

signalling. We concluded that only with complete detariffing could we definitively eliminate these possible anticompetitive practices and protect consumers, some of which are small business entities.<sup>274</sup> We noted that we attempted to keep burdens on nondominant interexchange carriers to a minimum. For example, we did not require nondominant interexchange carriers to make rate and service information available to the public in any particular format, or at any particular location.<sup>275</sup>

**a. Impact of Complete Detariffing on Small, Nondominant Interexchange Carriers**

92. *Comments.* Although not in response to the FRFA, TRA claims that the *Second Report and Order* does not adequately address the impact of complete detariffing on small, nondominant interexchange carriers.<sup>276</sup> TRA requests that the Commission permit nondominant interexchange carriers to tariff their domestic, interstate, interexchange service offerings.<sup>277</sup>

93. *Discussion.* As discussed in the Order on Reconsideration, we permit carriers to file tariffs for dial-around 1+ services and LEC-implemented new customer services. We base this decision on the credible evidence offered by parties on reconsideration concerning the costs and burdens to carriers and customers of providing these services in the absence of tariffs.<sup>278</sup> Permitting carriers to file tariffs in these limited circumstances will ease the burdens on nondominant interexchange carriers and customers, some of which are small entities. We discuss these issues above in the Order on Reconsideration.<sup>279</sup>

**3. Description and Estimates of the Number of Small Entities Affected by this Order on Reconsideration**

94. For the purposes of this Order on Reconsideration, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are

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<sup>274</sup> *Id.*

<sup>275</sup> *Id.* at 20809, para. 156.

<sup>276</sup> TRA Petition at 13.

<sup>277</sup> *Id.* at 9.

<sup>278</sup> *See supra* at paras. 15, 16, 32, 39.

<sup>279</sup> *Id.* at 20746-50, paras. 26-36; 20751-54, paras. 39-44.

appropriate to its activities.<sup>280</sup> Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.<sup>281</sup> The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities with fewer than 1,500 employees.<sup>282</sup> We first discuss generally the total number of small telephone companies falling within both of those SIC categories. Then, we discuss the number of small businesses within the two subcategories that may be affected by our rules, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

95. *Total Number of Telephone Companies Affected.* Many of the decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by the SBA. The United States Bureau of the Census (the Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.<sup>283</sup> This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."<sup>284</sup> For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms that may be affected by this Order on Reconsideration.

96. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.<sup>285</sup> According to the SBA's definition, a

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<sup>280</sup> See 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

<sup>281</sup> 15 U.S.C. § 632. See, e.g., *Brown Transport Truckload, Inc. v. Southern Wipers, Inc.*, 176 B.R. 82 (N.D. Ga. 1994).

<sup>282</sup> 13 C.F.R. § 121.201.

<sup>283</sup> United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) (*1992 Census*).

<sup>284</sup> 15 U.S.C. § 632(a)(1).

<sup>285</sup> *1992 Census*, *supra* note 283, at Firm Size 1-123.

small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons.<sup>286</sup> All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in this Order on Reconsideration.

97. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of interexchange carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with Telecommunications Relay Services (TRS). According to our most recent data, 97 companies reported that they were engaged in the provision of interexchange services.<sup>287</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of interexchange carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 97 small entity interexchange carriers that may be affected by the decisions and rules adopted in this Order on Reconsideration.

98. *Resellers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under the SBA's rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 206 companies reported that they were engaged in the resale of telephone services.<sup>288</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under

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<sup>286</sup> 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

<sup>287</sup> Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Tbl. 21 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Feb. 1996).

<sup>288</sup> *Id.*

the SBA's definition. Consequently, we estimate that there are fewer than 206 small entity resellers that may be affected by the decisions and rules adopted in this Order on Reconsideration.

99. In addition, the rules adopted in this Order on Reconsideration may affect companies that analyze information contained in tariffs. The SBA has not developed a definition of small entities specifically applicable to companies that analyze tariff information. The closest applicable definition under the SBA rules is for Information Retrieval Services (SIC Category 7375). The Census Bureau reports that, at the end of 1992, there were approximately 618 such firms classified as small entities.<sup>289</sup> This number contains a variety of different types of companies, only some of which analyze tariff information. We are unable at this time to estimate with greater precision the number of such companies and those that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 618 such small entity companies that may be affected by the decisions and rules adopted in this Order on Reconsideration.

100. We assume that most, if not all, small businesses purchase interstate, domestic, interexchange telecommunications services. As a result, our rules in this Order on Reconsideration would affect virtually all small business entities. The SBA guidelines to the SBREFA state that about 99.7 percent of all firms are small and have fewer than 500 employees and less than \$25 million in sales or assets. There are approximately 6.3 million establishments in the SBA's database.<sup>290</sup> The SBA database does include nonprofit establishments, but it does not include governmental entities. SBREFA requires us to estimate the number of such entities with populations of less than 50,000 that would be affected by our new rules.<sup>291</sup> There are 85,006 governmental entities in the nation.<sup>292</sup> This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. This number, however, includes 38,978 counties, cities and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000.<sup>293</sup> The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 96 percent, or 81,600, are small entities that would be affected by the decisions and rules adopted in this Order on Reconsideration.

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<sup>289</sup> U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 2D, SIC Code 7375 (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

<sup>290</sup> A Guide to the Regulatory Flexibility Act, U.S. Small Business Administration, Washington D.C., at 14 (May 1996).

<sup>291</sup> 5 U.S.C. § 601(5).

<sup>292</sup> 1992 Census of Governments, Bureau of the Census, U.S. Department of Commerce.

<sup>293</sup> *Id.*

**4. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements and Steps Taken to Minimize the Significant Economic Impact of this Order on Reconsideration on Small Entities, Including the Significant Alternatives Considered and Rejected**

101. *Structure of the Analysis.* In this section of the Supplemental FRFA, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities as a result of this Order on Reconsideration.<sup>294</sup> As a part of this discussion, we mention some of the types of skills that will be needed to meet the new requirements. We also describe the steps taken to minimize the economic impact of our decisions on small entities, including the significant alternatives considered and rejected.<sup>295</sup>

102. We provide this summary analysis to provide context for our analysis in this Supplemental FRFA. To the extent that any statement contained in this Supplemental FRFA is perceived as creating ambiguity with respect to our rules or statements made in the *Second Report and Order* or preceding sections of this Order on Reconsideration, the rules and statements set forth in the *Second Report and Order* and in the preceding sections of this Order on Reconsideration shall be controlling.

**a. Permissive Detariffing for Dial-around 1+ Services**

103. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.* In the *Second Report and Order*, we concluded that the record did not support a finding that complete detariffing would cause nondominant interexchange carriers to cease offering casual calling services. Rather, we found that nondominant interexchange carriers have options other than tariffs by which they can ensure the establishment of a contractual relationship with casual callers that would legally obligate such callers to pay for the telecommunications service they use and bind them to the carriers' terms and conditions.<sup>296</sup> In this Order on Reconsideration, we adopt permissive detariffing, on an interim basis, for a subset of casual calling services, specifically, the provision of dial-around 1+ services. This change in the manner of conducting their business may require nondominant interexchange carriers to use technical, operation, accounting, billing, and legal skills.

104. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered.* By permitting nondominant interexchange carriers to file tariffs for dial-around 1+ services, we enable these carriers and their customers, some of which are small business entities, to avoid the substantial costs and burdens associated with ensuring the establishment of an enforceable contract in the absence

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<sup>294</sup> See 5 U.S.C. § 604(a)(4).

<sup>295</sup> See 5 U.S.C. § 604(a)(5).

<sup>296</sup> *Second Report and Order* at 20764, para. 58.

of tariffs. The means of ensuring the establishment of an enforceable contract with customers of other casual calling services cannot be reasonably implemented currently for dial-around 1+ services because the interexchange carriers do not have the ability reasonably to distinguish dial-around 1+ calls from direct dial 1+ calls placed from telephones presubscribed to an interexchange carrier, as required to provide the dial-around 1+ caller with the rates, terms, and conditions prior to completion of the call. The inability of nondominant interexchange carriers to distinguish between dial-around 1+ and direct dial 1+ calls would require these carriers to implement the recorded announcement of the rates, terms, and conditions or other means adopted by such carriers to ensure a contractual relationship with dial-around 1+ callers for both dial-around 1+ callers and direct dial 1+ callers. The increased costs and the delay in call set-up time that are attendant with ensuring the establishment of a contractual relationship with dial-around 1+ callers would impose an unreasonable burden on consumers using direct dial 1+ service from their PIC. We find in this Order on Reconsideration that the technology to distinguish dial-around 1+ calls from direct dial 1+ calls placed from telephones presubscribed to an interexchange carrier is not universally offered by all LECs, either because some LEC switches are not capable of providing signalling using SS7, which is necessary to provide this feature, or because a LEC has chosen not to offer this feature.<sup>297</sup>

105. In this Order on Reconsideration, we reject the option of requiring LECs to deploy universally switches capable of providing SS7. We reject this option, which might impose greater burdens on small LECs, because a significant number of LEC switches do not presently have SS7 capability<sup>298</sup> and we do not have an adequate record in this proceeding to evaluate the costs that such a decision would impose on LECs.

**b. Permissive Detariffing for LEC-Implemented New Customer Services**

106. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.* In the *Second Report and Order*, we did not specifically address whether complete detariffing is in the public interest with respect to the provision of interstate, domestic, interexchange service to new customers that select and use an interexchange service before receiving information about the rates, terms, and conditions of that service. In this Order on Reconsideration, we permit interexchange carriers to file tariffs to cover the provision of service during the initial 45 days of nondominant interexchange carriers' provision of interstate, domestic, interexchange services to new residential and small business customers, or until a written contract is consummated, whichever is earlier, in the limited circumstance when a new customer contacts the LEC to select an interexchange carrier or to initiate a PIC change. This change in the manner of conducting their business may require

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<sup>297</sup> See *supra* para. 33.

<sup>298</sup> See Report, *Infrastructure of the Local Operating Companies Aggregated to the Holding Company Level*, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission at table 10(a) (rel. Mar. 13, 1997).

nondominant interexchange carriers to use technical, operation, accounting, billing, and legal skills.

107. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Alternatives Considered.* Adoption of permissive detariffing for the initial period of LEC-implemented interstate, domestic, interexchange service to new residential and small business customer enables the nondominant interexchange carriers and their customers, some of which are small business entities, to avoid the substantial costs and burdens associated with ensuring the establishment of an enforceable contract in the absence of tariffs.

108. In this Order on Reconsideration, we considered several means by which LECs could convey to customers of nondominant interexchange carriers 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 of service. We reject the alternative of requiring nondominant interexchange carriers to 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 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. In addition, requiring prospective customers to contact nondominant interexchange carriers directly prior to the commencement of service in order to establish the necessary contractual relationship would preclude residential and small business customers from changing or selecting a PIC by contacting the LECs as they do today. Finally, nondominant interexchange carrier could decide to delay provisioning of the service until a contractual relationship is formalized, but such a delay may also discourage residential and small business customers from making PIC changes, thereby deterring competition in the interexchange market.<sup>299</sup>

### c. Information Disclosure Requirements

109. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.* In the *Second Report and Order*, we required 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 at least one location during regular business hours.<sup>300</sup> We also required carriers to inform the public that this information is available when responding to consumer inquiries or complaints and to specify the manner in

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<sup>299</sup> See *supra* para. 41.

<sup>300</sup> *Second Report and Order* at 20777, para. 86.

which the consumer may obtain the information.<sup>301</sup> We further required nondominant interexchange carriers to maintain, for a period of two years and six months, the information provided to the public, as well as documents supporting the rates, terms, and conditions for all of their interstate, domestic, interexchange offerings, that they can submit to the Commission upon request.<sup>302</sup> In addition, we required nondominant interexchange carriers to file with the Commission, and update as necessary, the name, address, and telephone number of the individual, or individuals, designated by the carrier to respond to Commission inquiries and requests for documents.<sup>303</sup> We further required nondominant providers of interstate, domestic, interexchange telecommunications services to file annual certifications signed by an officer of the company under oath that the company is in compliance with its statutory geographic rate averaging and rate integration obligations.<sup>304</sup>

110. In this Order on Reconsideration, we eliminate the requirement that nondominant interexchange carriers make publicly available information concerning rates, terms, and conditions for all of their interstate, domestic, interexchange services. To enforce the geographic rate averaging and rate integration requirements applicable to mass market services, 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

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<sup>301</sup> *Id.*

<sup>302</sup> *Id.* at 20777-78, para. 87.

<sup>303</sup> *Id.*

<sup>304</sup> *Id.* at 20775, para. 83.

must make available to the Commission upon request.<sup>305</sup> Compliance with this obligation may require the use of accounting, billing, and legal skills.

111. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered.* 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. Moreover, we conclude that 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.<sup>306</sup>

112. We also recognize the concerns of resellers that, without rate and service information made available 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 find, however, 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.<sup>307</sup>

## 5. Report to Congress

113. The Commission shall send a copy of this Supplemental FRFA, along with this Order on Reconsideration, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this Supplemental FRFA will also be published in the Federal Register.

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<sup>305</sup> See *supra* para. 69.

<sup>306</sup> *Id.* at 20770, para. 71.

<sup>307</sup> *Id.* at 20770-71, para. 72.

**B. Supplemental Final Paperwork Reduction Analysis**

114. As required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13,<sup>308</sup> the *Notice* invited the general public and the Office of Management and Budget (OMB) to comment on proposed changes to the Commission's information collection requirements contained in the *Notice*.<sup>309</sup> The changes to our information collection requirements proposed in the *Notice* included: (1) the elimination of tariff filings by nondominant interexchange carriers for interstate, domestic, interexchange telecommunications services;<sup>310</sup> (2) the requirement that nondominant interexchange carriers maintain at their premises price and service information regarding their interstate, interexchange offerings that they can submit to the Commission upon request;<sup>311</sup> (3) the requirement that providers of interexchange services file certifications with the Commission stating that they are in compliance with their statutory rate integration and geographic rate averaging obligations under section 254(g) of the Communications Act;<sup>312</sup> and (4) the requirement that interexchange carriers advertise the availability of discount rate plans throughout the entirety of their service areas.<sup>313</sup>

115. On June 12, 1996, OMB approved all of the proposed changes to our information collection requirements in accordance with the Paperwork Reduction Act.<sup>314</sup> In approving the proposed changes, OMB "strongly recommend[ed] that the [Commission] investigate potential mechanisms to provide consumers, State regulators, and other interested parties with some standardized pricing information," which "could be provided as part of the certification process or could be made available to the public in other ways."<sup>315</sup>

116. In this Order on Reconsideration, we adopt several changes to our information collection requirements proposed in the *Notice*. Specifically, we have decided to: (1) permit nondominant interexchange carriers to file tariffs for the provision of dial-around 1+ services using a nondominant interexchange carrier's carrier access code; (2) permit nondominant interexchange carriers to file tariffs for the initial 45 days of domestic, interstate, interexchange service, or until there is a written contract between the carrier and the customer,

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<sup>308</sup> 44 U.S.C. §§ 3501 *et seq.*

<sup>309</sup> *Notice*, 11 FCC Rcd at 7193-94.

<sup>310</sup> *Id.* at 7157-63.

<sup>311</sup> *Id.* at 7162-63.

<sup>312</sup> *Id.* at 7178, 7182.

<sup>313</sup> *Id.* at 7179.

<sup>314</sup> *Notice of Office of Management and Budget Action*, OMB No. 3060-0704 (June 12, 1996).

<sup>315</sup> *Id.*

whichever is earlier,<sup>316</sup> (3) eliminate the public disclosure requirement. We reaffirm our decision in the *Second Report and Order* to require nondominant interexchange carriers to: (1) file annual certifications with the Commission stating that they are in compliance with their statutory rate integration and geographic rate averaging obligations under section 254(g) of the Communications Act,<sup>317</sup> and (2) maintain price and service information on all their interstate, domestic, interexchange services that they can make available to the Commission upon request.<sup>318</sup> Implementation of these requirements will be subject to approval by OMB as prescribed by the Paperwork Reduction Act.

## VI. ORDERING CLAUSES

117. Accordingly, IT IS ORDERED that, pursuant to sections 1-4, 10, 201, 202, 203, 204, 205, 215, 218, 220, 226, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 160, 201, 202, 203, 204, 205, 215, 218, 220, 226, and 254, the ORDER ON RECONSIDERATION is hereby ADOPTED. The requirements adopted in this Order on Reconsideration shall be effective 30 days after publication of a summary thereof in the Federal Register or on the date when the requirements adopted in the *Second Report and Order* in this proceeding become effective, whichever is later. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

118. IT IS FURTHER ORDERED that Parts 42 and 61 of the Commission's rules, 47 C.F.R. §§ 42 and 61 are AMENDED as set forth in Appendix B hereto.

119. IT IS FURTHER ORDERED that the Petitions for Reconsideration filed by Ad Hoc Users Committee, AT&T, Frontier, Telco, and TRA ARE GRANTED in part and DENIED in part, as described herein. All other Petitions for Reconsideration filed in this proceeding ARE DENIED.

120. IT IS FURTHER ORDERED that the Petitions for Clarification filed in this proceeding ARE GRANTED in part, and DENIED in part, as described herein.

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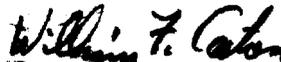
<sup>316</sup> See *supra* para. 10.

<sup>317</sup> *Id.* at para. 69.

<sup>318</sup> *Id.*

121. IT IS FURTHER ORDERED that whereas the *Second Report and Order* in this proceeding was stayed by the United States Court of Appeals for the District of Columbia Circuit, we direct the General Counsel expeditiously to file the necessary papers with the court to request clarification of that stay on the decision herein. Accordingly, this Order on Reconsideration IS STAYED pending the court's ruling.

FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary

**APPENDIX A**  
**LIST OF PARTIES**  
(CC Docket No. 96-61)

**List of Petitioners**

Ad Hoc Telecommunications Users Committee, The California Bankers Clearing House Association, The New York Clearing House Association, ABB Business Services, Inc., and The Prudential Insurance Company of America (Ad Hoc Users Committee)  
American Petroleum Institute (API)  
AT&T Corp. (AT&T)  
Frontier Corporation (Frontier)  
General Communication, Inc. (GCI)  
Rural Telephone Coalition (RTC)  
SDN Users Association, Inc. (SDN Users)  
Telco Communications Group (Telco)  
Telecommunications Management Information Systems Coalition (TMISC)  
Telecommunications Resellers Association (TRA)  
Western Union Communications, Inc. (Western Union)

**List of Parties Filing Oppositions and Comments**

ABC, Inc., CBS Inc., National Broadcasting Company, Inc., and Turner Broadcasting System, Inc. (Television Networks)  
Ad Hoc Telecommunications Users Committee, The California Bankers Clearing House Association, The New York Clearing House Association, ABB Business Services, Inc., and The Prudential Insurance Company of America (Ad Hoc Users)  
American Petroleum Institute (API)  
AT&T Corp. (AT&T)  
BellAtlantic Telephone Companies (Bell Atlantic)  
Competitive Telecommunications Association (CompTel)  
SBC Communications, Inc. (SBC)  
Sprint Corporation (Sprint)  
State of Alaska (Alaska)  
State of Hawaii (Hawaii)  
U S WEST, Inc. (U S WEST)

**List of Parties Filing Reply Comments**

Ad Hoc Telecommunications Users Committee, The California Bankers Clearing House Association, The New York Clearing House Association, ABB Business Services, Inc., and The Prudential Insurance Company of America (Ad Hoc Users)

American Petroleum Institute (API)

AT&T Corp. (AT&T)

Rural Telephone Coalition (RTC)

Telecommunications Management Information Systems Coalition (TMISC)

Telecommunications Resellers Association (TRA)

WorldCom, Inc. (WorldCom)

**APPENDIX B -- RULES****AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS**

Parts 42 and 61 of Title 47 of the Code of Federal Regulations are amended as follows:

**PART 42-- PRESERVATION OF RECORDS OF  
COMMUNICATIONS COMMON CARRIERS**

1. The authority citation for part 42 continues to read as follows:

AUTHORITY: Sec. 4(i), 48 Stat. 1066, as amended, 47 U.S.C.154(i). Interprets or applies secs. 219 and 220, 48 Stat. 1077-78, 47 U.S.C. 219, 220.

2. Section 42.10 is deleted.

3. Section 42.11 is amended by revising paragraph (a) and deleting paragraph (c). Paragraph (b) is unchanged.

**§42.11. Retention of information concerning detariffed interexchange services.**

(a) A nondominant interexchange carrier shall maintain, for submission to the Commission upon request, price and service information regarding all of the carrier's detariffed interstate, domestic, interexchange service offerings. The price and service information maintained for purposes of this subparagraph shall include documents supporting the rates, terms, and conditions of the carrier's detariffed interstate, domestic, interexchange offerings. The information maintained pursuant to this subsection shall be maintained in a manner that allows the carrier to produce such records within ten business days.

**PART 61-- TARIFFS**

4. The authority citation for part 61 continues to read as follows:

AUTHORITY: Secs. 1, 4(i), 4(j), 201-205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C.151, 154(i), 154(j), 201-205, and 4-3, unless otherwise noted.

5. Section 61.3(jj) is unchanged.

6. Section 61.20 is revised to read as follows:

**§ 61.20 Detariffing of interstate, domestic, interexchange services.**

- (a) Except as otherwise provided in paragraphs (b) and (c), or by Commission order,

carriers that are nondominant in the provision of interstate, domestic, interexchange services shall not file tariffs for such services.

(b) Carriers that are nondominant in the provision of interstate, domestic, interexchange services shall be allowed to file tariffs for dial-around 1+ services. For the purposes of this paragraph, dial-around 1+ calls are those calls made by accessing the interexchange carrier through the use of that carrier's carrier access code. A carrier access code is a five or seven digit access code that enables callers to reach any carrier, presubscribed or otherwise, from any telephone.

(c) Carriers that are nondominant in the provision of interstate, domestic, interexchange services shall be allowed to file tariffs for such service to those customers who contact the local exchange carrier to designate an interexchange carrier or to initiate a change with respect to their primary interexchange carrier. These tariffs shall remain in effect until the interexchange carrier and the customer consummate a written contract, but in no event for more than 45 days.

7. Section 61.72 is amended by revising introductory paragraph (a). Paragraph (b) is unchanged.

**§ 61.72 Posting.**

(a) Offering carriers must post (i.e., keep accessible to the public) during the carrier's regular business hours, a schedule of rates and regulations for those services for which tariff filings are required and those services for which carriers exercise the option to file tariffs. This schedule must include all effective and proposed rates and regulations pertaining to the services offered to and from the community or communities served, and must be the same as that on file with the Commission. This posting requirement must be satisfied by the following methods:

\* \* \* \* \*

8. Section 61.74 is unchanged.

**Statement of Commissioner Susan Ness  
Dissenting in Part**

*Re: Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended*

I respectfully dissent from that portion of today's decision that eliminates the public disclosure requirement that was established in our *Second Report and Order* in this docket. I continue to believe that the public disclosure requirement is a valuable safeguard that promotes the policies of rate integration and rate averaging codified in Section 254(g) of the Communications Act, as amended by the Telecommunications Act of 1996.

The principal holding of our prior order was that interstate, interexchange services should generally be completely detariffed. I support that decision (as well as the limited exceptions adopted as a matter of necessity today). Complete detariffing has several virtues that make it decidedly preferable to permissive detariffing.

Chief among these is that the elimination of tariffs will increase the likelihood that relationship between carriers and consumers will be fair. No longer will tariffs filed with the FCC be used to establish one-sided relationships whose benefits accrue mainly to the carrier and whose burdens and liabilities fall mainly on the consumer. Under complete detariffing, it will be more likely that the consumer will be aware of the terms and conditions sought by the carrier, and less likely that the carrier will try to portray them as being approved -- or even required -- by the government.

Complete detariffing has other benefits, large and small. A major consideration, discussed in some detail in our prior order, is that complete detariffing avoids problems resulting from the "filed-rate doctrine." A comparatively minor benefit is that complete detariffing reduces administrative burdens on the agency -- space requirements, personnel to receive and to organize tariff filings, etc.

Collectively, all of these benefits are significant. In my view, they amply justify our conclusion under Section 10 of the Communications Act to adopt a regime of complete, as opposed to permissive, detariffing.

Our prior order stated that another benefit of complete detariffing was that it would deter tacit pricing coordination among interexchange carriers. This objective is necessarily somewhat in tension with the public disclosure requirement, which ensures that any person can obtain the prices charged by any interexchange carrier for any detariffed service, upon request. The majority resolves this tension by eliminating the public disclosure requirement. I would resolve it by acknowledging that the considerations that weighed most heavily in my

decision on complete detariffing were those described in the preceding paragraphs, and not the fear of tacit price coordination.

In my judgment, the public disclosure requirement should be maintained. This requirement, adopted at the specific request of the principal sponsors of the rate integration and geographic averaging provision of the statute, provides a ready mechanism for consumers to ascertain whether carriers are in fact complying with their obligations under Section 254(g). While the same information could be collected by the Commission in a complaint proceeding, or even in routine audits, I believe this approach unnecessarily sacrifices the prophylactic effect of requiring that the information be readily available to persons who lack the resources to initiate proceedings at the Commission. Since the carriers must maintain the pricing information in any event, and there has been no showing that carriers face significant burdens in responding to requests for public disclosure, I would have preferred to retain the public disclosure requirement and a higher level of confidence that rate integration and geographic averaging responsibilities will be met.

My disagreement with the majority on this point does not extend to other issues in this proceeding. Indeed, I find the case for complete detariffing compelling even though I do not rely on concerns about tacit price coordination to reach this result. For those who believe that complete detariffing reduces the prospect for tacit price coordination, the case for complete detariffing is arguably even more compelling.