</sup> In addition, many parties assert that the complaint process is adequate to remedy any illegal carrier conduct that violates the Communications Act and harms consumers.<sup>84</sup>

31. Several commenters also support the Commission's tentative conclusion that tariff filing requirements actually harm consumers by impeding the development of vigorous competition and by leading to higher rates.<sup>85</sup>

32. A number of state commissions and other commenters assert, however, that, without tariffs, the complaint process would not be adequate to protect consumers.<sup>86</sup> They claim that the complaint process is cumbersome, expensive and time-consuming,<sup>87</sup> and that without tariffs, consumers will lack sufficient information on which to base a complaint that a carrier has violated Section 201 or 202, or failed to comply with the rate averaging and rate integration requirements of Section 254(g).<sup>88</sup> A number of state commissions and other

---

Networks Comments at 3. Other commenters arguing that this criterion is satisfied, however, support detariffing on a permissive basis. See AT&T Comments at 6; LDDS Comments at 4-5; NYNEX Comments at 2-3; Frontier Comments at 2-3; GTE Comments at 3-4; Cable & Wireless Comments at 4; UTC Comments at 2; Corporate Managers Comments at 2. Sprint urges the Commission to adopt permissive detariffing, and therefore, by implication, suggests that this criterion is met. Sprint Comments at 10. MCI argues that this criterion is met only for individually negotiated service agreements. MCI Reply at 9.

<sup>83</sup> AT&T Comments at 6; LDDS Comments at 4-5; NYNEX Comments at 2-3; Frontier Comments at 2-3; GTE Comments at 3-4; Cable & Wireless Comments at 4; Florida PSC Comments at 2-3; Ad Hoc Users Comments at 2-3; UTC Comments at 2; API Comments at 4; Cato Institute Comments at 2.

<sup>84</sup> LDDS Comments at 4-5; GTE Comments at 3 n.4; Florida PSC Comments at 2-3; UTC Comments at 3; API Comments at 4.

<sup>85</sup> NYNEX Comments at 3; BellSouth Comments at 17; Corporate Managers Comments at 4-5; UTC Comments at 4; API Comments at 5.

<sup>86</sup> Alaska Reply at 10-11; Pennsylvania PUC Comments at 8-10; Louisiana PSC Comments at 4-6; Alabama PSC Comments at 4; Ohio Consumers' Counsel Comments at 6; Iowa Utilities Board Comments at 2-3; Tennessee Attorney General Comments at 4; National Association of Attorneys General Telecommunications Subcommittee Comments at 3, 5; CFA/CU Comments at 7; GCI Comments at 5; ACTA Comments at 6-7; TRA Comments at 6-7; Telecommunications Information Services Comments at 2; GSA Comments at 6; Excel Comments at 2-3; Casual Calling Coalition Comments at 5-8; Hunter Comments at 1; Lee Comments at 1; Ward Comments at 1; Orlic Comments at 1; Stark Comments at 1; Loflin Comments at 1-2; Sussman Comments at 1-2. MCI argues that tariffs are necessary to protect consumers that purchase mass market services offered mainly to residential and small business customers. MCI Reply at 9-14.

<sup>87</sup> Alabama PSC Comments at 4; GCI Comments at 5; TRA Comments at 21; ACTA Comments at 10-11.

<sup>88</sup> Alaska Comments at 5-6; Alabama PSC Comments at 2-5; Ohio Consumers' Counsel Comments at 5-6; Pennsylvania Office of Consumer Advocate Comments at 3; Tennessee Attorney General Comments at 4; CFA/CU Comments at 4, 6-7; GCI Comments at 2-5; ACTA Comments at 6-7; TRA Comments at 6-7;

parties also assert that detariffing will impede state regulatory or law enforcement functions, because state officials depend on information contained in tariffs filed with the Commission to protect consumers, to prevent fraudulent practices, and to promote state objectives and policies, such as ensuring that rates for intraLATA services are no higher than those for interLATA services.<sup>89</sup> In addition, some state commissions are concerned that tariff forbearance by the Commission might preempt state tariff filing requirements because Section 10(e) of the Communications Act provides that "a State commission may not continue to apply or to enforce any provision of this Act that the Commission has determined to forbear from applying."<sup>90</sup> Several parties add that tariffs also ensure that the Commission has access to accurate information in the event of a dispute.<sup>91</sup>

33. The Ad Hoc Users and BellSouth maintain, however, that, even in the absence of tariffs, carriers will make price and service information available to the public through methods such as advertising, bill inserts and brochures; and that those methods are more effective at informing consumers than tariff filings, which are not readily available to consumers and which most consumers therefore never examine.<sup>92</sup>

34. Some commenters suggest that, if the Commission detariffs, the Commission should limit forbearance from tariff filing requirements to individually-negotiated service arrangements.<sup>93</sup> They urge the Commission to retain tariff filing requirements for mass market services offered to residential and small business customers because, they claim, tariffs are necessary to protect consumers of such services.<sup>94</sup>

---

Telecommunications Information Services Comments at 2; GSA Comments at 5-6; Casual Calling Coalition Comments at 7-8.

<sup>89</sup> Louisiana PSC Comments at 4-5; Pennsylvania PUC Comments at 8; Iowa Utilities Board Comments at 3; Tennessee Attorney General Comments at 3; Alabama PSC Comments at 2; National Association of Attorneys General Telecommunications Subcommittee Comments at 2-3; Eastern Tel Reply at 3-4; WinStar Reply at 4.

<sup>90</sup> 47 U.S.C. § 160(e); see Louisiana PSC Comments at 1-3; Florida PSC Comments at 4; see also New York Department of Public Service Reply at 1; Louisiana PSC Reply at 2 (both arguing that the Commission cannot preclude states from regulating intrastate, interexchange services); Florida PSC Comments at 4, 6 (arguing that the Commission should use its general regulatory powers rather than the forbearance provision in the 1996 Act to implement detariffing).

<sup>91</sup> Eastern Tel Comments at 7; Pennsylvania Office of Consumer Advocate Comments at 3; Iowa Utilities Board Comments at 2; Casual Calling Coalition Comments at 11.

<sup>92</sup> BellSouth Comments at 20; Ad Hoc Users Reply at 12-13.

<sup>93</sup> MCI Comments at 3; Sprint Comments at 5; CFA/CU Comments at 2; GCI Comments at 2.

<sup>94</sup> MCI Comments at 3; Sprint Comments at 11-14; CFA/CU Comments at 2; GCI Comments at 2.

35. In addition, American Telegram argues that tariffs are necessary to protect consumers with respect to terms and conditions, but not rates and charges, of nondominant interexchange carriers. American Telegram asserts that tariffs are necessary to protect consumers with respect to terms and conditions of service, because, without tariffs, each customer would have to challenge its individual contract with the carrier in order to establish the illegality of the carrier's terms or conditions for service.<sup>95</sup> American Telegram claims that, by contrast, when a tariff is challenged, any changes to the tariffed terms and conditions apply automatically to all customers of that service.<sup>96</sup>

### (3) Discussion

36. We adopt the tentative conclusion in the Notice that tariff filings by nondominant interexchange carriers for interstate, domestic, interexchange services are not necessary to protect consumers. Rather, as discussed above,<sup>97</sup> we find that it is highly unlikely that interexchange carriers that lack market power could successfully charge rates, or impose terms and conditions, for interstate, domestic, interexchange services that violate Sections 201 and 202 of the Communications Act. We therefore conclude that market forces, our administration of the Section 208 complaint process, and our ability to reimpose tariff filing requirements, if necessary, are sufficient to protect consumers.

37. We also adopt the tentative conclusion that in the interstate, domestic, interexchange market, requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services may harm consumers by impeding the development of vigorous competition, which could lead to higher rates.<sup>98</sup> We agree with NYNEX that "forbearance will promote competition and deter price coordination, which can threaten competitive benefits."<sup>99</sup> By promoting competition, detariffing will better protect consumers against the imposition of rates, terms, or conditions that violate the Communications Act.

38. We reject the argument that, for interstate, domestic, interexchange services offered by nondominant interexchange carriers, the complaint process is inadequate to protect consumers. As an initial matter, we note that we are not simply relying on the complaint process to protect consumers. Rather, as set forth above, we believe that market forces,

---

<sup>95</sup> American Telegram Comments at 3.

<sup>96</sup> American Telegram Comments at 3. American Telegram urges the Commission to detariff nondominant interexchange carriers' rates and charges, but to allow such carriers to tariff terms and conditions. Id.

<sup>97</sup> See supra para. 21.

<sup>98</sup> See infra paras. 53-54.

<sup>99</sup> NYNEX Comments at 3; see also BellSouth Comments at 17; Corporate Managers Comments at 4-5; UTC Comments at 4; API Comments at 5.

together with the complaint process, will adequately protect consumers. In addition, we find that our complaint process is adequate to redress any harm to consumers should a nondominant interexchange carrier establish prices, or impose terms and conditions, that violate Sections 201 or 202, or engage in other conduct that violates the Communications Act or our regulations.<sup>100</sup> Moreover, we note that in the absence of tariffs, consumers will be able to pursue remedies under state consumer protection and contract laws in a manner currently precluded by the "filed-rate" doctrine.<sup>101</sup>

39. While we agree with those commenters that argue that the Commission and the public may need access to information concerning carriers' rates, terms and conditions to ensure carrier compliance with the requirements of Sections 201, 202, and 254(g) of the Communications Act,<sup>102</sup> we are not persuaded that tariffs filed pursuant to Section 203 are the only, or most effective, means of disseminating such information. As an initial matter, we note that the majority of complaints by consumers about the lawfulness of carriers' rates, terms, or conditions for interstate, domestic, interexchange services are based on information obtained through the billing process, rather than information obtained from carriers' tariffs. As set forth above, we believe that nondominant interexchange carriers likely will provide rate and service information currently contained in tariffs to their customers in order to establish a legal relationship with such customers or as part of the billing process.<sup>103</sup> Moreover, nondominant carriers likely will publicize their rates, terms and conditions for service in order to maintain, or improve, their competitive positions in the market.<sup>104</sup> We therefore conclude that the public will have access to sufficient information to bring to the Commission's attention possible violations of the Communications Act without the risk of anticompetitive effects inherent in tariff filing requirements.

40. Additionally, we find no basis for the claim that the detariffing of the interstate, domestic, interexchange services of nondominant interexchange carriers will significantly impede state regulatory or law enforcement functions. The rules we adopt in this proceeding will not interfere with, and in fact may facilitate, a state agency's ability to obtain directly

---

<sup>100</sup> The Commission will address rules related to the complaint process in an upcoming proceeding.

<sup>101</sup> See, e.g., California Detariffing Interim Opinion, at Appendix A. For a discussion of the "filed-rate" doctrine, see infra note 122 and para. 55.

<sup>102</sup> See Alaska Comments at 4; Pennsylvania PUC Comments at 8; Louisiana PSC Comments at 4-5; Alabama PSC Comments at 2-3; Ohio Consumers' Counsel Comments at 5-6; Iowa Utilities Board Comments at 2-3; Tennessee Attorney General Comments at 4; National Association of Attorneys General Telecommunications Subcommittee Comments at 3-4; CFA/CU Comments at 4-5; GCI Comments at 2-3; ACTA Comments at 9-10; TRA Comments at 6-7; Telecommunications Information Services Comments at 2; GSA Comments at 6; Excel Comments at 2-3; Casual Calling Coalition Comments at 5-8.

<sup>103</sup> See supra para. 25.

<sup>104</sup> See supra para. 25.

from carriers price and service information regarding interstate, domestic, interexchange services.<sup>105</sup> Our action here also does not affect state tariff filing requirements for intrastate services.<sup>106</sup> Section 10(e) of the Communications Act, which provides that "a State commission may not continue to apply or to enforce any provision of this Act that the Commission has determined to forbear from applying,"<sup>107</sup> does not prohibit states from requiring nondominant interexchange carriers to file tariffs with respect to their intrastate, interexchange services based on our action here.

41. We reject the suggestion that tariffs are necessary to protect consumers of mass market interstate, domestic, interexchange services provided by nondominant interexchange carriers, and therefore that the Commission should limit forbearance only to individually-negotiated service arrangements. We find that the reasons supporting our conclusion that tariff filings are not necessary to protect consumers of interstate, domestic, interexchange services provided by nondominant interexchange carriers apply to all such services, and not only to those provided pursuant to individually-negotiated arrangements. Specifically, any increase in competition resulting from the elimination of tariffs will redound to the benefit of consumers of all interstate, domestic, interexchange services. For example, we believe that eliminating tariffs for mass market services will increase carriers' incentive to reduce prices for such services, and reduce their ability to engage in tacit price coordination. In addition, detariffing of mass market services will likely provide greater protection to consumers, because, as discussed below, carriers will likely be required, as a matter of contract law, to give customers advance notice before instituting changes that adversely affect customers.<sup>108</sup> Carriers will also continue to provide rate information to customers as part of the billing process, and in order to market their services and to retain customers.<sup>109</sup>

42. Similarly, we do not agree with American Telegram's claim that tariffs are necessary to protect consumers with respect to terms and conditions, but not rates and charges, of interstate, domestic, interexchange services provided by nondominant interexchange carriers. Just as we believe that competition is sufficient to ensure that nondominant interexchange carriers' charges for interstate, domestic, interexchange services are just and reasonable, and not unreasonably discriminatory, and to protect consumers, we believe that competitive forces will ensure that nondominant carriers' non-price terms and conditions are reasonable. Moreover, we concur with BellSouth that even non-price tariff

---

<sup>105</sup> See infra section II.C.

<sup>106</sup> See Louisiana PSC Comments at 3; Florida PSC Comments at 1-2; Eastern Tel Reply at 3; see also New York Department of Public Service Reply at 1; Louisiana PSC Reply at 2 (both arguing that the Commission cannot preclude states from regulating intrastate, interexchange services).

<sup>107</sup> 47 U.S.C. § 160(e).

<sup>108</sup> See infra para. 56.

<sup>109</sup> See supra para. 25.

filings can be used to facilitate tacit coordination by carriers.<sup>110</sup> In addition, we reject American Telegram's argument that tariffs concerning nondominant carriers' terms and conditions for interstate, domestic, interexchange service are necessary to protect consumers, because, without such tariffs, each customer seeking to challenge a carrier's terms or conditions would have to show that its individual contract is unlawful.<sup>111</sup> Nondominant interexchange carriers are likely to use standard contracts for most services rather than individually negotiate a different contract with each customer. As a result, following a successful challenge to a carrier's standard service agreement, that carrier is likely to modify the unlawful contract with all of its customers, rather than face additional complaints or litigation in which the previous determination that the contract is unlawful would likely be given preclusive effect. As in nearly every other business that is conducted without tariffs, we find that tariffs by nondominant interexchange carriers for interstate, domestic, interexchange services are not necessary to protect consumers. In the absence of such tariffs, consumers will not only have our complaint process, but will also be able to pursue remedies under state consumer protection and contract laws.<sup>112</sup>

43. For the reasons discussed herein, we conclude that tariffs for the interstate, domestic, interexchange services of nondominant interexchange carriers are not necessary to protect consumers. We therefore conclude that the proposal to adopt complete detariffing meets the second of the statutory forbearance criteria.

**c. Is Forbearance From Applying Section 203 Tariff Filing Requirements to the Interstate, Domestic, Interexchange Services Offered By Nondominant Interexchange Carriers Consistent With the Public Interest?**

**(1) Background**

44. The third statutory criterion requires us to determine whether forbearance from applying Section 203 tariff filing requirements to the interstate, domestic, interexchange services of nondominant interexchange carriers is consistent with the public interest.<sup>113</sup> In making this determination, the statute specifically requires us to consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services.<sup>114</sup> In addition, Section

---

<sup>110</sup> See BellSouth Comments at 18 n.58.

<sup>111</sup> See American Telegram Comments at 3.

<sup>112</sup> See, e.g., California Detariffing Interim Opinion, at Appendix A.

<sup>113</sup> 47 U.S.C. § 160(a).

<sup>114</sup> Id. at § 160(b).

10(b) provides that, "[i]f the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest."<sup>115</sup> In the Notice, the Commission tentatively concluded that it should not permit nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services of nondominant interexchange carriers, because complete detariffing of such services will promote competition and deter price coordination in the interstate, domestic, interexchange market, and will better protect consumers.<sup>116</sup>

## (2) Comments

45. Several commenters, including large consumers of telecommunications services, agree with the Commission's tentative conclusion that complete detariffing of nondominant interexchange carriers' interstate, domestic, interexchange services is in the public interest.<sup>117</sup> These commenters argue that allowing nondominant interexchange carriers to continue to file tariffs undermines the development of vigorous competition because: (1) tariffs delay a carrier's ability to respond to market changes;<sup>118</sup> (2) even under streamlined tariff filing procedures, the preparation, filing, and defense of tariffs imposes substantial uneconomic costs on carriers;<sup>119</sup> (3) absent tariffs, a carrier could no longer refuse to accommodate a customer's request for services tailored to its specific needs on the ground that the request is beyond the scope of the carrier's tariff;<sup>120</sup> (4) tariffs reduce incentives to engage in competitive price discounting, because competitors can respond to any price change before it has the desired effect of capturing market share.<sup>121</sup> Some of these commenters additionally argue that complete detariffing would eliminate the possible invocation of the "filed-rate" doctrine.<sup>122</sup>

---

<sup>115</sup> Id.

<sup>116</sup> Notice, 11 FCC Rcd at 7159-61.

<sup>117</sup> Ad Hoc Users Comments at 4; API Comments at 5-6; Networks Comments at 3; BellSouth Comments at 17-18; Florida PSC Comments at 3-4 (supporting complete detariffing, but arguing that the Commission should use its general regulatory authority, rather than its authority under Section 10, to detariff); Cato Institute Comments at 3-4; GSA Comments at 8-10.

<sup>118</sup> BellSouth Comments at 17.

<sup>119</sup> Id. at 17, Florida PSC Comments at 4; API Comments at 5.

<sup>120</sup> BellSouth Comments at 20; Ad Hoc Users Reply at 10-11; API Reply at 6.

<sup>121</sup> BellSouth Comments at 17-18; API Comments at 5.

<sup>122</sup> It is well established that, pursuant to the "filed-rate" doctrine, in a situation where a filed tariff rate, term or condition differs from a rate, term, or condition set in a non-tariffed carrier-customer contract, the carrier is required to assess the tariff rate, term, or condition. See Armour Packing Co. v. United States, 209 U.S. 56 (1908) (Armour Packing); American Broadcasting Cos., Inc. v. FCC, 643 F.2d 818 (D.C. Cir. 1980); see also