

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In The Matter of

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

REPLY OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION
TO PETITIONS FOR RECONSIDERATION

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Section 1.419(g) of the Commission's Rules, 47 C.F.R. § 1.419(g), hereby replies to comments opposing the Ad Hoc Telecommunications Users Committee's ("Ad Hoc") Petition for Clarification and Partial Reconsideration of the Second Report and Order, FCC 96-424 (released October 31, 1996), 61 Fed. Reg. 59340. Specifically, TRA supports herein the States of Hawaii and Alaska, which have urged the Commission to reject Ad Hoc's contention that the Commission should not require the disclosure of rate information concerning customer-specific arrangements.

No. of Copies rec'd 0211
List ABCDE

The States of Hawaii and Alaska adamantly oppose the request of Ad Hoc to remove customer-specific offerings from the rate disclosure requirement of the Second Report and Order. Primarily focusing upon the prevention of potentially harmful effects to consumers from geographic rate deaveraging and an absence of rate integration, the States of Alaska and Hawaii evidence a strong interest in maintaining the public availability of customer-specific rate information in order that such information may continue to afford consumers and regulators a ready means of monitoring carrier behavior. A matter of much greater concern to the universe of resale telecommunications providers, however, is the host of competitive ramifications which the record in this proceeding amply demonstrates would inevitably result from the inability of resale carriers to access information concerning the rates, terms and conditions for all interexchange service offerings, including customer-specific service offerings.

TRA agrees with the States of Alaska and Hawaii that the information disclosure requirement of the Second Report and Order is clear on its face and applies to all detariffed interstate, domestic, interexchange services of nondominant interexchange carriers, including customer-specific service arrangements. And contrary to Ad Hoc's contention that no public policy concerns exist which would justify the imposition of an information disclosure requirement for customer-specific service arrangements, the record in this proceeding is replete with examples of public policy concerns which would do precisely that. Indeed, absent application of the information disclosure obligation to customer-specific service arrangements, it is unlikely that the Commission's decision to forbear from enforcing its tariff rules would be deemed to satisfy the exacting requirements of Section 10 of the Telecommunications Act, which not only requires the Commission to determine that enforcement of a provision is not necessary to ensure just and

reasonable and nondiscriminatory charges, is not necessary for the protection of consumers, and is consistent with the public interest, but also to "consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions".¹ Finally, as TRA and other parties have repeatedly advised the Commission, continued access to rate information regarding customer-specific service arrangements is, and will remain, critical to the ability of resale carriers to obtain equally beneficial service arrangements for their end user customers.

TRA agrees with the States of Alaska and Hawaii that the Second Report and Order is unambiguous on the issue of which detariffed services are subject to the information disclosure requirement: carriers are obligated to provide rate information for **all** interstate, domestic interexchange services; no carve-out exists for customer-specific service offerings. Contrary to Ad Hoc's perception that "[t]here is considerable confusion over the scope of this disclosure requirement,"² even a quick read of the language of the Second Report and Order confirms the State of Hawaii's statement that "the statute is plain on its face and applies to **all** "interexchange telecommunications services."³ Likewise, the strongly held conviction of the State of Alaska that "[t]he information disclosure requirement set forth in the Second Report and Order

¹ 47 U.S.C. § 160(a), (b). Indeed, the Commission defended the Second Report and Order's satisfaction of the requirements of Section 10 before the U.S. Court of Appeals for the District of Columbia Circuit by citing to the Commission's determination in the Second Report and Order that the public interest would be served by the imposition on nondominant interexchange carriers of "an affirmative obligation to 'make information on current rates, terms and conditions for all of their interstate, domestic interexchange services available to the public', because "such a requirement would help ensure that 'consumers, including resellers, [could] compare carriers' service offerings', while lessening the risk of anticompetitive price coordination that could be presented by the filing of industry-wide tariffed rates in a single centralized location." Opposition of FCC to ACTA Motion for Stay Pending Judicial Review, Case Nos. 96-1459 and 96-477 (Jan. 24, 1977) at pp. 6-7.

² Ad Hoc Petition for Clarification and Partial Reconsideration at p. 7.

³ Comments of State of Hawaii at p. 8.

(or any greater information disclosure requirements the Commission might adopt) should apply to customer-specific service offerings"⁴ finds support in both the language of § 42.10,⁵ and the text of the Second Report and Order itself:

[W]e will require nondominant interexchange carriers to make information on current rates, terms, and conditions for all of their interstate, domestic, interexchange services available to the public in an easy to understand format and in a timely manner.²³³

²³³ . . . A nondominant interexchange carrier must make available to any member of the public such information about all of that carrier's interstate, domestic, interexchange services."⁶

The Commission is acutely aware that only the largest corporate telecommunications users, the market segment for which competition among the major IXCs is most intense, have the economic muscle to ensure that the services and pricing they obtain are "cutting edge". Resale carriers, with commensurate usage volumes, have been able to secure for their end-user customers substantially lower service rates by "piggy-backing" off these major service arrangements by taking "off-the-shelf" offerings which heretofore have been on file with the Commission in the form of contract tariffs memorializing customer-specific service arrangements. Only one conclusion can logically follow the Commission's repeated insistence that the filing of tariffs is no longer necessary to protect the public interest because information

⁴ Comments of State of Alaska at p. 3.

⁵ "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. . ." 47 CFR § 42.10.

⁶ Second Report and Order at ¶ 84.

on rates, terms and conditions will continue to be available to the public and resale carriers alike.⁷ That conclusion is that customer-specific service arrangements must remain subject to the information disclosure requirements of the Second Report and Order.

The States of Alaska and Hawaii are also correct that strong public interest considerations exist for the imposition of a uniformly applicable information disclosure requirement by the Commission, not the least of which is consumer protection, the bedrock upon which all Commission policy is constructed. Whatever else the Second Report and Order may have altered, the FCC's "historic commitment to protecting consumers of interstate telecommunications services against anticompetitive practices"⁸ remains constant. It is inconceivable that the Commission would reaffirm its "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"⁹ only to simultaneously remove from those consumers access to the precise information essential to the identification of price discrimination -- the rates, terms and conditions associated with customer-specific service arrangements, the most attractively priced, and thus the most desirable, of all service offerings.

To the contrary, continued access to rate information sufficient to allow consumers and resellers to identify beneficial service offerings and to monitor IXC behavior, and thus diminish the likelihood of rate discrimination, has figured prominently in the Commission's determination that forbearance of its tariff rules with respect to interstate interexchange domestic

⁷ See Second Report and Order at ¶ 85.

⁸ Second Report and Order at ¶ 5.

⁹ Second Report and Order at ¶ 5.

service offerings of nondominant interexchange carriers satisfies the statutory requirements of Section 10. Indeed, the Commission not only noted that requiring nondominant interexchange carriers to disclose rate information for all of their interstate, domestic, interexchange services "will promote the public interest by making it easier for consumers, including resellers, to compare carrier service offerings,"¹⁰ but also specifically held "we are persuaded by the arguments of many parties, including numerous state regulatory commissions and consumer groups, that publicly available information is necessary to ensure that consumers can bring complaints, if necessary. . ."¹¹ That the Commission's information disclosure requirement for customer-specific service arrangements plays a strong public interest function is thus indisputable.

As TRA has noted in this and other proceedings, the largest facilities-based carriers often deny resale carriers access to the superior service offerings and preferred price points they make available to large corporate and other major users with commensurate (and in far too many instances, substantially lower) traffic volumes. As noted above, resale carriers have been able to overcome such "refusals to deal" by taking "off-the-shelf" customer-specific large corporate offerings which prior to mandatory detariffing had been filed as tariffs. If IXC's are allowed to withhold information regarding such contract-based service offerings, resale carriers will be precluded from taking similar arrangements to the ultimate detriment of the resale carrier's customers. That same inability to access information will also preclude resale carriers and the public from utilizing the Commission's formal complaint process to obtain relief from IXC price discrimination. As the State of Hawaii has pointed out, [w]ithout public disclosure of rate and

¹⁰ Second Report and Order at ¶ 85.

¹¹ Second Report and Order at ¶ 84.

service information, customers of specialized offerings will be deprived of the notice necessary to determine whether carriers are possibly engaging in illegal discrimination. Customers will not know that initiating a complaint is warranted unless they have some access to a carrier's rate and service information initially.¹²

Finally, TRA notes that the Commission's indication that the information disclosure requirement is not intended to "require carriers to disclose more information than is currently provided in tariffs, particular in contract tariffs,"¹³ in no way undercuts the application of the requirement to customer-specific service arrangement information. Indeed, the information disclosure requirement of the Second Report and Order does not require carriers to provide more information than is currently provided in tariff. As discussed below, however, chipping away at the obligation to make information available by exempting customer-specific service offerings from the disclosure requirement would allow interexchange carriers to reduce the amount of information provided the public and would essentially preclude the Commission from relying upon the ability of resellers to identify and take action against price discrimination, a factor which figured prominently in the Commission's determination that forbearance from enforcing tariff rules is not adverse to the public interest.

By imposing upon nondominant interexchange carriers the obligation to provide information on rates, terms and conditions of all interstate, domestic, interexchange services, the Commission addressed TRA's concern that in a market that is less than perfectly competitive carriers would be able to discriminate against resellers. In responding to TRA's concern, the

¹² Comments of State of Hawaii at pp. 10-11.

¹³ Second Report and Order at ¶ 85.

Commission specifically recognized that "[t]he requirement that nondominant interexchange carriers make available to the public information concerning current rates, terms and conditions for all of their interstate, domestic, interexchange services will also promote the public interest by making it easier for consumers, including resellers, to compare carrier service offerings."¹⁴ The only service offerings which are useful to resale carriers are the customer-specific service arrangements which allow resale carriers to make use of their massive usage volumes to obtain service, and to make service available to their resale customers, at rates much more beneficial than would otherwise be available to those customers. It is essential, then, in order that as the Commission envisions, "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"¹⁵ that rates, terms and conditions relating to those customer-specific service arrangements must be made available pursuant to the Second Report and Order information disclosure requirement.

¹⁴ Second Report and Order at ¶ 85.

¹⁵ Second Report and Order at ¶ 27.

The language and import of the Second Report and Order is remarkably clear. Application of the Commission's information disclosure requirement should apply -- and does apply -- to customer-specific service offerings of nondominant interexchange carriers. Public interest considerations overwhelmingly favor retention of the Commission's information disclosure obligation with respect to not only customer-specific service arrangements but all detariffed interstate, domestic interexchange services of nondominant IXC. Accordingly, the Telecommunications Resellers Association joins the States of Alaska and Hawaii in urging the Commission to deny the petition for clarification and partial reconsideration of the Ad Hoc Telecommunications Users Committee.

Respectfully submitted,

**TELECOMMUNICATIONS
RESELLERS ASSOCIATION**

By: 

Charles C. Hunter
Catherine M. Hannan
HUNTER & MOW, P.C.
1620 I Street, N.W.
Suite 701
Washington, D.C. 20006
(202) 293-2500

February 7, 1997

Its Attorneys

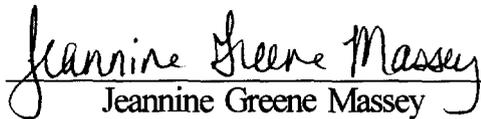
CERTIFICATE OF SERVICE

I, Jeannine Greene Massey, hereby certify that copies of the foregoing document were mailed this 7th day of February, 1997, by United States First Class mail, postage prepaid, to the following:

Ellen G. Block
Henry D. Levine
James S. Blaszak
Levine, Blaszak, Block & Boothby
1300 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20036

Herbert E. Marks
Marc Berejka
James M. Fink
Squire, Sanders & Dempson, L.L.P.
1201 Pennsylvania Avenue, N.W.
P. O. Box 407
Washington, D.C. 20044

Robert M. Halperin
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004


Jeannine Greene Massey