

41. We have considered various means by which LECs could convey to new customers of a nondominant interexchange carrier the information necessary to ensure the establishment of an enforceable contract during the initial period after the customer contacts the LEC and before the nondominant interexchange carrier can formalize the contractual relationship. We conclude, however, that none of these means adequately ensures an enforceable contractual relationship between the nondominant interexchange carrier and the customer during this initial period. Nondominant interexchange carriers conceivably could contract with LECs to act as agents of the interexchange carrier to establish a contractual relationship with the prospective customer by orally providing the rates, terms, and conditions of the interexchange service. We are reluctant, however, to adopt a policy that may have the effect of mandating such agency arrangements, especially since the LEC may have an affiliate that offers competing interstate interexchange services. Alternatively, if prospective customers are required to contact nondominant interexchange carriers directly prior to the commencement of service in order to establish the necessary contractual relationship, such a requirement would preclude residential and business customers from changing or selecting a PIC by contacting the LECs as they do today. That, in turn, could diminish competition among interexchange carriers by making it more difficult for customers to switch interexchange carriers. Finally, the nondominant interexchange carrier may decide to delay provisioning of the service until a contractual relationship is formalized, which also may discourage residential and business customers from making PIC changes, thereby deterring competition in the interexchange market. We, therefore, conclude that the benefits of allowing nondominant interexchange carriers to file tariffs, at their discretion, for the limited period before the customer executes a written contract outweigh any potential benefits resulting from complete detariffing in this particular situation. Consistent with the deregulatory framework of the 1996 Act, we are allowing nondominant interexchange carriers to file tariffs under the circumstances described herein, as opposed to requiring tariffs, to allow nondominant interexchange carriers and LECs to agree upon alternatives to tariffs for the purpose of adequately ensuring a contractual relationship between the nondominant interexchange carrier and the customer before the customer formally executes the written contract.

42. We reject AT&T's arguments that we should also allow nondominant interexchange carriers to provide an initial period of service under tariff when a customer contacts the interexchange carrier or its marketing agent directly. AT&T claims that even when the customer contacts the carrier or its marketing agents directly to begin interexchange service or initiate a PIC change, it is unable to consummate a written contract prior to the commencement of service, given the large number of requests it receives and the period of time it takes to process customers' requests.¹³⁶ When a customer contacts the interexchange carrier or its marketing agent directly, however, there is an opportunity for the interexchange carrier to establish, at a minimum, an oral contract by relating to the customer the rates, terms, and conditions that will be in effect from the commencement of service until such time

¹³⁶ AT&T Petition at 11 n.11.

as the customer formalizes a written contract with the interexchange carrier. This situation is distinguishable from both the situation in which the prospective customer contacts the LEC to select an interexchange carrier or to initiate a PIC change, and when a customer places a casual call using a carrier's CAC. The interexchange carrier does not have an opportunity in either of those cases to interact with the customer. In contrast, a customer who contacts the nondominant interexchange carrier directly is in essentially the same position as customers of other businesses in unregulated, competitive markets, *i.e.*, they have an opportunity to interact with the service provider before the service is initiated. We are not persuaded, therefore, that we should reconsider our decision to require complete detariffing when a customer contacts the interexchange carrier or its marketing agent directly to begin interexchange service or to initiate a PIC change. We reaffirm our finding that complete detariffing when a customer contacts the interexchange carrier or its marketing agent directly to begin interexchange service or to initiate a PIC change is in the public interest.

43. Moreover, we find that permitting nondominant interexchange carriers to file tariffs effective for the initial 45 days of service or until there is a written contract between the carrier and the customer, whichever is earlier, in those limited instances where prospective customers contact the LEC to select an interexchange carrier or to initiate a PIC change, is not inconsistent with a primary reason we adopted complete detariffing in the *Second Report and Order*, *i.e.*, eliminating the ability of carriers to invoke the "filed-rate" doctrine.¹³⁷ We believe that the ability of carriers to invoke the "filed-rate" doctrine does not create significant problems when a customer contacts the LEC to select an interexchange carrier or to initiate a PIC change because the proposed tariff is in place only for a limited time, *i.e.*, the initial 45 days of service or until a written contract between the carrier and the customer is consummated, whichever is earlier. The limited term of the tariff would prevent carriers from unilaterally changing the terms of negotiated agreements or unilaterally limiting their liability for damages after the initial period of service.¹³⁸ Upon expiration of the tariff, the legal relationship between carriers and customers will much more closely resemble the legal relationship between service providers and customers in an unregulated environment, a goal of detariffing delineated in the *Second Report and Order*.¹³⁹

44. We recognize that permitting nondominant interexchange carriers to file tariffs for service to new customers that contact the LEC raises the risk that carriers could use these tariffs to send price signals for their mass market services. We believe, however, that we cannot address the unique problems raised by the commenters about establishing a contractual relationship with these new customers in a detariffed environment without allowing nondominant interexchange carriers to file tariffs for a short period needed to formalize the contract. We note that should we become aware of evidence indicating that nondominant

¹³⁷ See *Second Report and Order* at 20760, para. 52.

¹³⁸ *Id.* at 20762, para. 55.

¹³⁹ *Id.*

interexchange carriers are using these tariffs to send price signals for their mass market services, we can reexamine our decision to adopt permissive detariffing for LEC-implemented new customer services.

D. Tariff Filing Requirements for Bundled Domestic and International Service Offerings

1. Background

45. In the *Notice* in this rulemaking docket, the Commission sought comment on whether it should forbear from requiring nondominant interexchange carriers to file tariffs for the international portions of service offerings that include both interstate, domestic, interexchange services and international services.¹⁴⁰ The Commission noted that it was reserving for a separate proceeding the issue of whether it should consider generally forbearing from requiring tariffs for international services provided by nondominant carriers.¹⁴¹

46. We determined in the *Second Report and Order* that there was insufficient record evidence to find that each of the statutory criteria necessary to forbear from requiring nondominant interexchange carriers to file tariffs for the international portions of bundled domestic and international service offerings had been satisfied.¹⁴² We concluded that we should address detariffing of the international portions of bundled domestic and international service offerings in a separate proceeding in which we could examine the state of competition in the international market.¹⁴³ We therefore required nondominant interexchange carriers with bundled domestic and international services to bifurcate their bundled domestic and international service offerings and file a tariff that includes only the international portions of their service offerings.¹⁴⁴

47. We also adopted a nine-month transition period in the *Second Report and Order* to allow nondominant interexchange carriers time to adjust to detariffing.¹⁴⁵ We determined that the Commission would not accept new tariffs for interstate, domestic, interexchange services, or revisions to existing tariffs, for long-term service arrangements

¹⁴⁰ *Notice*, 11 FCC Rcd at 7160.

¹⁴¹ *Id.*

¹⁴² *Second Report and Order* at 20782-83, para. 98.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 20779, para. 89.

during the nine-month transition.¹⁴⁶

2. Positions of the Parties

48. API and SDN Users request that the Commission detariff the international portions of bundled domestic and international services offered by nondominant interexchange carriers.¹⁴⁷ Ad Hoc Users Committee and the Television Networks support API's and SDN Users' petitions for reconsideration.¹⁴⁸ AT&T and CompTel argue that the international services portion of bundled service offerings should be treated on the same basis as the interstate, domestic, interexchange services portion, without specifying whether both portions should be tariffed or detariffed.¹⁴⁹ SDN Users, AT&T, Ad Hoc Users Committee, and CompTel contend that requiring tariffs only for the international portions of bundled domestic and international service offerings confuses customers and complicates negotiations.¹⁵⁰ API further argues that the statutory forbearance criteria are satisfied with respect to the international portion of bundled international and domestic services, because the policy considerations that support the Commission's decision to detariff the interstate, domestic, interexchange market are equally relevant to the international portion of bundled international and domestic offerings.¹⁵¹ In particular, API states that the public interest objectives of eliminating the possible invocation of the "filed-rate" doctrine and establishing market conditions that more closely resemble an unregulated environment are also served by detariffing the international portions of bundled international and domestic offerings.¹⁵² API further argues that there is no evidence in the record that would support a need to retain tariffs for the international portions of bundled offerings.¹⁵³

49. Sprint opposes the request to allow domestic nondominant carriers to detariff the international portions of bundled domestic and international services offered by nondominant interexchange carriers.¹⁵⁴ Sprint argues that requiring carriers to detariff such

¹⁴⁶ *Id.* at 20779-80, para. 90.

¹⁴⁷ API Petition at 1-2; SDN Users Petition at 1; API Reply at 1-3.

¹⁴⁸ Ad Hoc Users Committee Comments at 2-3; Television Networks Comments at 6.

¹⁴⁹ AT&T Comments at 7-8; CompTel Comments at 9-10.

¹⁵⁰ AT&T Petition at 15; SDN Users Petition at 1; Ad Hoc Users Committee Comments at 2-3; CompTel Comments at 9-10.

¹⁵¹ API Petition at 5.

¹⁵² *Id.* at 9.

¹⁵³ *Id.* at 6-7.

¹⁵⁴ Sprint Comments at 1 n.1.

international services will confuse customers, because some carriers are dominant in certain international markets and nondominant in others.¹⁵⁵ Sprint therefore urges the Commission to maintain tariff filing requirements for all international services until the Commission is able to examine the unique issues involved in applying its detariffing policies to international services.¹⁵⁶

50. AT&T and CompTel further request that the Commission allow permissive detariffing for mixed international and domestic services offered by nondominant interexchange carriers during the nine-month transition to allow carriers and customers to adjust to the new policy.¹⁵⁷ Ad Hoc Users Committee and API oppose this request on the ground that such a policy would allow carriers to alter or abrogate long-term arrangements by invoking the "filed-rate" doctrine.¹⁵⁸ API disputes AT&T's contention that customers are "significantly confused" by the requirement that nondominant interexchange carriers bifurcate mixed international and domestic service offerings and states that customers have worked through issues with carriers that are far more daunting and potentially confusing.¹⁵⁹

3. Discussion

51. In order to determine whether the statutory criteria are satisfied for us to forbear from requiring tariffs for the international portion of bundled domestic and international service offerings, we need to examine the state of competition for these international services. We find nothing in the record on reconsideration that enables us to make findings on the state of competition for such services. API claims only that detariffing the international portion of bundled domestic and international service offerings would lead to the same public interest benefits as detariffing interstate, domestic, interexchange services.¹⁶⁰ Other parties argue that requiring tariffs only for the international portions of bundled domestic and international service offerings confuses customers and complicates negotiations.¹⁶¹ The parties, however, have not provided new evidence in the record that would enable us to determine that the statutory forbearance criteria are met for detariffing the international portion of bundled domestic and international service offerings. The state of

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ AT&T Petition at 15-16; CompTel Comments at 9-10.

¹⁵⁸ Ad Hoc Users Committee Comments at 2-3; API Comments at 3-6.

¹⁵⁹ API Comments at 3-4.

¹⁶⁰ API Petition at 5.

¹⁶¹ See AT&T Petition at 15; SDN Users Petition at 1; Ad Hoc Users Committee Comments at 2-3; CompTel Comments at 9-10.

competition in the international market may not be the same as in the domestic market, and, we do not have sufficient evidence in this proceeding to make such a determination. We therefore affirm our conclusion that the determination of whether to detariff the international portions of bundled domestic and international service offerings should be addressed as part of a separate proceeding in which the Commission can further examine the state of competition in the international market.

52. We need not address at this time AT&T's request that we adopt permissive detariffing for bundled international and domestic service offerings during the nine-month transition. The United States Court of Appeals for the D.C. Circuit has stayed the *Second Report and Order*, pending judicial review.¹⁶² Nondominant interexchange carriers, therefore, are currently required to file tariffs for all of their interstate, domestic, interexchange services, including those that are bundled with international services.¹⁶³ We delegate authority to the Common Carrier Bureau to determine the appropriate transition period and address other transition issues when the detariffing rules become effective.

E. Local Access Portion of Interstate, Domestic, Interexchange Services

1. Positions of the Parties

53. Ad Hoc Users Committee requests that the Commission clarify that the *Second Report and Order* detariffed the exchange access components of the interstate, domestic, interexchange services offered by nondominant interexchange carriers, and not only the interoffice component of such services.¹⁶⁴ It argues that a requirement that nondominant interexchange carriers separate their integrated end-to-end service offerings into interexchange and exchange access services would radically depart from the Commission's historical approach to regulation of the interstate, domestic, interexchange marketplace and would create a "practical nightmare" for nondominant interexchange carriers to implement.¹⁶⁵ API and Sprint support Ad Hoc Users Committee's request for clarification.¹⁶⁶

54. Bell Atlantic contends that Ad Hoc's request, which deals with the regulation of exchange access services and not the regulation of interexchange services, is beyond the scope

¹⁶² See *MCI Telecommunications Corp. v. FCC*, No. 96-1459 (D.C. Cir. Feb. 13, 1997).

¹⁶³ See *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Public Notice, DA 97-493 (rel. Mar. 6, 1997).

¹⁶⁴ Ad Hoc Users Committee Petition at 2-3.

¹⁶⁵ *Id.* at 4-5; Ad Hoc Users Committee Reply at 2-3.

¹⁶⁶ API Comments at 8-9; Sprint Comments at 7.

of this proceeding.¹⁶⁷ Moreover, Bell Atlantic argues that the Commission should not detariff the exchange access services of nondominant providers without detariffing such services for all providers.¹⁶⁸

2. Discussion

55. We agree with Ad Hoc Users Committee that we detariffed integrated end-to-end interstate, domestic, interexchange services in the *Second Report and Order*, including both the interexchange portion and the interstate exchange access components of such services when offered on an integrated basis.¹⁶⁹ We note that our conclusion that the forbearance criteria are satisfied applies only to interstate exchange access that is offered to customers as part of an integrated, end-to-end interstate, domestic, interexchange service that the customer is purchasing. We are not detariffing in this proceeding the sale of interstate exchange access that is offered on a stand-alone basis.¹⁷⁰

56. Nondominant interexchange carriers purchase or self provide interstate exchange access as an input to providing integrated, end-to-end interstate, domestic, interexchange service. Thus, access is merely a component of a service offered to end users. We have found that market forces generally will ensure that nondominant interexchange carriers do not charge rates, or impose terms and conditions, for their interstate, domestic, interexchange services that violate sections 201 and 202 of the Communications Act.¹⁷¹ Because market forces will generally constrain nondominant interexchange carriers' charges for interstate, domestic, interexchange services, there is no need to require the nondominant interexchange carrier to break out and tariff a separate charge for interstate exchange access.

¹⁶⁷ Bell Atlantic Comments at 1-2.

¹⁶⁸ *Id.* at 2.

¹⁶⁹ See *Second Report and Order* at 20773, para. 77.

¹⁷⁰ The Commission, in another proceeding, recently granted, in part, two petitions seeking forbearance from tariff filing requirements for competitive access providers (CAPs) and non-dominant providers of interstate exchange access services. In that proceeding, the Commission adopted permissive detariffing for non-ILEC providers of interstate exchange access services, and proposed the adoption of complete detariffing for all non-ILEC providers of these services. See *In the Matters of Hyperion Telecommunications, Inc. Petition Requesting Forbearance, Time Warner Communications Petition for Forbearance, Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, CC Docket No. 97-146, FCC 97-219 (rel. June 19, 1997); see also *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, FCC 97-158, at paras. 349-66 (rel. May 16, 1997) (*Access Charge Reform Order*).

¹⁷¹ *Second Report and Order* at 20742-43, para. 21.

F. Effect of Detariffing on AT&T/Alascom's Common Carrier Services

1. Background

57. AT&T/Alascom offers certain "common carrier" services that the Commission has defined as "all interstate interexchange transport and switching services that are necessary for other interexchange carriers to provide services in Alaska up to the point of interconnection with each Alaska local exchange carrier."¹⁷² In the *AT&T Reclassification* proceeding, AT&T made certain commitments, including, *inter alia*, that it "will comply with all of the obligations and conditions contained in the Commission orders associated with AT&T's purchase of Alascom, Inc., including the *Alascom Authorization Order*, the *Market Structure Order*, and the *Final Recommended Decision*."¹⁷³ In the *Second Report and Order*, we stated that our decision to forbear from requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services would not affect AT&T's commitment to comply with the Commission's orders associated with AT&T's purchase of Alascom, and that AT&T would continue to be bound by this commitment.¹⁷⁴

2. Discussion

58. We have been asked to clarify in this proceeding that the *Second Report and Order* did not detariff AT&T/Alascom's common carrier services.¹⁷⁵ A similar issue has been raised in the *AT&T Reclassification Order*.¹⁷⁶ We believe this issue is better addressed in that proceeding in light of AT&T's commitment in that proceeding to comply with the Commission's orders associated with AT&T's purchase of Alascom. We therefore incorporate the record filed in this proceeding on the issue of detariffing AT&T/Alascom's common

¹⁷² *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands*, CC Docket No. 83-1376, Memorandum Opinion and Order, 9 FCC Rcd 3023, 3023 n.5 (1994) (*Market Structure Order*).

¹⁷³ *Motion of AT&T to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271, 3333-34, 3364-65 (1995) (*AT&T Reclassification Order*), recon. pending; see also *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers Between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands*, CC Docket No. 83-1376, Tentative Recommendation and Order Inviting Comments, 8 FCC Rcd 3684 (1993); Memorandum Opinion and Order, 9 FCC Rcd 3023 (1994) (*Market Structure Order*), adopting Joint Board Final Recommended Decision, 9 FCC Rcd 2197 (1993) (*Final Recommended Decision*); *Application of Alascom, Inc., AT&T Corp. and Pacific Telecom, Inc. for Transfer of Control of Alascom, Inc. from Pacific Telecom, Inc. to AT&T Corp.*, File No.s W-P-C-7037, 6520, Order and Authorization, 11 FCC Rcd 732 (1995) (*Alascom Authorization Order*).

¹⁷⁴ *Second Report and Order* at 20787-88, at para. 109.

¹⁷⁵ See GCI Petition at 1-3. API disagrees with GCI's request. See API Comments at 11.

¹⁷⁶ See GCI Petition for Reconsideration or Clarification of the *AT&T Reclassification Order*, filed November 22, 1995.

carriers services to the *AT&T Reclassification* proceeding.

III. INFORMATION DISCLOSURE ISSUES

A. Background

59. The Commission tentatively concluded in the *Notice* that it would require nondominant providers of interstate, domestic, interexchange telecommunications services to file certifications that they are in compliance with the geographic rate averaging and rate integration requirements of section 254(g) of the Communications Act to ensure compliance with those requirements.¹⁷⁷ The Commission also tentatively concluded in the *Notice* that, if it were to adopt a complete detariffing policy, nondominant interexchange carriers would be required to maintain at their premises price and service information regarding all of their interstate, domestic, interexchange service offerings, which they could submit to the Commission upon request.¹⁷⁸

60. In the *Second Report and Order*, we adopted the tentative conclusion in the *Notice* and required nondominant interexchange carriers to file an annual certification stating that they are in compliance with the statutory rate averaging and rate integration requirements.¹⁷⁹ We further adopted the tentative conclusion in the *Notice* and ordered nondominant interexchange carriers to maintain supporting documentation on the rates, terms, and conditions of their interstate, domestic, interexchange services that they could submit to the Commission within ten business days upon request.¹⁸⁰ In addition, in the *Second Report and Order*, we required nondominant interexchange carriers to make information concerning current rates, terms, and conditions for all of their interstate, domestic, interexchange services available to the public in at least one location during regular business hours, although we expressly stated that we did not intend to require nondominant interexchange carriers to disclose more information than is currently provided in tariffs.¹⁸¹

B. Positions of the Parties

61. Several parties filed petitions asking the Commission to reconsider or clarify various aspects of the public disclosure requirement in the *Second Report and Order*. Ad Hoc Users Committee requests that the Commission eliminate the public disclosure

¹⁷⁷ *Notice*, 11 FCC Rcd at 7178, 7182.

¹⁷⁸ *Id.* at 7163.

¹⁷⁹ *Second Report and Order* at 20775, para. 83.

¹⁸⁰ *Id.* at 20777-78, para. 87.

¹⁸¹ *Id.* at 20776, para. 84; 20777, para. 86.

requirement with respect to information on individually-negotiated service arrangements.¹⁸² It argues that a public disclosure requirement makes it easier for interexchange carriers to ascertain their competitors' price and service information, and, therefore, the requirement is inconsistent with the Commission's interest in deterring price coordination.¹⁸³ Ad Hoc Users Committee further argues that, because the Commission decided to forbear from applying section 254(g) to contract tariffs and similar customer-specific agreements, disclosure of the rates and terms of individually-negotiated service arrangements cannot be justified on the basis of enforcing section 254(g).¹⁸⁴ Rather than requiring public disclosure, Ad Hoc Users Committee contends that the Commission could meet the objectives supporting a public disclosure requirement in the *Second Report and Order* through: (1) the workings of the competitive market; (2) the Commission's complaint process; and (3) disclosure of rate and term information to Commission and state regulatory staff, to Congress in connection with agency oversight, and to complainants in discovery proceedings before the Commission or courts.¹⁸⁵

62. API, Bell Atlantic, and Sprint support Ad Hoc Users Committee's petition, arguing that a public disclosure requirement for customer-specific arrangements will inhibit competition and that businesses in other competitive markets are not required to disclose the terms of customer-specific deals.¹⁸⁶ Bell Atlantic further argues that, if the Commission eliminates the public disclosure requirement, it should also not require dominant interexchange carriers to disclose their prices to the public through tariffs.¹⁸⁷ Bell Atlantic maintains that requiring dominant interexchange carriers to file tariffs or otherwise disclose their prices would be anticompetitive, because nondominant interexchange carriers would set their prices based on the dominant carrier's disclosed prices.¹⁸⁸

63. TRA argues that the public disclosure requirement is necessary to address, at least in part, its concerns that carriers will discriminate against resellers in the absence of tariffs.¹⁸⁹ Several other parties request that the Commission strengthen the information

¹⁸² Ad Hoc Users Committee Petition at 6-10; Ad Hoc Users Committee Reply at 6.

¹⁸³ Ad Hoc Users Committee Petition at 8, 10.

¹⁸⁴ *Id.* at 8-9 (citing *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61, Report and Order, 11 FCC Rcd 9564, 9577 (1996) (*Geographic Rate Averaging Order*)).

¹⁸⁵ Ad Hoc Users Committee Petition at 10; Ad Hoc Users Committee Reply at 6.

¹⁸⁶ API Comments at 10-11; Bell Atlantic Comments at 3; Sprint Comments at 8; API Reply at 4.

¹⁸⁷ Bell Atlantic Comments at 3.

¹⁸⁸ *Id.*

¹⁸⁹ TRA Petition at 4-5; TRA Reply at 1-9.

disclosure requirements in the *Second Report and Order*, which they deem insufficient. Specifically, Rural Telephone Coalition (RTC) asks the Commission to require carriers to make information more widely available to consumers to ensure that they have easy access to the information necessary to determine whether nondominant interexchange carriers are complying with the rate integration and rate averaging requirements of section 254(g).¹⁹⁰ RTC argues that the *Second Report and Order's* requirement that nondominant interexchange carriers make information available in only one location will prevent customers, especially those in rural areas, from obtaining the information.¹⁹¹ Instead, RTC urges the Commission to require carriers to make the information available on-line and at one public place in each state in which the carrier operates.¹⁹² RTC contends that these requirements would not be unduly burdensome on carriers.¹⁹³ Alaska and Hawaii support RTC's petition.¹⁹⁴

64. Telecommunications Management Information Systems Coalition (TMISC) requests that we clarify the disclosure rules by specifying the type and amount of information that must be made publicly available, as well as the time limit within which nondominant interexchange carriers must make the information publicly available.¹⁹⁵ TMISC argues that, without more specific information requirements, the Commission and other interested parties may not be able effectively to enforce the geographic rate averaging and rate integration requirements of section 254(g).¹⁹⁶ TMISC further points out that a significant number of consumer organizations, public interest organizations, and state governments filed comments in this proceeding, arguing that effective public disclosure requirements are not only necessary to enforce section 254(g), but also to enable consumers to make fully informed service decisions.¹⁹⁷ Hawaii argues that the Commission should require nondominant interexchange carriers to disclose the same amount of information that is currently provided in tariffs and also agrees with TMISC that the current information disclosure provisions are inadequate.¹⁹⁸

65. AT&T responds to RTC and TMISC by arguing that complete detariffing will

¹⁹⁰ RTC Petition at 2.

¹⁹¹ *Id.* at 4.

¹⁹² *Id.* at 4-5.

¹⁹³ RTC Reply at 2-3.

¹⁹⁴ Alaska Comments at 3-5; Hawaii Comments at 6-7; *see also* TRA Reply at 1-9 (supporting the comments of Alaska and Hawaii).

¹⁹⁵ TMISC Petition at 2.

¹⁹⁶ *Id.* at 2.

¹⁹⁷ *Id.* at 1.

¹⁹⁸ Hawaii Comments at 5-6.

impose substantial burdens on nondominant interexchange carriers, particularly the costs associated with establishing and maintaining a legal relationship with their customers.¹⁹⁹ AT&T contends that there is no reason to add to these costs by imposing more burdensome information disclosure requirements.²⁰⁰

C. Discussion

66. The basis for our decision in the *Second Report and Order* to adopt a public disclosure requirement for all interstate, domestic, interexchange services offered by nondominant interexchange carriers was to provide the public with the information necessary to determine whether a carrier was adhering to the rate integration and rate averaging requirements of section 254(g).²⁰¹ We recognized that, in competitive markets, carriers would not necessarily maintain geographically averaged and integrated rates for interstate, domestic, interexchange services as required by section 254(g).²⁰² We also determined that a public disclosure requirement would promote the public interest by making it easier for consumers, including resellers, to compare service offerings and to bring complaints.²⁰³ We noted, however, that nondominant interexchange carriers will generally provide such information to consumers to improve or maintain their competitive position in the market.²⁰⁴

67. We sought to tailor this public disclosure requirement to meet our objective of ensuring that nondominant interexchange carriers comply with section 254(g) in their provision of interstate, domestic, interexchange services, while minimizing any potential adverse effects on our general policy of allowing market forces, rather than regulation, to discipline the practices of these carriers. Although a public disclosure requirement does not affect certain benefits of complete detariffing, such as elimination of possible invocation of the "filed-rate" doctrine, it may detract from our objective of reducing regulatory burdens and deterring tacit price coordination. Thus, we minimized the burdens on nondominant interexchange carriers of complying with this requirement by, for example, only requiring nondominant interexchange carriers to make information available in one location and not specifying a format for the disclosure.²⁰⁵

¹⁹⁹ AT&T Comments at 3-5.

²⁰⁰ *Id.*

²⁰¹ *Second Report and Order* at 20776, para. 84.

²⁰² *Id.*

²⁰³ *Id.* at 20776-77, para. 85.

²⁰⁴ *Id.* at 20745-46, para. 25; 20776, para. 84.

²⁰⁵ *Id.* at 20777, para. 86.

68. Upon further examination, we agree with Ad Hoc Users Committee that we can more narrowly tailor our information requirements. We therefore grant Ad Hoc Users Committee's petition and eliminate the public disclosure requirement for individually-negotiated service arrangements.²⁰⁶ Ad Hoc Users Committee correctly states that disclosure of the rates, terms, and conditions of individually-negotiated service arrangements cannot be justified on the basis of the need to enforce section 254(g), because the Commission decided to forbear from applying the geographic rate averaging and rate integration requirements to such arrangements.²⁰⁷ The Commission, however, requires carriers to ensure that individually-negotiated service offerings are available to similarly-situated customers, regardless of their geographic location.²⁰⁸ There are means to ensure that nondominant interexchange carriers make individually-negotiated service arrangements available to all similarly-situated customers without a public disclosure requirement. Market forces generally will ensure that nondominant interexchange carriers that lack market power do not charge rates, or impose terms and conditions, for interstate, domestic, interexchange services that are unjustly or unreasonably discriminatory.²⁰⁹ Specifically, if a nondominant interexchange carrier could profit from selling an interstate, domestic, interexchange service at one price to one customer and attempted to sell the same service at an unjustly or unreasonably discriminatory price to a similarly-situated customer, that customer would purchase services from other facilities-based nondominant interexchange carriers that could profit from selling the same services to that customer at the lower market price. Moreover, we can remedy any carrier conduct that violates the requirement that carriers make individually-negotiated service arrangements available to all similarly-situated customers through the section 208 complaint process²¹⁰ and the requirement adopted in the *Second Report and Order* that nondominant interexchange carriers maintain price and service information on all of their interstate, domestic, interexchange services that they must make available to the Commission upon request.²¹¹

²⁰⁶ Individually-negotiated service arrangements, as opposed to mass market services, are customer-specific arrangements, such as contract tariffs, AT&T's Tariff 12 options, MCI's special customer arrangements, and Sprint's custom network service arrangements.

²⁰⁷ *Geographic Rate Averaging Order*, 11 FCC Rcd at 9577.

²⁰⁸ *Id.*

²⁰⁹ *Second Report and Order* at 20742-43, para. 21.

²¹⁰ A customer can file a section 208 complaint and allege that a carrier has unreasonably discriminated against it in the provision of either contract or mass market services. The customer complainant, as always, under section 208, bears the initial burden of establishing that: (1) the complainant sought substantially the same service arrangement under the same terms and conditions that were made available to another customer; and (2) the carrier refused to make that service available to the complainant on terms similar to those of another customer's service arrangement. If a complainant establishes this, the burden shifts to the carrier which must demonstrate why the discrimination is reasonable. See *Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd 5880, 5903 (1991).

²¹¹ *Id.* at 20777-78, para. 87.

Thus, eliminating public disclosure for individually-negotiated service arrangements will not hinder enforcement of the requirement that carriers make such services available to all similarly-situated customers, and will also decrease the regulatory burden on nondominant interexchange carriers and deter tacit price coordination.

69. Although Ad Hoc Users Committee requests that the Commission eliminate the public disclosure requirement only for individually-negotiated service arrangements, the arguments it raises about the effect of public disclosure on tacit price coordination and the need to tailor more narrowly the information requirements apply to mass market services as well.²¹² We therefore conclude on reconsideration that we should also eliminate the public disclosure requirement for mass market interstate, domestic, interexchange services offered by nondominant interexchange carriers.²¹³ We emphasize, however, that this decision does not suggest any diminution in our commitment to enforce the geographic rate averaging and rate integration requirements. To that end, we require nondominant interexchange carriers to file annually certifications stating that they are in compliance with their obligations under section 254(g) and to maintain price and service information on all of their interstate, domestic, interexchange services that they must make available to the Commission and to state regulatory commissions upon request. In addition, we will further our goal of deterring tacit price coordination, because a nondominant interexchange carrier's rate, terms, and conditions for interstate, domestic, interexchange services will not be collected and available in one location, although we recognize that nondominant interexchange carriers may still be able to obtain information about their competitors' rates and service offerings in the absence of a public disclosure requirement.

70. We believe that our decision to eliminate the public disclosure requirement for mass market services will not deprive residential and other low volume customers of

²¹² Although no party specifically requested that the Commission eliminate the public disclosure requirement for mass market services, the Commission, in light of pending petitions for reconsideration, retains jurisdiction to reconsider its rules on its own motion. See *Central Florida Enters., Inc. v. FCC*, 598 F.2d 37, 48 n.51 (D.C. Cir. 1978), cert. dismissed, 441 U.S. 957 (1979).

²¹³ Mass market interstate, domestic, interexchange services are those services that are not individually-negotiated service arrangements, and, therefore, we are eliminating the public disclosure requirement for all interstate, domestic, interexchange services offered by nondominant interexchange carriers. Bell Atlantic's argument that we should also not require dominant interexchange carriers to disclose their rates, terms, and conditions is now largely moot in light of our determination that LECs providing interstate, domestic, interexchange services will generally be classified as nondominant in their provision of such services, pursuant to *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area; and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket Nos. 96-149, 96-61, Second Report and Order and Third Report and Order, FCC 97-142 (rel. April 18, 1997). Because this proceeding concerns detariffing only nondominant interexchange carriers' interstate, domestic, interexchange services and the record on dominant interexchange carrier regulation is extremely limited, we will address the issue of the regulatory treatment of dominant interexchange carriers if and when we determine that an interexchange carrier should be classified as dominant in its provision of interstate, domestic, interexchange services.

information about nondominant interexchange carriers' interstate, domestic, interexchange service offerings that they need to ensure that they have been correctly billed and to bring to the Commission's attention possible violations of the Communications Act, particularly section 254(g). To the contrary, we find nothing in the record of this reconsideration proceeding that would cause us to modify our conclusion in the *Second Report and Order* that consumers will have access to information concerning the rates, terms, and conditions for interstate, domestic, interexchange services offered by nondominant interexchange carriers to consumers through, *inter alia*, the billing process, information provided by nondominant interexchange carriers to establish a contractual relationship with their customers, notifications required by service contracts or state consumer protection laws, and advertisements and marketing materials.²¹⁴ We note that the majority of consumer complaints about the lawfulness of carriers' rates, terms, or conditions for interstate, domestic, interexchange services are based on information obtained through the billing process.²¹⁵ Consumers will also have the information they need to select the service best suited to their calling patterns through the mechanisms discussed above and the workings of the competitive market. Because consumers will have access to rate and service information about nondominant interexchange carriers' interstate, domestic, interexchange services in a detariffed environment without a public disclosure requirement, we conclude that the public disclosure requirement in the *Second Report and Order*, let alone an expanded public disclosure requirement as RTC and TMISC request, is unnecessary to protect consumers.

71. We recognize that elimination of the public disclosure requirement will make the collection of information more difficult for businesses, including consumer groups, that analyze and compare the rates and services of interexchange carriers and offer their analysis to the public for a fee. These businesses, however, will have access to the information that nondominant interexchange carriers provide to the public in order to market their services and improve their competitive position in the market. On balance, we conclude that the benefits of eliminating the public disclosure requirement for consumers, *e.g.*, decreased risk of tacit price coordination and increased competition in the interstate, domestic, interexchange market, outweigh any potential adverse effects on these businesses. Moreover, as stated above, consumers will not be deprived of the information they need and will receive additional information directly from nondominant interexchange carriers that will provide rate and service information to consumers in order to ensure the establishment of a contractual relationship with them in a detariffed environment. Although we find on the basis of the record in this proceeding that a public disclosure requirement is not necessary to ensure that interexchange carriers comply with their obligation under section 254(g), we are prepared to revisit this issue in the event that evidence shows that the safeguards we have implemented are inadequate. One tool at our disposal is to conduct audits of interexchange carrier

²¹⁴ *Second Report and Order* at 20745-46; para. 25; 20751, para. 39.

²¹⁵ *Id.* at 20751, para. 39. Moreover, as set forth in the *Second Report and Order*, we find that it is highly unlikely that interexchange carriers that lack market power could successfully charge rates, or impose terms and conditions that violate sections 201 and 202 of the Communications Act. *Id.* at 20742-43, para. 21.

compliance with the rate averaging obligations of section 254(g).

72. We also recognize the concerns of resellers, as expressed by TRA, that, without rate and service information through either tariffs or a public disclosure requirement, resellers will not have adequate information to prevent nondominant interexchange carriers from discriminating against resellers, which are not only customers, but also competitors of the carriers. We conclude, however, that the resellers' concern that the resale market will not survive in a detariffed environment without a public disclosure requirement is overstated. As noted in the *Second Report and Order*, 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 202.²¹⁶ Thus, as discussed below, our long-standing policies barring prohibitions on resale and restrictive eligibility requirements will continue in full force to the same extent as prior to detariffing.²¹⁷ Moreover, we agree with Ad Hoc Users Committee that it is unreasonable to assume that in a substantially competitive market, facilities-based carriers will not provide resellers with service options at reasonable rates. As TRA noted, in another proceeding, AT&T has just begun to "reform its conduct with respect to resellers" when its market share declined to fifty percent.²¹⁸ If a carrier does not provide resellers with service options at reasonable rates, resellers are not only likely to find another facilities-based carrier that will do so, but resellers also have the right to file a section 208 complaint with the Commission. We therefore find that the increased benefits to interexchange carriers and consumers of complete detariffing without a public disclosure requirement, *e.g.*, decreased risk of tacit price coordination and increased competition in the interstate, domestic, interexchange market, and a reduced regulatory burden justify any negative effect upon resellers of eliminating the public disclosure requirement.

73. Finally, we make clear that the annual certification requirement and the requirement that nondominant interexchange carriers maintain price and service information on all of their interstate, domestic, interexchange services that they must submit to the Commission upon request, discussed herein, are the same as those contained in the *Second Report and Order*.²¹⁹

²¹⁶ *Id.* at 20746-47, para. 27.

²¹⁷ *See infra* para. 75.

²¹⁸ *See* Opposition of the Telecommunications Resellers Association, filed in Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLata Services in Michigan, CC Docket No. 97-137, at 43 (filed June 10, 1997).

²¹⁹ *Second Report and Order* 20775, para. 83, 20777-78, para. 87.

IV. MISCELLANEOUS ISSUES

A. Nondiscriminatory Access to Interstate, Domestic, Interexchange Services

1. Positions of the Parties

74. TRA asks the Commission to clarify that nondominant interexchange carriers are required to make available, upon request, all interstate, domestic, interexchange services, including contract-based services, on a nondiscriminatory basis, to all qualified entities, including resellers.²²⁰ TRA argues that the Commission has required nondominant interexchange carriers to make such service offerings generally available, and has declared unlawful restrictive eligibility requirements that unreasonably discriminate against similarly-situated customers.²²¹ TRA notes that the Commission addressed its concerns in the *Second Report and Order*, in part, by requiring nondominant interexchange carriers to make publicly available price and service information on all of their interstate, domestic, interexchange services.²²² TRA contends, however, that the *Second Report and Order* does not expressly declare that the "general availability" requirement will continue to apply.²²³

2. Discussion

75. The Commission has long-standing policies of prohibiting restrictions on resale and barring restrictive eligibility requirements for interstate, domestic, interexchange services that have the effect of unreasonably discriminating against similarly-situated customers.²²⁴ The Commission has further concluded that individually-negotiated service arrangements do not violate section 202(a)'s prohibition against "unjust or unreasonable discrimination,"²²⁵ if the terms of the service arrangement are made available to similarly-situated customers.²²⁶ In

²²⁰ TRA Petition at 7.

²²¹ *Id.* at 7-8.

²²² *Id.* at 5.

²²³ *Id.* at 5-6.

²²⁴ See *Competition in the Interstate, Interexchange Marketplace*, CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880, 5901, 5903 (1991) (*First Interexchange Competition Order*); *AT&T Communications, Revisions to F.C.C. Tariff No. 12*, CC Docket No. 87-568, Memorandum Opinion and Order, 4 FCC Rcd 4932, 4938-39 & n.69 (1989), *rev'd and remanded on other grounds, MCI Telecommunications Corp. v. FCC*, 917 F.2d 30 (D.C. Cir. 1990).

²²⁵ 47 U.S.C. § 202(a).

²²⁶ *First Interexchange Competition Order*, 6 FCC Rcd at 5903. The Commission recently reaffirmed this policy in the order implementing section 254(g) of the Communications Act. See *Geographic Rate Averaging Order*, 11 FCC Rcd at 9577.

the *Second Report and Order*, we made clear that our decision to forbear from requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services does not affect carriers' obligations under sections 201 and 202.²²⁷ Thus, nondominant interexchange carriers are prohibited from imposing restrictions on resale and restrictive eligibility requirements that unreasonably discriminate against similarly-situated customers to the same extent that they were prohibited from doing so prior to adoption of the *Second Report and Order*.²²⁸

B. Law Governing the Lawfulness of Rates, Terms, and Conditions for Interstate Services

1. Positions of the Parties

76. AT&T requests that the Commission clarify that federal, and not state, law governs the determination as to whether a nondominant interexchange carrier's rates, terms, and conditions for interstate, domestic, interexchange services are lawful.²²⁹ AT&T contends that parties may interpret the statement in the *Second Report and Order* that, with complete detariffing, "consumers will also be able to pursue remedies under state consumer protection and contract laws"²³⁰ as allowing challenges under state law to the lawfulness of rates, terms, and conditions for these interstate services.²³¹ AT&T argues that any interpretation that authorizes such challenges under state law is foreclosed by numerous judicial decisions recognizing that sections 201 and 202 of the Communications Act preempt state law with respect to the reasonableness of rates, terms, and conditions for interstate telecommunications services.²³² Sprint, and WorldCom support AT&T's petition, arguing that the Communications Act, and not state law, governs rates, terms, and conditions for interstate telecommunications services.²³³ U S WEST argues that the Commission should adopt permissive detariffing until it conducts a new proceeding to determine the law that governs the relationship between

²²⁷ *Second Report and Order* at 20746-47, para. 27.

²²⁸ TRA also stated in its petition that the Commission partially addressed its concerns by requiring nondominant interexchange carriers to disclose publicly certain information regarding their interstate, domestic, interexchange services. As stated above, we have eliminated the public disclosure requirement in this Order on Reconsideration. For a discussion of this issue and TRA's concerns, see *supra* paras. 59-73.

²²⁹ AT&T Petition at 17-18.

²³⁰ *Second Report and Order* at 20752-53, para. 42.

²³¹ AT&T Petition at 17-18.

²³² *Id.* at 18-20 (citing *Chicago and Northwestern Transportation Co. v. Kalo Brick and Tile Co.*, 450 U.S. 311 (1981); *Nordlicht v. New York Tel. Co.*, 799 F.2d 859 (2d Cir. 1986); *Ivy Broadcasting v. AT&T*, 391 F.2d 486 (2d Cir. 1968)).

²³³ Sprint Comments at 6-7; WorldCom Reply at 6-7.

carriers and customers in a detariffed environment.²³⁴ API opposes U S WEST's request that the Commission conduct a new proceeding to determine the applicability of state and federal law in a detariffed environment.²³⁵

2. Discussion

77. In the *Second Report and Order*, we stated that our decision to forbear from requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services will not affect our enforcement of carriers' obligations under sections 201 and 202 to charge rates, and impose practices, classifications, and regulations that are just and reasonable, and not unjustly or unreasonably discriminatory.²³⁶ We therefore agree with AT&T, Sprint, and WorldCom that the Communications Act continues to govern determinations as to whether rates, terms, and conditions for interstate, domestic, interexchange services are just and reasonable, and are not unjustly or unreasonably discriminatory. While the parties only sought clarification that the Communications Act governs the determination as to the lawfulness of rates, terms, and conditions, we note that the Communications Act does not govern other issues, such as contract formation and breach of contract, that arise in a detariffed environment. As stated in the *Second Report and Order*, consumers may have remedies under state consumer protection and contract laws as to issues regarding the legal relationship between the carrier and customer in a detariffed regime.²³⁷

78. We reject U S WEST's argument that we should adopt permissive detariffing until there is greater certainty about the law that would govern the relationship between carriers and customers in the absence of tariffs. We adopted a nine-month transition in the *Second Report and Order*, during which nondominant interexchange carriers are permitted to file new tariffs and revise existing tariffs for mass market services. This transition provides for a period of permissive detariffing to allow nondominant interexchange carriers time to adjust to detariffing. We believe that a lengthier period of time is unnecessary to address U S WEST's concern.

²³⁴ U S WEST Comments at 3-6.

²³⁵ API Reply at 3-4.

²³⁶ See, e.g., *Second Report and Order* 20742-43, para. 21; 20746-47, para. 27; 20750-51, para. 38.

²³⁷ *Id.* at 20752-53, para. 42.

C. Private Contract Clauses Preserving the "Filed-Rate" Doctrine

1. Positions of the Parties

79. Ad Hoc requests that the Commission clarify that the intent of the *Second Report and Order* is not to permit carriers to preserve the "unfair advantages" they would enjoy under "filed-rate" doctrine, but to eliminate the ability of nondominant interexchange carriers to invoke the "filed-rate" doctrine.²³⁸ Ad Hoc contends that some interexchange carriers are attempting to preserve their right to make unilateral changes to contracts by including a contract clause pursuant to which the carrier is permitted to alter the terms of the contract at any time, and for any reason.²³⁹

2. Discussion

80. In the *Second Report and Order*, we stated that not permitting nondominant interexchange carriers to file tariffs for the provision of interstate, domestic, interexchange services will achieve the public interest objective of eliminating the ability of nondominant interexchange carriers to invoke the "filed-rate" doctrine.²⁴⁰ We also observed that eliminating the ability of carriers to invoke the "filed-rate" doctrine benefits consumers by creating a legal relationship that more closely resembles the legal relationship between service providers and customers in an unregulated environment, and is in the public interest.²⁴¹ While we do not support attempts by carriers to preserve their ability to alter unilaterally the terms of a contract, pursuant to a contract clause, we will rely on private negotiations between the parties in the first instance to resolve such issues. The issue of whether a particular contract clause is "just and reasonable," as required by section 201(b) of the Communications Act, is not before us in this proceeding, however, such an issue would be an appropriate matter for a section 208 complaint.

²³⁸ Ad Hoc Petition at 11.

²³⁹ *Id.*

²⁴⁰ *Second Report and Order* at 20762, para. 55.

²⁴¹ *See supra* para. 12.

D. Relationship of Detariffing to Access Charge Reform and Universal Service**1. Positions of the Parties**

81. RTC urges the Commission in this proceeding to ensure adequate universal support for access charges in high-cost areas to minimize the incentive of interexchange carriers to deaverage their rates.²⁴² RTC contends that, notwithstanding the statutory requirement that interexchange carriers charge "reasonably comparable" rural and urban interexchange rates,²⁴³ interexchange carriers have an incentive to deaverage their rates, especially as they face increased competition from BOCs and others.²⁴⁴ RTC further argues that eliminating tariffs and curtailing public information availability will decrease interexchange carriers' incentive to average interexchange rates.²⁴⁵ Although RTC recognizes that the Commission is considering universal service support and access charge reform in other dockets, it nevertheless contends that there is an overlap between this proceeding and those other dockets.²⁴⁶ Thus, RTC urges the Commission in this proceeding to reduce the incentive to deaverage rates by ensuring adequate support mechanisms for high-cost areas.²⁴⁷

82. AT&T counters that the *Second Report and Order* does not compel a particular result in the Commission's universal service and access charge reform proceedings.²⁴⁸ AT&T further argues that any relationship between detariffing and access charge reform or universal service should be considered in those particular dockets.²⁴⁹

²⁴² RTC Petition at 5-6; RTC Reply at 3-4.

²⁴³ 47 U.S.C. § 254(b)(3), (g).

²⁴⁴ RTC Petition at 5-6.

²⁴⁵ *Id.* at 6.

²⁴⁶ RTC Reply at 4-5.

²⁴⁷ RTC Petition at 5-7; RTC Reply at 3-5.

²⁴⁸ AT&T Comments at 4 n.5.

²⁴⁹ *Id.*

2. Discussion

83. We have recently addressed universal service support and access charge reform in separate proceedings.²⁵⁰ We agree with AT&T that these issues are beyond the scope of this proceeding and better addressed in those particular proceedings in which numerous parties commented specifically on universal service and access charge reform issues. Therefore, we decline to address these issues in this proceeding.

E. Fees for the Withdrawal of Tariffs

1. Positions of the Parties

84. TRA requests that the Commission refrain from collecting filing fees from nondominant interexchange carriers that are required to withdraw tariffs pursuant to the *Second Report and Order*.²⁵¹ TRA argues that section 1.1113(a)(4) of the Commission's rules²⁵² supports its argument that it is inequitable to retain filing fees when carriers are compelled to withdraw tariffs as a result of Commission action.²⁵³

2. Discussion

85. 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 per tariff filing.²⁵⁴ After we adopted the *Second Report and Order*, the Common Carrier Bureau received inquiries concerning whether nondominant interexchange carriers must pay the tariff filing fee to withdraw or revise tariffs pursuant to the *Second Report and Order*, and whether nondominant interexchange carriers that pay such fees would be entitled to a refund or return of the fee. On December 19, 1996, the Common Carrier Bureau issued the *Public Notice Concerning Implementation*, in which it responded to these inquiries and addressed the precise issue TRA

²⁵⁰ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157 (rel. May 8, 1997); *Access Charge Reform Order*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, FCC 97-158.

²⁵¹ TRA Petition at 16-17.

²⁵² Section 1.1113(a) provides that "[t]he full amount of any fee submitted will be returned or refunded . . . when 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." 47 C.F.R. § 1.1113(a).

²⁵³ TRA Petition at 16-17.

²⁵⁴ 47 C.F.R. § 1.1105.

raises here.²⁵⁵ The Common Carrier Bureau, consistent with Commission precedent and practice, concluded in the *Public Notice Concerning Implementation* that nondominant interexchange carriers would need to pay tariff filing fees to withdraw or revise existing tariffs pursuant to the *Second Report and Order*, and that such carriers would not be entitled to a return or refund of the fee. We now affirm this conclusion.

86. The purpose of the fee program is to assess and collect fees for regulatory services provided to the public, and the fees charged are based primarily on the costs to the Commission of providing those services.²⁵⁶ In the *Fee Program Order*, the Commission concluded that section 1.1113(a)(4) 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."²⁵⁷ The Commission specifically concluded that Congress, when it established the regulatory fee program, did not envision an exemption from the payment of fees for additional tariff filings required by changes to the Commission's rules.²⁵⁸ Based on its analysis in the *Fee Program Order*, the Commission required Commercial Mobile Radio Service providers to pay the tariff filing fee for cancelling tariffs for domestic interstate services pursuant to a Commission order.²⁵⁹ We are not aware of any distinction that justifies a different determination in this case.²⁶⁰ We therefore conclude that nondominant interexchange carriers cancelling their tariffs for interstate, domestic, interexchange services, or revising their tariffs for bundled international and domestic service offerings to exclude interstate, domestic, interexchange services, will be required to pay the tariff filing fee and will not be eligible for a return or refund of that fee.

87. To minimize the cost to nondominant interexchange carriers of cancelling or revising tariffs pursuant to the *Second Report and Order*, we reiterate that such carriers may cancel or revise several tariffs under one cover letter with the payment of one filing fee, as

²⁵⁵ *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Public Notice, Further Guidance Concerning Implementation, DA 96-2155, at 2 (rel. Dec. 19, 1996) (*Public Notice Concerning Implementation*).

²⁵⁶ *Public Notice Concerning Implementation*, at 2; see also *In the Matter of Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, Gen. Docket No. 86-285, Report and Order, 2 FCC Rcd 947, 977 (1987) (*Fee Program Order*).

²⁵⁷ *Fee Program Order*, 2 FCC Rcd at 950 (emphasis added).

²⁵⁸ *Id.* at 950, 977.

²⁵⁹ *Implementation of Section 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411 (1994) (*Regulatory Treatment of Mobile Services Order*).

²⁶⁰ *Public Notice Concerning Implementation* at 2.

stated in the *Public Notice Concerning Implementation*.²⁶¹ In addition, organizations that file tariffs on behalf of several carriers may request a 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.²⁶²

V. PROCEDURAL ISSUES

A. Final Regulatory Flexibility Analysis on Reconsideration

88. As required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice*.²⁶³ The Commission sought written public comments on the proposals in the *Notice*. In addition, pursuant to section 603, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *Second Report and Order*.²⁶⁴ That FRFA conformed to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).²⁶⁵ The Supplemental Final Regulatory Flexibility Analysis in this initial Order on Reconsideration (Supplemental FRFA) also conforms to the RFA.

1. Need for and Objectives of this Order on Reconsideration and the Rules Adopted Herein

89. With the exception of dial-around 1+ services and LEC-implemented new customer services, our decisions and rules in this Order on Reconsideration detariff completely the interstate, domestic, interexchange services of nondominant interexchange carriers.²⁶⁶ In this Order on Reconsideration, we grant in part and deny in part several of the petitions filed for reconsideration and/or clarification of the *Second Report and Order*, in order to further the same needs and objectives as those discussed in the FRFA in the *Second Report and Order*,²⁶⁷ including reducing the costs and burdens of providing interstate, domestic, interexchange services, in the absence of tariffs, on nondominant interexchange carriers and customers, some of which are small entities. First, we adopt permissive

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Notice*, 11 FCC Rcd at 7192-93.

²⁶⁴ *Second Report and Order* at 20798-809, paras. 129-58.

²⁶⁵ 5 U.S.C. §§ 601 *et seq.* The SBREFA is Title II of the Contract With America Advancement Act of 1996 (CWAAA), Pub. L. No. 104-121, 110 Stat. 847 (1996).

²⁶⁶ *See supra* para. 10.

²⁶⁷ *Second Report and Order* at 20798-99, paras. 130-31.

detariffing for dial-around 1+ services using a nondominant interexchange carrier's access code. Second, we adopt permissive detariffing for the initial 45 days of LEC-implemented interstate, domestic interexchange service to new residential or small business customers, or until a written contract is consummated, whichever is earlier. Third, we eliminate the public disclosure requirement for all interstate, domestic, interexchange service offered by nondominant interexchange carriers. In addition, we require nondominant interexchange carriers to file annual certifications stating that they are in compliance with their obligations under section 254(g) and to maintain price and service information on all of their interstate, domestic, interexchange services that they must make available to the Commission upon request. Finally, with the exception of dial-around 1+ services and LEC-implemented new customer services, we affirm our conclusion that permissive detariffing of all other interstate, domestic, interexchange service of nondominant interexchange carriers is not in the public interest.

2. Analysis of Significant Issues Raised in Response to the FRFA

90. *Summary of the FRFA.*²⁶⁸ In the FRFA, we recognized that many of the decisions and rules adopted in the *Second Report and Order* may have a significant effect on a substantial number of the small telephone companies identified by the Small Business Administration (SBA).²⁶⁹ Based upon data contained in the most recent census and a report by the Commission's Common Carrier Bureau, we estimated that fewer than 3,497 telephone service firms are small entity telephone service firms that could be affected.²⁷⁰ We also discussed the reporting requirements imposed by the *Second Report and Order*.²⁷¹

91. In addition, we discussed the steps we had taken to minimize the impact on small entities, consistent with our stated objectives.²⁷² We concluded that our actions in the *Second Report and Order* would benefit small entities by facilitating the development of increased competition in the interstate, domestic, interexchange market, thereby benefitting all consumers, some of which are small business entities.²⁷³ We found that the record in that proceeding indicated that detariffing on a permissive basis would not definitively eliminate the possible invocation of the "filed-rate" doctrine and would create the risk of price

²⁶⁸ For a summary of the IRFA and an analysis of the significant issues raised in response to the IRFA, see *Second Report and Order* at 20799-803, paras. 132-41.

²⁶⁹ *Id.* at 20804, para. 143.

²⁷⁰ *Id.*

²⁷¹ *Id.* at 20807, paras. 149-52.

²⁷² *Id.* at 20808-09, paras. 153-57.

²⁷³ *Id.* at 20808, para. 154.