

FCC MAIL SECTION

Federal Communications Commission

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Policy and Rules Concerning)
the Interstate, Interexchange Marketplace)
Implementation of Section 254(g) of the) CC Docket No. 96-61
Communications Act of 1934, as amended)

ERRATUM

Adopted: October 28, 1997

Released: October 28, 1997

By the Acting Chief, Common Carrier Bureau:

1. This Erratum corrects paragraph 68 in the *Order on Reconsideration* in the above captioned docket, which was released by the Commission on August 20, 1997. *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, Second Report and Order, FCC 97-293 (rel. August 20, 1997) (*Order on Reconsideration*). This error was corrected prior to publication of the *Order on Reconsideration* in the Federal Register.
2. The following paragraph replaces paragraph 68 in the *Order on Reconsideration*. Paragraph 68 now reads as follows:

68. Upon further examination, we agree with Ad Hoc Users Committee that we can more narrowly tailor our information disclosure requirement. We therefore grant Ad Hoc Users Committee's petition and eliminate the public disclosure requirement for individually-negotiated service arrangements.²⁰⁶ We find that the disclosure of the rates, terms, and conditions of individually-negotiated service arrangements cannot be justified on the basis of the need to enforce the rate averaging requirements of section 254(g). This is because the Commission decided to "forbear from applying Section 254(g) to such arrangements, consistent with the intent of Congress, to the extent necessary."²⁰⁷ The Commission continues to require carriers to ensure that individually-negotiated service offerings are available to all

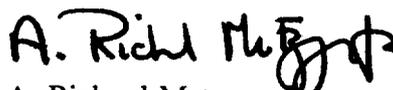
²⁰⁶ Individually-negotiated service arrangements, as opposed to mass market services, are customer-specific arrangements, such as contract tariffs, AT&T's Tariff 12 options, MCI's special customer arrangements, and Sprint's custom network service arrangements.

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

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similarly-situated customers, regardless of their geographic location.²⁰⁸ There are several 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 process.²¹⁰ In addition, we will be able to investigate carriers' compliance with our rules through the requirement adopted in the *Second Report and Order* that interexchange carriers maintain price and service information on all of their interstate, domestic, interexchange services and make this information available to the Commission upon request.²¹¹ 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.

FEDERAL COMMUNICATIONS COMMISSION



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²⁰⁸ *Id.* The Commission did not forbear from applying the rate integration requirements to individually-negotiated service arrangements. *Id.* at 9588-89.

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 *Second Report and Order* at 20777-78, para. 87.