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FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET N.W.
WASHINGTON, DC 20554

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Released: December 19, 1996

**POLICY AND RULES CONCERNING THE
INTERSTATE, INTEREXCHANGE MARKETPLACE**

**CC DOCKET NO. 96-61
(FCC 96-424)**

SECOND REPORT AND ORDER

RELEASED: October 31, 1996

FURTHER GUIDANCE CONCERNING IMPLEMENTATION

On October 31, 1996, the Commission released a Second Report and Order In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, FCC 96-424 (Detariffing Order). The Detariffing Order was published in the Federal Register on November 22, 1996, and therefore, detariffing becomes effective on December 22, 1996.

The Order requires "all nondominant interexchange carriers to cancel their tariffs for interstate, domestic interexchange, services on file with the Commission within nine months of the effective date of this Order and not to file any such tariffs thereafter." The Order further provides that: "Nondominant interexchange carriers may cancel their tariffs for interstate, domestic interexchange services at any time during the nine month period." Detariffing Order at paras. 89,90. International services will continue to be tariffed.

Beginning December 22, 1996, tariffs for nondominant, domestic, interstate, interexchange services on file with the Commission may be cancelled immediately; with all tariffs for such services to be cancelled no later than September 22, 1997. Carriers with bundled offerings (domestic and international) must delete the domestic portions; or cancel the bundled tariffs and refile only the international service offerings. During the nine month period, the Commission will accept new tariffs and revisions to carriers' tariffs for mass market interstate, domestic, interexchange services only. Such tariffs must be cancelled no later than September 22, 1997. The Commission will not accept new tariffs, or revisions to carriers' existing tariffs, for long-term service arrangements, such as contract tariffs, during the transition period.

Tariffs may be cancelled by replacement, supplement, or expiration. A supplement is identical to a tariff page but should be designated as a supplement instead of a numbered page. The contents of a supplement should state: "Pursuant to the Second Report and Order in CC Docket 96-61, released October 31, 1996; this tariff is cancelled in its entirety." Tariff cancellations must be submitted on diskette, in Word Perfect 5.1 (see the attached Filing Guide for instructions).

Pursuant to Section 1.1105 of the Commission's rules, tariff filings must be accompanied by a filing fee, which is currently six hundred dollars (\$600.00), per tariff filing. The Common Carrier Bureau has received inquiries concerning whether a carrier that pays the tariff filing fee to cancel its tariff(s) will be entitled to a refund or return of the fee under Section 1.1113(a) of the Commission's rules. Section 1.1113(a) provides that "[t]he full amount of any fee submitted will be returned or refunded . . . [w]hen the Commission adopts new rules that nullify applications already accepted for filing, or new law or treaty would render useless a grant or other positive disposition of the application."

Consistent with past Commission precedent and practice, we conclude that this rule does not apply to tariff filing fees that are paid in connection with a carrier's cancellation of its tariff(s) pursuant to the Detariffing Order. Section 1.1113(a) was intended to apply in those rare instances where the Commission creates a new regulation or policy or the Congress and the President approve a new law or treaty that would make the grant of a pending application a legal nullity. However, the Commission also found that should the Commission create new policies or Congress create new laws that would require additional chargeable filings by existing licensees, these additional filings must be accompanied by fees. In the Matter of Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 2 FCC Rcd 947, 950 (1987) (Fee Program Order) Thus, carriers cancelling their tariffs for domestic interstate services, or revising their tariffs for bundled international and domestic service offerings to exclude domestic interstate services, will be required to pay the tariff filing fee and will not be eligible for return or refund of that fee. In the Fee Program Order the Commission specifically found that an exemption from the payment of fees for tariff filings required by changes to the Commission's rules was not envisioned by Congress when it established the regulatory fee program. Fee Program Order 2 FCC Rcd at 977. The Commission noted that the purpose of the fee program is to assess and collect fees for regulatory services provided to the public, and that the fees charged are based primarily on the costs to the Commission of providing those services. Id. Based on its analysis in the Fee Program Order, the Commission required Commercial Mobile Radio Service (CMRS) providers to pay the tariff filing fee for cancelling tariffs for domestic interstate services pursuant to Implementation of Section 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services, 2d Report and Order, 9 FCC Rcd 1411 (1994). We are not aware of any distinction that would justify a different determination in this case.

In order to minimize their costs, carriers may cancel several tariffs or revise several tariffs under one cover letter with the payment of one filing fee. In addition, organizations that file tariffs on behalf of several carriers may request waiver of applicable filing rules so that they may cancel the tariffs of several carriers or file revisions to tariffs of several carriers under

one cover letter with the payment of one filing fee. Waiver of the applicable filing rules for this purpose must be requested by filing an Application for Special Permission pursuant to Sections 61.151, 61.152 , and 61.153 of the Commission's Rules, 47 C.F.R. §§ 61.151, 61.152, 61.153.

Section 42.11(c) of Title 47 of the Code of Federal Regulations, 47 CFR, § 42.11(c) requires that: "A nondominant interexchange carrier shall file with the Commission, and update as necessary, the name, address, and telephone number of the individual(s) designated by the carrier to respond to Commission inquiries and requests for documents about the carrier's detariffed interstate, domestic, interexchange services."

Carriers with tariffs on file should provide this information by filing a letter (company logo, original and two copies), with the Secretary, FCC, 1919 'M' Street NW, Washington DC 20554, Attention: Competitive Pricing Division, Common Carrier Bureau. This letter should be filed in a separate package, at the same time as the initial filing that either cancels the interstate, domestic, interexchange services tariff(s) or revises the existing tariff to remove references to interstate, domestic, interexchange services. Carriers who are not currently providing such services, and therefore do not have tariffs on file with the Commission, should file this information with the Commission by the time they begin to offer interstate, domestic, interexchange services to the public.

In addition, Section 64.1900 of Title 47 of the Code of Federal Regulations, 47 CFR §§ 64.1900(a) and 64.1900(b) requires that: "(a) A nondominant provider of interexchange telecommunications services, which provides detariffed interstate, domestic, interexchange service, shall file with the Commission, on an annual basis, a certification that it is providing such services in compliance with its geographic rate averaging and rate integration obligations pursuant to section 254(g) of the Communications Act of 1934, as amended."; and, "(b) The certification filed pursuant to paragraph (a) of this section shall be signed by an officer of the company, under oath."

Carriers with tariffs on file should file this certification letter (company logo, original and two copies) with the Secretary, FCC, 1919 'M' Street NW, Washington DC 20554, Attention: Competitive Pricing Division, Common Carrier Bureau. This certification should be filed initially, at the same time, and in a separate package, as the filing that either cancels their domestic, interstate, interexchange services tariff(s) or revises the existing tariff to remove references to interstate, domestic, interexchange services. Carriers who are not currently providing such services, and therefore do not have tariffs on file with the Commission, should file this information with the Commission by the time they begin to offer interstate, domestic, interexchange services to the public. **Carriers are reminded that this certification filing is an annual requirement.**

Finally, Section 42.10 of Title 47 of the Code of Federal Regulations, 47 CFR § 42.10, requires that: "[a] nondominant interexchange carrier shall make available to any member of the public, in at least one location, during regular business hours, information concerning its current rates, terms and conditions for all of its detariffed interstate, domestic, interexchange services. Such information shall be made available in an easy to understand format and in a timely manner. When responding to an inquiry or complaint from the public

concerning rates, terms and conditions for such services, a carrier shall specify that such information is available and the manner in which the public may obtain the information." Affected carriers are reminded that they must comply with the requirements of this section prior to the date on which they begin to offer interstate, domestic, interexchange services to the public on a detariffed basis.

There is no filing fee required for either the letter with the contact information or the certification letter.

For additional assistance, contact: Larry Barnes, 202-418-1649, (e-mail: lbarnes@fcc.gov); or Calvin Howell, 202-418-1569, (e-mail: chowell@fcc.gov).

-- FCC --

TARIFF FILING GUIDE

TABLE 1 --- COMPONENTS TO ASSEMBLE

1. The Cover Letter (47 CFR, Section 61.21) - addressed to Secretary, Federal Communications Commission, Washington DC 20554 **(International carriers must reference the FCC file number that granted the 214 authority.)**
2. Tariff **(on diskette in Word Perfect 5.1)**
3. Completed FCC Fee Form 159
4. Check (payable to the FCC) for Filing Fee (\$600)

TABLE 2 --- TARIFF PACKAGES

1. MELLON BANK PACKAGE
 - a. **Original** Cover Letter
 - b. Completed FCC Fee Form 159
 - c. Check for Filing Fee**NOTE: DO NOT SEND A TARIFF WITH THIS PACKAGE.**
2. SECRETARY PACKAGE
 - a. **Copy** of Cover Letter
 - b. Tariff on diskette (WordPerfect 5.1)
3. COMMERCIAL CONTRACTOR PACKAGE
 - a. **Copy** of Cover Letter
 - b. Tariff on diskette (WordPerfect 5.1)
4. TARIFF AND PRICING ANALYSIS BRANCH* PACKAGE**
 - a. **Copy** of Cover Letter
 - b. Tariff on diskette (WordPerfect 5.1)

* Formerly the "Tariff Review Branch"; name changed effective April 26, 1996.

** This package should be clearly labeled --*Public Reference Copy* -

TABLE 3 --- PACKAGE ADDRESSES

1. **MELLON BANK PACKAGE**

HAND DELIVERY

Federal Communications Commission
c/o Mellon Bank
Three Mellon Bank Center
525 William Penn Way
27th Floor, Room 153-2713
Pittsburgh, PA 15259-0001
(ATTN: Wholesale Lockbox Shift Supervisor)

MAIL DELIVERY

Federal Communications Commission
Tariff Filings
P.O. Box 358150
Pittsburgh, PA 15251-5150

2. **SECRETARY PACKAGE * ****

HAND DELIVERY

Secretary
Federal Communications Commission
1919 'M' Street, NW
Room 222
Washington, DC 20036

MAIL DELIVERY

Secretary
Federal Communications Commission
1919 'M' Street, NW
Washington, DC 20554

3. **COMMERCIAL CONTRACTOR PACKAGE**

HAND DELIVERY

Commercial Contractor
1919 'M' Street, NW
Room 246
Washington, DC 20036

MAIL DELIVERY

Commercial Contractor
1919 'M' Street, NW
Washington, DC 20554

4. **TARIFF AND PRICING ANALYSIS BRANCH PACKAGE ****

HAND DELIVERY

Chief, Tariff and Pricing Analysis
Branch
1919 'M' Street, NW
Room 518
Washington, DC 20036

MAIL DELIVERY

Chief, Tariff and Pricing Analysis
Branch
1919 'M' Street, NW
Washington, DC 20554

* The date on which the Secretary Package is stamped as received by the Secretary's Office or Commission mail room is defined as the *official filing date*. The *effective date* of a nondominant tariff must be at least one day *after the official filing date*.

** Formerly the "Tariff Review Branch"; name changed effective April 26, 1996. The Secretary and Tariff and Pricing Analysis Branch packages must be sent separately, but by the same means of delivery so they will be received on the same date.