cancellation, the Commission will accept new tariffs and revisions to the carrier's tariffs for mass market interstate, domestic, interexchange services.[248] However, in order to preserve the legitimate business expectations of customers taking service pursuant to long-term service arrangements, and to limit the ability of carriers to unilaterally alter or abrogate such arrangements by invoking the filed rate doctrine, the Commission will not accept new tariffs, or revisions to carriers' existing tariffs, for long-term service arrangements (such as contract tariffs, AT&T's Tariff 12 options, MCI's special customer arrangements, and Sprint's custom network service arrangements) during the transition period. We recognize that many such long-term service arrangements incorporate by reference mass market tariffs. By precluding carriers during the transition period from filing tariffs or revisions to tariffs for long-term service arrangements, we do not intend to limit carriers' ability to file tariffs and tariff revisions for mass market services.

91. Carriers that have on file with the Commission "mixed" tariff offerings[249] that contain services subject to detariffing pursuant to this Order, may comply with this Order either by: (1) cancelling the entire tariff and refiling a new tariff for only those services subject to tariff filing requirements; or (2) issuing revised pages cancelling the material in the tariffs that pertain to those services subject to forbearance.[250]

92. We note that, while complete detariffing will change the legal framework for long-term service arrangements, we do not intend by our actions in this Order to disturb existing contractual or other long-term arrangements. Accordingly, our detariffing policy should not be interpreted to allow parties to alter or abrogate the terms of long-term

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[248] We note that in the Sixth Report and Order, the Commission required carriers with existing services under tariffs on file with the Commission to provide those services consistent with such tariffs until they chose to cancel those tariffs. Sixth Report and Order, 99 FCC 2d at 1034. We believe that it is appropriate to allow nondominant interexchange carriers to revise their tariffs for mass market interstate, domestic, interexchange services on file with the Commission during the nine-month transition period in order to respond to changes in the market.

[249] A "mixed" tariff offering is a tariff that includes services for which the carrier is subject to different tariff filing requirements. One example of a "mixed" tariff offering would be a tariff that contains interstate, domestic, interexchange services for which the carrier is nondominant and therefore prior to the effectiveness of this Order was subject to a one-day tariff filing requirement, as well as international services for which the carrier is nondominant and therefore subject to a one-day tariff filing requirement. Another example would occur where a carrier is dominant for certain services and nondominant for others and includes both types of services in one tariff.

[250] As discussed below in section II.E., we determine that a carrier that has mixed tariff offerings that include interstate, domestic, interexchange services for which the carrier is nondominant, as well as international services for which the carrier is nondominant, must continue to tariff the international portions of such bundled or mixed tariff offerings. Accordingly, such a carrier must comply with this requirement. This requirement also applies to a carrier that has other types of mixed tariff offerings that are affected by this Order, such as where the carrier offers in one tariff interstate, domestic, interexchange services for which it is nondominant with other services for which the carrier is dominant.

arrangements currently on file with the Commission. Because we have determined that our action here does not entitle parties to a contract-based, or other long-term, service arrangement to take a "fresh look" at such arrangements, we need not address API's suggestion that we prohibit nondominant interexchange carriers from demanding that the terms of existing pricing arrangements be extended beyond their currently applicable terms.

93. Finally, we decline to follow Eastern Tel's suggestion that the Commission work with industry during the transition period to establish a standard contract for telecommunications services. As noted above, we believe that nondominant interexchange carriers may use various methods to provide service to their customers. We find that it would be more consistent with the pro-competitive and deregulatory objectives of the 1996 Act to allow carriers and customers freely to determine the most efficient methods for providing interexchange services without tariffs.

E. Tariff Filing Requirements for the International Portion of Bundled Domestic and International Services

1. Background

94. A number of nondominant interexchange carriers currently file bundled tariffs that include both interstate, domestic, interexchange services and international services. In the Notice, the Commission sought comment on whether it should forbear from requiring nondominant interexchange carriers to file tariffs for the international portions of bundled domestic and international service offerings if the Commission forbears from requiring such carriers to file tariffs for their domestic services.[251] The Commission noted that it was reserving for another day, in a separate proceeding, the broader question of whether it should consider generally forbearing from requiring tariffs for international services provided by nondominant carriers.[252]

2. Comments

95. Several commenters support detariffing the international portions of bundled domestic and international services offered by nondominant interexchange carriers.[253] Ad Hoc Users, API and AT&T argue that different tariff filing requirements for the domestic and international portions of bundled offerings would require the artificial partition of unified

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[251] Notice, 11 FCC Rcd at 7160.

[252] Id.

[253] Ad Hoc Users Comments at 11-12; Television Networks Comments at 5; API Comments at 9-10; AT&T October 17 Ex Parte at 3; AT&T October 22 Ex Parte at 2 n.3; NYNEX Comments at 2 n.3.

service arrangements, which would impose substantial costs on both customers and carriers.[254] Ad Hoc Users also contends that different tariff rules would lead to separate minimum revenue requirements for domestic and international services.[255] API and the Television Networks argue that international services offered by nondominant carriers should be detariffed whether or not the international services are bundled with domestic services.[256]

96. Other parties argue that the Commission should not detariff international portions of bundled offerings until nondominant international carriers are relieved generally of tariff filing requirements.[257]

97. AMSC, which provides mobile telecommunications services using satellites that cover the continental United States, Hawaii, Alaska, Puerto Rico, and the U.S. Virgin Islands, as well as adjacent international waters and northern parts of South America, urges the Commission to detariff the international portions of the offerings of nondominant CMRS providers, including its own services.[258] AMSC argues that there is no rationale for maintenance of a tariff filing requirement for the international services of AMSC or other CMRS providers.[259] In addition, AMSC argues that because it offers a mobile service via satellite, it cannot determine whether a call originates in a domestic or international area and that most of its international service is provided to users in international waters.[260]

3. Discussion

98. In the Notice, the Commission indicated that it would consider in a separate proceeding the question of whether it should generally forbear from requiring tariffs for international services provided by nondominant carriers, but it sought comment on whether it

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[254] Ad Hoc Users Comments at 11-12; API Comments at 9-10; AT&T October 17 Ex Parte at 3; AT&T October 22 Ex Parte at 2 n.3.

[255] Ad Hoc Telecommunications Users Comments at 11-12.

[256] Television Networks Comments at 5; API Reply at 12-13.

[257] MCI Comments at 17 n.23; BT North America Comments at 2-3; Cable & Wireless Comments at 5 n.15. MCI expressed concern that, if the Commission detariffed the international portion of bundled or "mixed" tariff offerings, AT&T, which was regulated as dominant in international markets when comments in this proceeding were due, would be freed of tariff regulation in connection with its "'mixed' international offerings." MCI Comments at 17 n.23.

[258] AMSC Comments at 1-4. The Commission detariffed AMSC's domestic services two years ago when it adopted mandatory detariffing for CMRS providers. Regulatory Treatment of Mobile Services Order, 9 FCC Rcd at 1457-58, 1479-80.

[259] AMSC Comments at 3.

[260] Id. at 2.

should forbear from requiring nondominant interexchange carriers to file tariffs for the international portions of bundled domestic and international service offerings.[261] There is not sufficient evidence in the record to make findings that each of the statutory criteria are met to forbear from requiring nondominant interexchange carriers to file tariffs for the international portions of bundled domestic and international service offerings. We therefore believe that detariffing the international portions of bundled domestic and international service offerings would be better addressed as part of a separate proceeding in which the Commission can further examine the state of competition in the international market.[262] Accordingly, we will require nondominant interexchange carriers to continue to file tariffs for the international portions of bundled domestic and international service offerings until we find that the statutory criteria are met for international services provided by nondominant carriers. A nondominant carrier with bundled domestic and international services may comply with this Order either by cancelling its entire tariff and refiling a new tariff only for the international portions of its service offerings or by issuing revised pages that cancel the material in its tariffs which pertains to those services subject to forbearance.[263] Because we will require nondominant interexchange carriers to continue to file tariffs for international services, we need not address MCI's concern that dominant international carriers might be freed from tariff requirements for the international portions of bundled domestic and international services.

99. Our decision here will not impose substantial administrative expenses on carriers or customers. In addition, to respond to concerns about the cost of partitioning bundled offerings, we are modifying our rules to permit nondominant interexchange carriers to cross reference detariffed interstate, domestic, interexchange service offerings in their tariffs for international services for purposes of calculating discounts and minimum revenue requirements.

100. We similarly find that there is insufficient record evidence in this proceeding to detariff the international portions of CMRS services, or to address AMSC's concerns with regard to its specific services at this time.

F. Effect of Forbearance on AT&T's Commitments

1. Background

101. In the AT&T Reclassification proceeding, AT&T made certain voluntary commitments that AT&T stated were intended to serve as transitional arrangements to address

[261] Notice, 11 FCC Rcd at 7160.

[262] See id. at 7160 n.85.

[263] See supra para. 91.

concerns expressed by parties about possible adverse effects of reclassifying AT&T.[264] These commitments concerned: service to low-income and other customers;[265] analog private line and 800 directory assistance services;[266] service to and from the State of Alaska and other regions subject to the Commission's rate integration policy;[267] geographic rate averaging;[268] changes to contract tariffs that adversely affect existing customers;[269] and dispute resolution procedures for reseller customers.[270] In the AT&T Reclassification Order, the Commission accepted AT&T's commitments and ordered AT&T to comply with those commitments.[271]

102. In the Notice, the Commission sought comment on the effects of the Commission's complete detariffing proposal on certain of AT&T's commitments. Specifically, AT&T committed, for a period of three years, to limit any price increases for interstate analog private line and 800 directory assistance services to a maximum increase in any year of no more than the increase in the consumer price index.[272] AT&T also committed, for a period of three years, to file tariff changes increasing the prices of these services on not less than five business days' notice, and to identify clearly such tariff transmittals as affecting the provisions of this commitment.[273] In the Notice, the Commission tentatively concluded that AT&T should remain subject to these commitments for the specified term of the commitments.[274] The Commission therefore tentatively concluded that if we were to adopt

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[264] AT&T Reclassification Order, 11 FCC Rcd at 3283-85, 3364-68.

[265] AT&T committed for a period of three years to offer optional calling plans, whose rates are constrained, to residential subscribers, and to provide advance notice of changes to such plans. Id. at 3315-18, 3365-66.

[266] AT&T committed for a period of three years to limit rate increases for these services to the rate of increase of the consumer price index, and to provide advance notice of such rate increases. Id. at 3327-28, 3365.

[267] AT&T committed to continue to comply with the Commission's rate integration policies and with the Commission's orders regarding AT&T's purchase of Alascom, Inc. Id. at 3333-34, 3364-65.

[268] AT&T committed, inter alia, to provide advance notice of any tariffs that deaverage interstate, residential direct dial rates. Id. at 3333-34, 3349, 3365.

[269] AT&T committed, inter alia, to comply with an agreement, for twelve months, between AT&T and the Telecommunications Resellers Association regarding changes to existing term plans. Id. at 3343-45, 3367-68.

[270] AT&T committed, inter alia, to establish a quick and efficient process to resolve disputes with resellers. Id. at 3344-45, 3368.

[271] Id. at 3292-93, 3356, 3357.

[272] Id. at 3327-28, 3365.

[273] Id.

[274] Notice, 11 FCC Rcd at 7163-64.

detariffing, AT&T should be required to continue to file tariffs for these services for the term of its commitments.[275]

103. In addition, AT&T voluntarily committed, for a period of three years, to offer two optional calling plans designed to mitigate the impact of future increases in basic schedule or residential rates.[276] The first plan is targeted to low-income customers, and the second is targeted to low-volume consumers, but is generally available to all residential customers. Moreover, AT&T agreed to file on not less than five business days' notice tariffs changing the structure of these plans or significantly increasing the cost of its basic residential service.[277]

2. Comments

104. The Pennsylvania PUC contends that AT&T should remain subject to all of its voluntary commitments as a safeguard, because AT&T has only been classified as a nondominant interexchange carrier for a short period of time.[278] The Florida PSC suggests that AT&T should remain subject to its three-year commitment to offer calling plans intended for low-income and low-volume consumers in order to eliminate concerns about rate increases for basic long-distance rates.[279] In contrast, several interexchange carriers contend that AT&T should not be bound by any commitments that do not apply equally to all nondominant interstate, interexchange carriers.[280]

105. AT&T states that it will abide by its commitments concerning unilateral changes to contract tariffs, but argues that it should not be subject to any additional burdens regarding contract tariffs that are not imposed on other nondominant carriers.[281] AT&T did not address its other commitments in its comments in this proceeding.

3. Discussion

106. We conclude that we should adopt the tentative conclusion in the Notice that AT&T should continue to comply with its commitments relating to 800 directory assistance

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[275] Id.

[276] AT&T Reclassification Order, 11 FCC Rcd at 3315-16.

[277] Id. at 3317-18.

[278] Pennsylvania PUC Comments at 10 n.3.

[279] Florida PSC Comments art 15-16.

[280] MCI Comments at 18; LCI Comments at 5; LDDS Reply at 14-15.

[281] AT&T Comments at 36-37.

and analog private line services. In the AT&T Reclassification Order, the Commission acknowledged that there was evidence in the record that AT&T may have the ability to control prices for 800 directory assistance service and analog private line services, but also noted that these services generate de minimis revenues when compared to total industry revenues.[282] The Commission stated, therefore, that the evidence regarding AT&T's ability to control prices for these specific services did not mean that AT&T has market power in the interstate, domestic, interexchange market as a whole.[283] The Commission further stated that it believed that "AT&T's voluntary commitments will effectively restrain AT&T's exercise of any market power it may have with respect to these narrow service segments."[284] In light of the Commission's conclusions in the AT&T Reclassification Order, and AT&T's statements that its commitments serve as a transitional mechanism, we find that detariffing of analog private line and 800 directory assistance services at this time is not in the public interest, and would not meet the statutory forbearance criteria. We, therefore, require AT&T to continue to file tariffs for these services in accordance with, and for the specified term of, its commitments. AT&T will be required to cancel its tariffs for these services within nine months of the end of its three-year commitment, consistent with the requirements we have adopted for other nondominant interexchange carriers.[285]

107. AT&T has not argued in this proceeding that it should be relieved of its commitment in the AT&T Reclassification Order to offer optional rate plans targeted at low-income and other residential customers.[286] Accordingly, we require that AT&T continue to offer an optional calling plan targeted to low-income customers and a plan targeted to low-volume customers, but which is generally available to all residential customers, until the expiration of its original commitment in the fall of 1998.[287] In addition, we will continue to monitor AT&T's compliance with its commitments to implement a consumer outreach program to notify its customers of the availability of such plans, and to offer for three years

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[282] AT&T Reclassification Order, 11 FCC Rcd at 3347. The Commission also stated that because other entities had expressed a desire to offer competitive 800 directory assistance service and because the revenues gained from this service are de minimis for AT&T, there was not a significant danger that AT&T would substantially raise prices for this service to the detriment of consumers. Id. at 3326-27. With respect to AT&T's analog private line services, the Commission stated that AT&T's position is unlikely to continue for long because the use of this service is declining with the advent of new digital technology. Id. at 3327.

[283] Id. at 3347.

[284] Id. The Commission also stated that it believes "that these commitments effectively address any concerns raised with respect to AT&T's provision of 800 directory assistance and analog private line services." Id. at 3327-28.

[285] See supra section II.D.

[286] See AT&T Reclassification Order, 11 FCC Rcd at 3315-18, 3365-67.

[287] Id.

an interstate optional calling plan that will provide residential customers a postalized rate of no more than $0.35 per minute for peak calling and $0.21 per minute for off-peak.[288]

108. We note that our decision to preclude nondominant interexchange carriers from filing tariffs for interstate, domestic, interexchange services would effectively eliminate AT&T's commitments to file changes to such optional plans and to file certain changes to its average residential interstate direct dial services on not less than five business days' notice.[289] Accordingly, consistent with AT&T's intent that its commitments serve as a transitional arrangement, we require AT&T, for the period of its commitments, to notify consumers of changes to such plans, or of changes to its average residential interstate direct dial services, under the circumstances specified in the AT&T Reclassification Order,[290] on not less than five business days' notice.

109. Finally, we conclude that actions in this proceeding do not affect AT&T's other commitments. In our Geographic Rate Averaging Order, we found that the rules adopted in that proceeding would require AT&T to provide interexchange service at geographically averaged and integrated rates.[291] We therefore released AT&T from its commitments relating to rate integration and geographic rate averaging.[292] We expressly did not release AT&T from its more specific commitment to comply with the Commission's orders associated with AT&T's purchase of Alascom.[293] We believe that detariffing would not affect these commitments. AT&T's commitment regarding dispute resolution procedures for resellers has no expiration date, and is also unaffected by detariffing.[294] Finally, AT&T's commitments concerning changes to contract tariffs, quarterly performance reports on reseller order

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288 Id.

289 AT&T committed to file changes to its average residential interstate direct dial services on not less than five business days' notice if those changes, (1) increase rates more than 20% for customers making more than $2.50 in calls per month, or (2) increase average monthly charges more than $.50 per month for customers making less than $2.50 in calls per month, and to clearly identify such tariff transmittals as affecting the provisions of this commitment. Id. Additionally, AT&T committed to file tariff changes to its optional calling plans on not less than five business days' notice, and only in the event of a significant change in the structure of the interexchange industry (including a reprice or restructure of access rates). Id. AT&T also committed to identify such tariff transmittals as affecting the provisions of this commitment. Id.

290 Id.

291 Geographic Rate Averaging Order, 11 FCC Rcd at 9600.

292 Id.

293 Id.; see also AT&T Reclassification Order, 11 FCC Rcd at 3334 n.329.

294 Id. at 3344-45, 3368.

processing, and providing an ombudsman to resolve reseller complaints, expire by their own terms in the fall of 1996.[295]

G. Additional Forbearance Issues

110. The Secretary of Defense raises two concerns regarding the National Security and Emergency Preparedness (NSEP) system. Specifically, two services, Telecommunications Services Priority (TSP) and Government Emergency Telecommunications Service (GETS) are now provided by nondominant interexchange carriers pursuant to tariffs. Under tariffs filed to provide TSP service, circuits with NSEP designations receive priority restoral and provisioning.[296] The Secretary of Defense argues that TSP tariffs not only establish a price for the service, but also serve as a clear sign that a carrier understands and accepts the responsibilities imposed by the Commission's TSP rules.[297] The Secretary of Defense also expressly acknowledges, however, that TSP service could be provided on the basis of negotiated contracts.[298] Consequently, we find no basis in the record for excluding TSP services from the requirements of this Order. The Secretary of Defense expresses concern, however, that carriers may not be aware of the TSP rules.[299] While we concur with the Secretary of Defense that carriers must understand their responsibilities under our TSP rules, and that carriers should price such services, before an emergency occurs, we do not believe that tariffs are necessary to fulfill these functions. Rather, we conclude that carriers will be adequately informed of our TSP rules and regulations when contracts for TSP services are negotiated. In addition, we reaffirm our commitment to enforce the TSP rules and regulations, and expect that officials responsible for the NSEP TSP System will report any violations of these rules to us.

111. The second issue raised by the Secretary of Defense concerns GETS, which provides NSEP-authorized personnel priority call completion over the public switched network. The Secretary of Defense seeks assurance that GETS would not be deemed to constitute unreasonable discrimination in violation of Section 202(a) of the Communications Act.[300] The Secretary of Defense states that the Office of the Manager of the National

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[295] AT&T committed, inter alia, to comply with an agreement, for twelve months, between AT&T and the Telecommunications Resellers Association regarding changes to existing term plans. Id. at 3343-45, 3367-68.

[296] Policies and procedures for the TSP system are set forth at 47 C.F.R. part 64, app. A.

[297] Secretary of Defense Comments at 2.

[298] Id.

[299] Id.

[300] Id. at 3; see also Letter from James R. Keegan, Chief, Domestic Facilities Division, Common Carrier Bureau, Federal Communications Commission, to Carl Wayne Smith, Chief Regulatory Counsel, Telecommunications, DOD, OMNCS (Aug. 30, 1995) (dismissing as moot request for declaratory ruling that

Communications System wrote to the Commission on November 29, 1993, asking for a declaratory ruling that GETS does not violate Section 202(a).[301] The Commission later determined that the request for a declaratory ruling was moot, because "[l]awful tariffs implementing [GETS] have gone into effect."[302] The Secretary of Defense is concerned that the permissibility of GETS is dependent on filed tariffs.[303] We conclude, however, that our decision to forbear does not affect the nondiscrimination provisions of Section 202(a). Thus, to the extent that GETS did not constitute unreasonable discrimination under tariffs, the service will not violate Section 202(a) following detariffing.

112. APCC urges the Commission not to take any action in this proceeding that may be inconsistent with or jeopardize the Commission's ongoing inquiry into operator services.[304] In the Notice in this proceeding, the Commission indicated that it would consider operator services in another proceeding and therefore expressly stated that it was not addressing the issue of forbearance from applying Section 226 of the Communications Act, which requires operator service providers (OSP) to file informational tariffs.[305] In the Nondominant Filing Order, the Commission, in order to minimize tariff filing burdens on carriers, permitted carriers that provide both operator services and other services to file one, single tariff under Section 203, rather than separate tariffs under Sections 203 and 226, as long as the tariff meets the requirements of both sections.[306] As a result, the largest nondominant interexchange carriers, or their affiliates, have filed tariffs for interstate and international operator services pursuant to Section 203 rather than Section 226.[307] Our decision to forbear from applying Section 203 tariff filing requirements to nondominant interexchange carriers for interstate, domestic, interexchange services does not relieve such carriers of the obligation to file informational tariffs pursuant to Section 226. Accordingly, any carrier that has included tariff information concerning interstate and international operator services in a Section 203 tariff must refile an informational tariff for such services, consistent with Section 226, upon

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GETS is not a violation of Section 202(a) of the Act) (filed as an attachment to the Comments of the Secretary of Defense) (Keegan Letter).

[301] Secretary of Defense Comments at 3; see also Keegan Letter.

[302] Keegan Letter; see also Secretary of Defense Comments at 3.

[303] Secretary of Defense Comments at 3.

[304] APCC Comments at 3.

[305] Notice, 11 FCC Rcd at 7154; see also Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92-77, Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 7274 (1996); Public Notice, DA 96-1695 (rel. Oct. 10, 1996) (seeking further comment).

[306] Nondominant Filing Order, 8 FCC Rcd at 6755.

[307] See Billed Party Preference for InterLATA 0+ Calls, 11 FCC Rcd at 7296 n.102.

cancelling such Section 203 tariff. Thus, our actions in this proceeding will not dictate the outcome of the Commission's inquiry into operator services.

III. BUNDLING OF CUSTOMER PREMISES EQUIPMENT

113. In the Computer II proceeding, the Commission adopted a rule requiring all common carriers to sell or lease CPE separate and apart from such carriers' regulated communications services, and to offer CPE solely on a non-tariffed basis.[308] Carriers previously had provided CPE to customers as part of a bundled package of services.[309] The Commission required carriers to separate the provision of CPE from the provision of transmission services, because it found that carriers' continued bundling of telecommunications services with CPE could force customers to purchase unwanted CPE in order to obtain necessary transmission services, thus restricting customer choice and retarding the development of a competitive CPE market.[310] The Commission acknowledged, however, that "[i]f the markets for components of [a] commodity bundle are workably competitive, bundling may present no major societal problems so long as the consumer is not deceived concerning the content and quality of the bundle."[311]

114. In the Notice, the Commission tentatively concluded that, in light of the development of substantial competition in the markets for CPE and interstate long-distance services, it was unlikely that nondominant interexchange carriers could engage in the type of anticompetitive conduct that led the Commission to prohibit the bundling of CPE with the provision, inter alia, of interstate, interexchange services.[312] The Commission also tentatively

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[308] Amendment of Section 64.702 of the Commission's Rules and Regulations, CC Docket No. 20828, Final Decision, 77 FCC 2d 384, 496 (1980) (Second Computer Inquiry or Computer II), recon., Memorandum Opinion and Order, 84 FCC 2d 50 (1980), further recon., Memorandum Opinion and Order on Further Reconsideration, 88 FCC 2d 512 (1981); aff'd sub nom., Computer and Communications Indus. Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983); Memorandum Opinion and Order on Further Reconsideration, FCC 84-190 (rel. May 4, 1984). Section 64.702(e) of our rules provides: "Except as otherwise ordered by the Commission, after March 1, 1982, the carrier provision of customer-premises equipment used in conjunction with the interstate telecommunications network shall be separate and distinct from provision of common carrier communications services and not offered on a tariffed basis." 47 C.F.R. § 64.702(e).

[309] Second Computer Inquiry, 77 FCC 2d at 442.

[310] Id. at 443 n.52 ("In regulated markets characterized by dominant firms [like the telecommunications industry], there may be an incentive . . . to use bundling as an anti-competitive marketing strategy, e.g., to cross-subsidize competitive by monopoly services, that restricts both consumer freedom of choice as well as the evolution of a competitive marketplace.").

[311] Id.

[312] Notice, 11 FCC Rcd at 7186. The Commission stated that the CPE market "is now widely recognized to be fully competitive." Id. at 7185 (citations omitted). The Commission also noted that it had previously determined that AT&T no longer possessed market power in the overall interstate, domestic, interexchange

concluded that allowing nondominant interexchange carriers to bundle CPE with interstate, interexchange services would promote competition by allowing such carriers to create attractive service/equipment packages. The Commission therefore proposed to amend Section 64.702(e) of the Commission's rules to allow nondominant interexchange carriers to bundle CPE with interstate, interexchange services.[313] The Commission sought comment on this proposal,[314] and on the effect that the proposed amendment of Section 64.702(e) would have on the Commission's other policies or rules.[315]

115. A number of commenters addressing this issue support the Commission's proposal to amend Section 64.702(e) to allow nondominant interexchange carriers to bundle CPE with the provision of interstate, interexchange services,[316] while other parties oppose such an amendment.[317] Many commenters further argue that if the Commission permits bundling

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market, and previously concluded that the business services market was "substantially competitive." Id. at 7185-86 (citations omitted).

[313] Id. at 7186.

[314] Id.

[315] Id. The Commission also sought comment on: (1) whether interexchange carriers should be required to offer separately, unbundled interstate, interexchange services on a nondiscriminatory basis if they are permitted to bundle CPE with the provision of interstate, interexchange services; and (2) whether and how the anticipated entry of local exchange carriers, in particular the BOCs, into the market for interstate, interexchange services should affect the Commission's analysis. Id. at 7186-87.

[316] See, e.g., AT&T Comments at 26-30; Sprint Comments at 26-29; LDDS Comments at 17-19; GCI Comments at 5-6; Excel Comments at 5-6; GTE Comments at 10-11; Bell Atlantic Comments at 5-7; PacTel Comments at 11-12; NYNEX Comments at 6-7; SBC Comments at 6-8; Frontier Comments at 7-8; USTA Comments at 3-4; US West Comments at 7-9; Rural Telephone Coalition Comments at 15; Cato Institute Comments at 4; TRA Comments at 40-42; Florida PSC Comments at 18-19; Louisiana PSC Comments at 9-11; Compaq Comments at 3-5; Ad Hoc Users Comments at 12-13; Ohio Consumers' Counsel Comments at 8-9; API Comments at 11-17. MCI supports a temporary suspension of the application of the rule for a one year trial period. MCI Comments at 24-25.

[317] ITAA Comments at 3-6; IDCMA Comments at 1-41; Consumer Electronics Retailers Coalition Comments at 2-14; Alabama PSC Comments at 9-11; Letter from William J. Johnson, Director of Telecommunications, Woolworth Corporation to William Caton, Acting Secretary, Federal Communications Commission (July 5, 1996); Letter from John A. Anheier, Director of Information Systems Services, Payless Cashways, Inc., to William Caton, Acting Secretary, Federal Communications Commission (July 9, 1996); Letter from William L. Salter, Sears, Roebuck and Co., to Reed Hundt, Chairman, Federal Communications Commission (Aug. 15, 1996); Letter from Bradley Stillman, Telecommunications Policy Director, Consumer Federation of America, to Reed Hundt, Chairman, Federal Communications Commission (Aug. 16, 1996); Letter from Jonathan Jacob Nadler, Counsel to IDCMA, Maura Colleton, Vice President -- ISEC Division, ITAA, John W. Pettit, Counsel to Consumer Electronics Retailers Coalition, Don Gilbert, Senior Vice President, National Retail Federation, and Robert M. McDowell, Deputy General Counsel, ACTA, to Reed Hundt, Chairman, Federal Communications Commission (Oct. 15, 1996); see also ex parte letters filed in October 1996 by the following value added resellers: Digital Connections Inc.; Datanode, Inc.; Network Communications Incorporated; Atrion

of CPE with interstate, interexchange services, it should require nondominant interexchange carriers to continue to offer unbundled interstate, interexchange services separately.[318]

116. In its comments, AT&T strongly supported the Commission's proposal, but suggested that it did not go far enough, and urged the Commission also to eliminate restrictions on single-priced, bundled packages of enhanced and interexchange services offered by nondominant interexchange carriers.[319] These restrictions (which are not codified in the Commission's rules) were adopted by the Commission in the Computer II proceeding.[320] AT&T maintains that such restrictions are no longer justified, in light of the Commission's findings regarding the competitiveness of the interexchange market, and because the enhanced services market is even more "robust, competitive and diverse" than the CPE market.[321] AT&T concludes that "the rationale underlying the Commission's proposal to eliminate the bundling restrictions for CPE and interexchange services applies equally to enhanced services,"[322] and it therefore urges the Commission to institute a supplemental notice of proposed rulemaking "to eliminate the restrictions against the bundling of interexchange services and enhanced services by nondominant interexchange carriers."[323]

117. ITAA opposes AT&T's request on the grounds that enhanced service providers ("ESPs") require access to unbundled network services at competitive prices and on

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Communications Resources; Ficomp Systems, Inc.; Western Data Group, Inc.; ACA Communications; Data Connect Enterprise; Ficomp, Inc.; Smith Communications, Inc.; The Datastore Incorporated; Commercial Telecom Systems, Inc.; Atlanta Datacom, Inc.; Main Resource Incorporated; Alternative Data Communication Sources, Inc.; Source Communications Group; Voice & Data Networks, Inc.; NOVA Electronics Data Inc.; Triangle Technologies, Inc.; Glasgal Communications, Inc; Jencom, Inc.; Datatron Network Systems, Inc.; Quantum Leap Incorporated. Finally, the Pennsylvania PUC recommended that the Commission defer action on this proposal to allow consumers to adjust gradually to a competitive environment. Pennsylvania PUC Comments at 13.

[318] GTE Comments at 11; GCI Comments at 6; Frontier Comments at 8; Florida PSC Comments at 19; Consumer Electronics Retailers Coalition Comments at 12-13; Ad Hoc Users Reply at 14; USTA Comments at 4; TRA Comments at 41-42; US West Comments at 9; PacTel Comments at 11; Tennessee Attorney General Comments at 6; API Reply at 15; Sprint Comments at 28; Louisiana PSC Comments at 10; LDDS Comments at 18; NYNEX Comments at 7. But see AT&T Comments at 27; Compaq Comments at 4-5; Cato Institute Comments at 5.

[319] AT&T Comments at 28. In its comments, MCI assumed that the proposed amendment of Section 64.702(e) would allow bundling of transmission with enhanced services as well as CPE or "any other product or service that the carrier chooses to include in a bundle." MCI Comments at 22-23 n.33.

[320] See Second Computer Inquiry, 77 FCC 2d at 475.

[321] AT&T Comments at 29-30.

[322] Id. at 28-29.

[323] Id. at 30.

nondiscriminatory terms in order to succeed. ITAA claims that there are only three nationwide facilities-based carriers, which ITAA contends collectively control the bulk of the interexchange market, from which ESPs can purchase the ubiquitous transmission services they require.[324] ITAA maintains that AT&T's proposal would chill the growth of the enhanced services market by making ESPs vulnerable to discrimination by carriers in favor of their own enhanced services.[325]

118. We conclude that, at this time, we should defer action on our earlier proposal to eliminate the CPE unbundling rule. We find that AT&T's request presents issues similar to those raised in the Notice relating to the bundling of CPE with interstate, interexchange services by nondominant interexchange carriers. AT&T's request, however, also raises issues that have not been addressed in the record before us. Because we believe it is appropriate to consider the Commission's prohibitions against bundling CPE and enhanced services with interstate, interexchange services together, in a single, consolidated proceeding, we decline to act on the Commission's proposal in the Notice to amend Section 64.702(e) of the Commission's rules to allow nondominant interexchange carriers to bundle CPE with interstate, interexchange services at this time. We intend to issue a further notice of proposed rulemaking that will address the continued applicability of the prohibitions against the bundling of both CPE and enhanced services with interstate, interexchange services by nondominant interexchange carriers.

IV. OTHER ISSUES

A. Pricing Issues

1. Background

119. In the AT&T Reclassification Order, the Commission found the evidence in the record regarding the existence of alleged tacit price coordination among interexchange carriers for basic residential services, or residential services generally to be inconclusive and conflicting.[326] The Commission concluded that, if there were tacit price coordination in the interexchange market, the problem was generic to the industry and would be better addressed by removing regulatory requirements that may have facilitated such conduct.[327] In the Notice, the Commission noted that its reclassification of AT&T removed one such regulatory

[324] ITAA Reply at 7-8.

[325] Id.

[326] AT&T Reclassification Order, 11 FCC Rcd at 3313-15.

[327] Id. at 3314-15.

requirement -- the longer advance notice period applicable only to AT&T.[328] The Commission also observed that the 1996 Act would provide the best solution to the problem of tacit price coordination, to the extent that it exists currently, by allowing for competitive entry in the interstate interexchange market by the facilities-based BOCs.[329] Moreover, the Commission tentatively concluded that complete detariffing of the interstate, domestic, interexchange services of nondominant interexchange carriers would discourage price coordination by eliminating carriers' ability to ascertain their competitors' interstate rates and service offerings from publicly-available tariffs filed with the Commission.[330] The Commission sought comment on these issues.[331]

2. Comments

120. BOCs and other commenters argue that there is substantial evidence of tacit price coordination by the largest interexchange carriers, which the BOCs claim have engaged in price signaling and increased basic rates in lock-step, despite decreasing costs.[332] Others, including a number of interexchange carriers, contend that there is no evidence of tacit price coordination, and that interexchange carriers have raised their rates for basic services because their rates were artificially kept below cost by price caps.[333]

121. Several commenters argue that the best remedy for price coordination, to the extent it exists, is competitive entry in the interstate, domestic, interexchange market.[334] Other commenters argue that because the BOCs have bottleneck control over access facilities,

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[328] Notice, 11 FCC Rcd at 7183-84.

[329] Id. (noting that increasing the number of facilities-based carriers should make tacit price coordination more difficult).

[330] Id.

[331] Id.

[332] BellSouth Comments at 4-16; Bell Atlantic Comments at 2-3; NYNEX Comments at 4; PacTel Comments at 10-11; Pennsylvania PUC Comments at 11; Market Dynamics Comments at 16; National Association of Development Organizations Comments at 5.

[333] AT&T Comments at 23-24; AT&T Reply at 6-9; MCI Comments at 19-22; MCI Reply at 18-19; Sprint Reply at 9-17; LDDS Comments at 11-12, 19; ACTA Comments at 11-12; 15-16.

[334] Ameritech Comments at 9; BellSouth Comments at 22-24; Bell Atlantic Comments at 3; PacTel Comments at 10; NYNEX Comments at 4; Florida PSC Comments at 15; Ohio Consumers' Counsel Comments at 8; National Association of Development Organizations Comments at 5-6; National Black Data Processing Association Comments at 1-2; CSE Comments at 4-5; USTA Comments at 2-3; Chrysler Minority Dealers Association Comments at 1; Association for the Study of Afro-American Life and History Comments at 1-2.

premature BOC entry may impede competition, because the BOCs will have unfair advantages over their competitors, forcing smaller carriers from the market.[335]

122. Some commenters suggest that the Commission's proposal to adopt complete detariffing will impede price coordination because tariffs enable carriers to ascertain their competitors' rates, terms and conditions for service at one, central location.[336] Others argue that complete detariffing will have little effect on price coordination because carriers will be able to keep track of their competitors' rates through other methods, such as through competitors' advertising and because the current streamlined tariff filing requirements prevent price signaling.[337]

3. Discussion

123. We find the evidence in the record regarding tacit price collusion to be inconclusive. While data presented by Bell South and Bell Atlantic could be consistent with the existence of tacit collusion among interexchange carriers,[338] these data are also consistent with competition among interexchange carriers. For example, the fact that increases in AT&T's basic rates have been matched almost immediately by MCI and Sprint is consistent with a theory of evolving competition in this marketplace. Between 1991 and 1995, while interexchange carriers were increasing basic rates, they were also lowering prices to higher volume customers through increases in discounts offered via discount plans. A Commission staff study of best available rates from AT&T to callers with different calling patterns shows that between 1991 and 1995, rates for customers with long-distance bills exceeding $10.00 per month have decreased by between 15 and 28 percent.[339] By contrast, the best prices available to customers with less than $10.00 per month of calls[340] have risen about 16 percent since 1991.[341] This pattern is consistent with the view that, over time, interexchange carriers began

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[335] AT&T Comments at 24-25; ACTA Comments at 15-16; Alabama PSC Comments at 9.

[336] BellSouth Comments at 17-18; Florida PSC Comments at 3; Cato Institute Comments at 4; API Comments at 5.

[337] See MCI Comments at 12; Sprint Comments at 20-21; Casual Calling Coalition Comments at 6-7; Business Telecom Comments at 6; ACTA Comments at 11-12; Frontier Comments at 3-4; CFA/CU Comments at 7; LDDS Comments at 11-12; PacTel Comments at 4-5; Ameritech Comments at 8; TRA Comments at 16-17; GCI Comments at 4; Ohio Consumers' Counsel Comments at 8; Louisiana PSC Comments at 8; Pennsylvania PUC Comments at 8-9, 11; see also supra note 29.

[338] See BellSouth Comments at 4-16; Bell Atlantic Comments at 2-3.

[339] AT&T Reclassification Order, 11 FCC Rcd at 3312, 3362-63.

[340] These prices are based on the basic rates, because no discount plans were generally available for those customers making less than $10.00 per month in calls.

[341] AT&T Reclassification Order, 11 FCC Rcd at 3313.

to compete more vigorously for high volume users than for low volume users. Such a market strategy would tend to result in lower prices for higher volume, more price sensitive customers, and higher prices for lower volume, less price sensitive customers.

124. Other data not discussed by BellSouth also are more suggestive of competition than collusion among interexchange carriers. For example, in 1994 nearly 30 million customers changed their presubscribed interexchange carriers,[342] which is indicative of competition among interexchange carriers for customers. In addition, between 1989 and 1992, advertising expenditures by all interexchange carriers increased 85 percent, to 1.6 billion dollars, which is further evidence of increased competition among interexchange carriers and not tacit collusion.[343]

125. Based on the record in this proceeding, we find the evidence of tacit price coordination to be inconclusive and conflicting. In addition, we conclude that the detariffing rules we adopt today, together with additional competitive entry consistent with the provisions of the 1996 Act, provides the best solution to tacit price coordination to the extent it exists. Regarding the Alabama PSC's concern that the BOCs will have unfair advantages over their competitors and thereby will force small carriers from the market, we note that the 1996 Act provides safeguards to prevent the BOCs from engaging in anticompetitive conduct to the detriment of long-distance competitors, some of which are small nondominant interexchange carriers.[344] We will address implementation of these safeguards in upcoming orders.[345]

B. Contract Tariff Issues

126. In the AT&T Reclassification proceeding, commenters raised certain issues regarding contract tariffs. The Commission deferred consideration of those issues to this proceeding because it found that those issues applied to all interexchange carriers and were

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[342] See id. at 3305.

[343] Michael E. Porter, Competition in the Long Distance Telecommunications Market, at 6 (Monitor Company Sept. 1993), appended to Motion for Reclassification of American Telephone & Telegraph Company as a Nondominant Carrier, CC Docket No. 79-252, filed by American Telephone and Telegraph Co. (Sept. 22, 1993).

[344] See 47 U.S.C. § 272.

[345] See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, CC Docket No. 96-149, Notice of Proposed Rulemaking, FCC 96-308 (rel. July 18, 1996); Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, Notice of Proposed Rulemaking, 11 FCC Rcd 9054 (1996).

unrelated to the determination of whether AT&T possessed market power.[346] In the Notice, the Commission noted that those issues would largely be mooted if, as proposed in the Notice, the Commission were to adopt a complete detariffing policy.[347] The Commission nevertheless sought comment on those and other issues, because such issues would remain relevant if we determined not to forbear from requiring nondominant interexchange carriers to file tariffs.[348]

127. MCI and GTE agree that the tariff-related issues raised in the Notice would be largely moot if the Commission adopts complete detariffing.[349] AT&T argues, however, that one of these issues, application of the "substantial cause" test would not be moot following adoption of a complete detariffing policy, because the substantial cause test is an integral part of the "just and reasonable" standard in section 201(b).[350] AT&T argues that because the Commission is not proposing to forbear from applying Section 201(b), the "substantial cause" test would still apply even if the Commission adopts a complete detariffing policy.[351] No other party commented on whether these issues would remain relevant if we were to adopt a complete detariffing policy.

128. Because we are implementing complete detariffing, we conclude that the contract tariff-related issues raised in the Notice are largely moot with respect to interstate, domestic, interexchange services offered by nondominant interexchange carriers. We reject AT&T's argument that the substantial cause test would continue to apply regardless of whether we order complete detariffing. In the RCA Americom Decisions, the Commission recognized that a dominant carrier's proposal "to modify extensively a long term service tariff may present significant issues of reasonableness under Section 201(b) that are not ordinarily raised in other tariff filings."[352] Accordingly, the Commission held that a carrier's unilateral tariff revisions that alter material terms and conditions of a long-term service tariff will be considered reasonable only if the carrier can show "substantial cause" for the revision.[353]

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[346] AT&T Reclassification Order, 11 FCC Rcd at 3342.

[347] Notice, 11 FCC Rcd at 7187.

[348] Id.

[349] MCI Comments at 27; GTE Comments at 8 n.11.

[350] AT&T Comments at 33-34.

[351] Id.

[352] RCA American Communications Inc. Revisions to Tariff F.C.C. Nos. 1 and 2, Memorandum Opinion and Order, 84 FCC 2d at 358; Memorandum Opinion and Order, 86 FCC 2d at 1201.

[353] RCA American Communications Inc. Revisions to Tariff F.C.C. Nos. 1 and 2, Memorandum Opinion and Order, 86 FCC 2d at 1201-1202; see also First Interexchange Competition Order, 6 FCC Rcd at 5898 n.155; February 1995 Interexchange Reconsideration Order, 10 FCC Rcd at 4574 n.51 (indicating that the substantial cause test would also apply to unilateral tariff modifications made by nondominant carriers).

While we recognize that the Commission may be called upon to examine the reasonableness of a nondominant interexchange carrier's rates, terms and conditions for interstate, domestic, interexchange services, for example, in the context of a Section 208 complaint proceeding, we find that following complete detariffing, we will no longer have to assess the reasonableness of modifications by such carriers to their tariffs for interstate, domestic, interexchange services. Thus, although the substantial cause test may continue to apply in other contexts, the test will no longer apply to unilateral tariff modifications by nondominant interexchange carriers regarding their interstate, domestic, interexchange services.

V. FINAL REGULATORY FLEXIBILITY ANALYSIS

129. As required by Section 603 of the Regulatory Flexibility Act (RFA),[354] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice.[355] The Commission sought written public comments on the proposals in the Notice, including on the IRFA.[356] The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Pub. L. No. 104-121, 110 Stat. 847 (1996).[357]

A. Need for and Objectives of the Proposed Rules

130. In the 1996 Act, Congress sought to establish "a pro-competitive, de-regulatory national policy framework" for the United States telecommunications industry.[358] One of the principal goals of the telephony provisions of the 1996 Act is promoting increased competition in all telecommunications markets, including those that are already open to competition, particularly long-distance services markets. Integral to this effort to foster competition is the requirement that the Commission forbear from applying any regulation or any provision of the Communications Act if the Commission makes certain specified findings.[359]

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[354] 5 U.S.C. § 603

[355] Notice, 11 FCC Rcd at 7192-93.

[356] Id. at 7193.

[357] Subtitle II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. § 601 et seq.

[358] Joint Explanatory Statement at 113.

[359] 47 U.S.C. § 160. Section 10 of the Communications Act provides, however, that the Commission may not forbear from applying new Section 251(c) related to interconnection (except as provided in Section 251(f)) and new Section 271 related to BOC provision of interLATA services until the Commission determines that those requirements have been fully implemented. Id.

131. In this Order, the Commission proposes to exercise its forbearance authority under Section 10 of the Communications Act[360] to detariff completely the interstate, domestic, interexchange services of nondominant interexchange carriers.[361] In addition, the Commission promulgates rules in this Order that will require nondominant interexchange carriers to make available to the public information on the rates, terms, and conditions for all of their interstate, domestic, interexchange services in order to aid enforcement of Section 254(g) of the Communications Act.[362] The objective of the rules adopted in this Order is to implement as quickly and effectively as possible the national telecommunications policies embodied in the 1996 Act and to promote the development of competitive, deregulated markets envisioned by Congress. In doing so, we are mindful of the balance that Congress struck between this goal of bringing the benefits of competition to all consumers and its concern for the impact of the 1996 Act on small business entities.

B. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

132. In the Notice, the Commission performed an IRFA.[363] In the IRFA, the Commission found that the rules it proposed to adopt in this proceeding may have an impact on small business entities as defined by section 601(3) of the RFA.[364] In addition, the IRFA solicited comment on alternatives to the proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding.[365]

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[360] Id.

[361] In this Order, 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 CPE with interstate, interexchange telecommunications services. The Commission also raised issues in the Notice 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 Geographic Rate Averaging Order, 11 FCC Rcd 9564. We will address the market definition and separation requirements in an upcoming order.

[362] New Section 254(g), adopted as part of the 1996 Act, requires that a provider of interexchange telecommunications services charge its subscribers in rural and high cost areas rates that do not exceed the rates that the carrier charges subscribers in urban areas (i.e., that rates be geographically averaged). Section 254(g) also requires that providers of interexchange telecommunications services charge subscribers in each State rates that do not exceed the rates it charges subscribers in another State (i.e., that rates be integrated). 47 U.S.C. § 254(g); see also Geographic Rate Averaging Order, 11 FCC Rcd 9564 (implementing Section 254(g)).

[363] Notice, 11 FCC Rcd at 7192-93.

[364] Id. at 7193.

[365] Id. at 7193.

1. Comments on the IRFA

133. No comments specifically address the Commission's initial regulatory flexibility analysis. Several parties, however, assert in their comments that the proposal to adopt complete detariffing would have an impact on small business entities. Several parties argue that tariffs send accurate economic signals and disseminate rate and service information so that nondominant interexchange carriers are able to price their services to compete with larger interexchange carriers.[366] ACTA further argues that increased transaction costs in a detariffed environment -- due to the need to establish a legal relationship with customers and notify them of any modifications -- would be especially burdensome on small carriers that have fewer resources.[367] In addition, Eastern Tel requests the Commission to work with industry, in particular small interexchange carriers, to develop a standard contract for telecommunications services, similar to the form contracts used in the real estate industry, that address such issues as the collection procedures that can be utilized.[368] APCC, however, argues that forbearance from tariff filing requirements would eliminate a regulatory requirement that is especially burdensome on small carriers.[369]

134. Several parties contend that complete detariffing would harm small business entities that are consumers of interstate, interexchange telecommunications services, because: (1) small business customers require access to information contained in tariffs to obtain the best rates available;[370] and (2) increased transaction costs would discourage nondominant interexchange carriers from serving certain market segments, including certain small business markets, thereby decreasing competitive choices for these small business customers.[371]

135. TRA argues that detariffing would allow carriers to discriminate against resellers, many of which are small and mid-sized businesses.[372] TRA claims that, as a result,

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[366] Casual Calling Coalition Comments at 5-6; Business Telecom Comments at 6; Eastern Tel Comments at 4; Ursus Comments at 5.

[367] ACTA Comments at 12-13.

[368] Eastern Tel Comments at 5.

[369] APCC Comments at 26.

[370] Casual Calling Coalition Comments at 5-6, 8-9; Audits Unlimited Comments at 1-2; Scheraga and Sheldon Comments at 1; GCI Comments at 3-4.

[371] LDDS Comments at 10.

[372] TRA Comments at 10-14; TRA Reply at 13.

the resale market will not survive.[373] TRA claims that a vibrant resale market provides residential and small business customers with access to lower rates.[374]

136. In addition, several small businesses that analyze tariff information for business and residential customers argue that they need such information to conduct their businesses.[375]

2. Discussion

137. We disagree with those commenters that argue that complete detariffing will harm small nondominant interexchange carriers. As discussed in section II, we find that not permitting nondominant interexchange carriers to file tariffs with respect to interstate, domestic, interexchange services will enhance competition among all providers of such services (regardless of size), promote competitive market conditions, and establish market conditions that more closely resemble an unregulated environment. We further find, as APCC notes, that filing tariffs imposes costs on carriers that attempt to make new service offerings. Our decision to adopt complete detariffing, therefore, should minimize regulatory burdens on all nondominant interexchange carriers, including small entities.

138. We recognize that complete detariffing may change significant aspects of the way in which nondominant interexchange carriers conduct their business. As discussed above,[376] however, tariffs are not the only feasible way for carriers to establish legal relationships with their customers, nor will carriers necessarily need to negotiate contracts for service with each, individual customer. Carriers could, for example, issue short, standard contracts that contain their basic rates, terms and conditions for service. As discussed above,[377] nondominant interexchange carriers that provide casual calling services have options other than tariffs by which they can establish legal relationships with casual callers, and pursuant to which such callers would be obligated to pay for the telecommunications services they use. We believe that the nine-month transition period established by this Order,[378] will afford nondominant interexchange carriers sufficient time to develop efficient mechanisms to provide interstate, domestic, interexchange services in a detariffed environment. Moreover,

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[373] TRA Comments at 10-14; TRA Reply at 13.

[374] TRA Comments at 7-8 (citing previous Commission statements on the public benefits that resale of telecommunications generates).

[375] XIOX Comments at 1-2; MOSCOM Comments at 1-2; Network Analysis Center Comments at 1-2; Audits Unlimited Comments at 1-2; Scheraga and Sheldon Comments at 1; Telecommunications Management Information Systems Coalition Comments at 5-6; Telecommunications Information Services Comments at 1-2.

[376] See supra para. 57.

[377] See supra para. 58.

[378] See supra section II.D.

parties that oppose complete detariffing have not shown that the business of providing interstate, domestic, interexchange services should be subject to a regulatory regime that is not available to firms that compete in any other market in this country. We thus conclude that requiring nondominant interexchange carriers to withdraw their tariffs and conduct their business as other enterprises do will not impose undue burdens on these carriers. Moreover, we disagree with ACTA's argument that detariffing will disproportionately burden small interexchange carriers.[379] While some of the increased administrative costs that carriers may initially incur as a result of detariffing are likely to be fixed (such as the cost of developing short, standard contracts), many such costs will vary based on the area or number of customers served by such carriers (e.g., advertising expenditures, the cost of promotional mailings or billing inserts). Nonetheless, we find that, on balance, the pro-competitive effects of relieving nondominant interexchange carriers of the obligation to file tariffs for their interstate, domestic, interexchange services outweigh any potential increase in transactional or administrative costs resulting from the shift to a detariffed environment.

139. We are also unpersuaded by the argument that complete detariffing will harm small business entities that utilize telecommunications services. Requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services impedes competition by removing incentives for competitive price discounting, imposing costs on carriers that attempt to make new offerings, and preventing consumers from seeking out or obtaining service arrangements specifically tailored to their needs. As discussed above,[380] complete detariffing will better protect consumers, many of which are small businesses, and will promote vigorous competition. As a result, we believe that complete detariffing will lead to lower prices for interstate, domestic, interexchange services, thereby benefitting all consumers, including small business ones. Moreover, because we do not agree that complete detariffing will substantially increase nondominant interexchange carriers' costs, we are unpersuaded that carriers will abandon segments of the market to the detriment of small business customers, as LDDS suggests.[381]

140. We reject the suggestion that eliminating tariff filing requirements would impede competition by reducing information available to consumers and small nondominant interexchange carriers. As discussed above, we believe that nondominant interexchange carriers will make rate and service information, currently contained in tariffs, available to the public in a more user-friendly form in order to preserve their competitive position in the market, and as part of their contractual relationship with customers.[382] Nevertheless, we acknowledge that, even in a competitive market, nondominant interexchange carriers might

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[379] See ACTA Comments at 12-13.

[380] See supra section II.B.2.b.

[381] See LDDS Comments at 10.

[382] See supra para. 25.

not provide complete information concerning all of their service offerings to all consumers, and that some consumers may not be able to determine which rate plan is most appropriate for them, based on their individual calling patterns. 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.[383] This obligation will ensure that all customers, many of which are small businesses, have access to such information.

141. Finally, as discussed above,[384] we are not persuaded that the resale market will disappear in the absence of tariffs. Our decision to forbear from requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services does not 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 above, we are requiring nondominant interexchange carriers to provide current rate and service information on their interstate, domestic, interexchange services to consumers, including resellers.[385] 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 complaints, if necessary.

C. Description and Estimates of the Number of Small Entities to Which the Rule Will Apply

142. For the purposes of this Order, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[386] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[387] SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than

[383] See supra paras. 84-86.

[384] See supra para. 27.

[385] See supra paras. 84-86.

[386] See 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

[387] 15 U.S.C. § 632. See, e.g., Brown Transport Truckload, Inc. v. Southern Wipers, Inc., 176 B.R. 82 (N.D. Ga. 1994).

1,500 employees.[388] We first discuss generally the total number of telephone companies falling within this SIC category. Then, we refine further those estimates and discuss the number of carriers falling within subcategories.

143. Total Number of Telephone Companies Affected. Many of the decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by SBA. The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[389] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, operator service providers, pay telephone operators, personal communications service providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities, small interexchange carriers, or resellers of interexchange services, because they are not "independently owned and operated."[390] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms that may be affected by this Order.

144. Wireline Carriers and Service Providers. SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[391] According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons.[392] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than

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[388] 13 C.F.R. § 121.201.

[389] United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (1992 Census).

[390] 15 U.S.C. § 632(a)(1).

[391] 1992 Census at Firm Size 1-123.

[392] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.