

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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In the Matter of )  
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Policy and Rules Concerning the )  
Interstate, Interexchange Marketplace )  
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)  
Implementation of Section 254(g) of the )  
Communications Act of 1934, as amended )  
\_\_\_\_\_ )

CC Docket No. 96-61

**OPPOSITION TO PETITIONS FOR  
FURTHER RECONSIDERATION**

The 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 file these comments in opposition to the five petitions for further reconsideration of the Commission's Order on Reconsideration ("Reconsideration Order") filed in the above-captioned proceeding.<sup>1</sup>

First, and most importantly, none of the petitions asks the Commission to reconsider its order requiring nondominant interexchange carriers to withdraw their tariffs for domestic services. All of the petitions focus on the Commission's decision in the Reconsideration Order to eliminate the requirement previously

<sup>1</sup> *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Order on Reconsideration, FCC 97-293 (released August 20, 1997), 62 Fed. Reg. 59583 (November 4, 1997). These comments are filed pursuant to the Commission's Public Notice, Report No. 2244 (released December 17, 1997), 62 Fed. Reg. 67072 (December 23, 1997).

adopted in the Second Report and Order that nondominant interexchange carriers publish the rates for their domestic service offerings.<sup>2</sup> Of the five petitions, two challenge the Commission's action only as it pertains to mass market services, *i.e.*, services other than those subject to carrier/customer negotiation and offered on a contract carriage basis.<sup>3</sup>

These comments are addressed to the other three petitions, which ask the Commission to retain the public disclosure requirement for customer-specific service offerings. At base, the petitions are little more than an expression of some customers' interest in knowing what other customers are paying for telecommunications services. Two – both electronics retailers in Brooklyn, New York -- offer no basis in law or public policy for why the Commission should require the carriers to satisfy this curiosity.<sup>4</sup> The third petitioner – Econobill Corp., a telecommunications consulting firm also located in Brooklyn (coincidence squared) – offers reasons that do not bear up under scrutiny.

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<sup>2</sup> Reconsideration Order at ¶¶ 66-73; *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Second Report and Order, FCC 96-424 (released October 31, 1996), 61 Fed. Reg. 59340 (November 22, 1996).

<sup>3</sup> Petition for Further Reconsideration of The Utility Reform Network *et al.* (filed December 4, 1997); Petition for Further Reconsideration by Telecommunications Research and Action Center *et al.* (filed December 4, 1997).

<sup>4</sup> These small business users state that they were able to obtain competitive rates only because they or their advisors had access to the custom tariffs filed for other customers. Letter to M.R. Salas from N. King, Harmony Computer and Electronics, Inc. (December 1, 1997); Letter to M.R. Salas from A. Mosseri, Abe's of Maine Cameras and Electronics (December 1, 1997). It is difficult to evaluate the weight to be accorded to these conclusory statements. We do not, for example, know whether these customers solicited bids from more than one vendor or even whether the rates they negotiated are particularly good.

Econobill argues first that competitive forces cannot guarantee fair rates unless each customer knows what other customers are paying.<sup>5</sup> This claim ignores the fact that the current regulatory regime, which requires public disclosure of customer-specific rates, is in fact an anomaly in the commercial world. There is no government-mandated disclosure of prices for other goods or services on which businesses depend -- insurance, tax and accounting services, telecommunications hardware, computer services, rents, wages, etc. By eliminating the public disclosure requirement in its Reconsideration Order, the Commission was simply putting telecommunications on the same commercial footing as other commonly used goods and services.

The most effective ways for any customer -- large, medium or small -- to determine whether a carrier's offer is reasonable is to solicit information from the carriers (in a competitive market, sellers have a substantial interest in telling buyers what they charge) and/or to secure proposals from more than one carrier. The fact that some customers may be unprepared to go to the trouble of securing competitive proposals is decidedly not a persuasive reason to retain a regulatory regime that interferes with market forces by informing each provider of the terms on which its competitors are offering service.

Second, Econobill dismisses the Commission's concern that mandatory disclosure will increase the risk of tacit price coordination among the carriers, stating that AT&T's price increases over the last decade have been modest and,

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<sup>5</sup> Letter to M.R. Salas from N. Rosenthal of Econobill Corp. (December 2, 1997).

in any event, amply justified by "inflation in cost of living and cost of services."<sup>6</sup> In fact, AT&T's standard rates for the most commonly used business services (outbound and toll-free services) have risen an average of 5-6% per year since 1990, not 2%-4% as alleged by Econobill.<sup>7</sup> This has occurred during a period in which AT&T's costs for switched access services – which represent about 40% of the costs of a telephone call -- have declined steadily as the result of Commission rulings in various LEC price cap proceedings,<sup>8</sup> and in which personnel cutbacks and decreases in the cost of cable and switching have sharply decreased the carriers' unit costs in other key areas. In sum, the factual basis for Econobill's argument – that mandatory rate disclosure has resulted in only modest price increases that are justified by cost inflation – is not accurate.<sup>9</sup>

In fact, AT&T's competitors have made no secret of the fact that they engage in "umbrella" pricing, setting their own prices for these services just

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<sup>6</sup> *Id.*, p. 2.

<sup>7</sup> Standard rates for virtual network services rose 9-13% in 1996. M. T. Hills, "Waiting for the Tariff Revolution?" *Business Communications Review* 48-50 (May 1997). Indeed, even the supporting material supplied by Econobill shows annual rate increases in excess of the levels described in the text of its petition -- more than 7% per year in the case of toll-free services.

<sup>8</sup> According to the Commission's own publications, interstate switched access costs declined an average of 4.7% per year from 1990 to 1996, or 26% in the aggregate. (Switched access costs per minute were derived by dividing industry-wide revenues from this service by total minutes of use. See Tables 6.2 and 8.9 of each year's Statistics of Common Carriers.) These figures do not, of course, take account of the substantial reductions ordered by the Commission in 1997.

<sup>9</sup> Econobill's petition also asks the Commission, "as an alternative to detariffing", to require carriers to write into their tariffs provisions that set a fixed limit on permitted rate increases. A page of AT&T's Contract Tariff No. 8532 is offered as an example of such a provision. To the extent that Econobill is asking the Commission to abandon mandatory detariffing in favor of some form of rate prescription, we strongly oppose it. There is no conceivable public interest to be served by the Commission's mandating "controlled rate increases" in a marketplace where customers who are willing to consider competitive alternatives

below AT&T's and moving them in lock-step with AT&T rate changes. It is noteworthy that these developments have occurred under a regulatory regime in which the carriers must disclose their rates to prospective customers – and to other carriers. In light of this history, it is difficult to see how the Commission could reasonably conclude that the continued application of mandatory rate disclosure will enhance the ability of business customers of any size to secure more favorable pricing than they currently enjoy.

Although the undersigned parties take no position on whether the Commission should require rate disclosure for residential and mass market business services, we note that the petitions of the consumer advocacy groups report a disturbing pattern in which carrier personnel routinely disseminate confusing and often inaccurate rate information to customers.<sup>10</sup> Econobill adds that this occurs in the market for business services as well, observing that carriers “prey on the ignorance of the average businessperson”. We wish to add that even business customers purchasing millions of dollars in telecommunications services annually are subject to these practices. Because the Filed Tariff Doctrine neatly insulates the carriers from the misleading (or even fraudulent) statements of their own personnel with respect to rates and

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are able to negotiate rates *that do not increase at all* during the contract term. See, e.g., AT&T Contract Tariff Nos. 8067 and 8099.

<sup>10</sup> See Petition for Further Reconsideration by Telecommunications Research and Action Center, *et al.* at Attachment B (December 4, 1997); Petition for Further Reconsideration by The Utility Reform Network, *et al.* at pp. 7-8 (December 4, 1997).

other terms of service, customers are rarely able to secure relief from these practices.<sup>11</sup>

There is no reason to believe that mandatory publication of carrier rates will solve this problem, which emerged despite the fact that we currently have mandatory rate disclosure in the form of tariffs. The problem has nothing to do with public rate disclosure – its persistence is largely attributable to the Commission's inability (because of fierce carrier opposition) to eliminate the outmoded and anti-consumer Filed Tariff Doctrine.

Nor can it be argued that public disclosure guarantees that consumers have ready access to clear and useful information. The consumer groups participating in this proceeding analyze tariff information *precisely* because the current form of mandatory rate disclosure yields filings that are incomprehensible to ordinary consumers (business or residential). If the Commission is concerned about carrier practices in this area, or believes that there is a need for better customer understanding of rates and terms of service, it may wish to consider a new initiative on these matters.<sup>12</sup> As the Commission

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<sup>11</sup> See *Marco Supply Co. v. AT&T Communications, Inc.*, 875 F.2d 434, 436 (4th Cir. 1989) (noting that "courts have held that a customer does not have a claim for relief against a carrier even if the latter's representation as to the applicable rates is fraudulent."); *AT&T Corp. v. Central Office Telephone Co.*, 108 F.3d 981 (9th Cir. 1997), cert. granted 118 U.S. 622 (1997).

<sup>12</sup> The Commission could, for example, follow the approach of other regulatory agencies dealing with such consumer protection issues and require carriers to provide customers with "plain English" service contracts that clearly show the cost and terms of service. See, e.g., 16 C.F.R. Part 453 (requiring providers of funeral services to provide to each purchaser accurate information about price and service options set forth "in a clear and conspicuous manner"); 49 C.F.R. Part 1056 (requiring motor carriers to provide each shipper of household goods with, *inter alia*, a reasonably accurate cost estimate that clearly describes the shipment and all services to be provided, and a "concise, easy-to-read, accurate summary" of applicable dispute resolution procedures).

has noted, mandatory rate disclosure carries risks of its own, and is unlikely to achieve the goals outlined by its proponents.

For the reasons stated, the Commission should deny the petitions to further reconsider its Second Report and Order in this proceeding.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I, Kurt A. Kaiser, hereby certify that on the 7<sup>th</sup> day of January, 1998, true and correct copies of the foregoing Opposition to Petitions for Further Reconsideration in CC Dkt. No. 96-61 were either hand-delivered\* or sent by first class, postage prepaid mail to the following list of parties:

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