

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

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

ORDER

Adopted: January 6, 1997

Released: January 6, 1997

By the Chief, Common Carrier Bureau:

1. On October 31, 1996, the Commission released the IXC Tariff Forbearance Order.¹ In that decision, the Commission determined that it would no longer require or allow nondominant interexchange carriers to file tariffs pursuant to section 203 of the Communications Act of 1934, as amended (the "Act"),² for their interstate, domestic interexchange services. The Commission undertook this action pursuant to the directive in new section 10(a) of the Act to "forbear from applying any regulation or any provision of this Act" to a class of telecommunications carriers if particular conditions are present.³ The Commission's decision to forbear from applying section 203 tariff filing requirements in this context was intended to advance the pro-competitive, deregulatory objectives of the Telecommunications Act of 1996.⁴

¹ 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 96-424, 61 Fed. Reg. 59,340 (Nov. 22, 1996) (IXC Tariff Forbearance Order).

² 47 U.S.C. § 203.

³ 47 U.S.C. § 160(a). Section 10(a) was added to the Communications Act by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq.

⁴ IXC Tariff Forbearance Order at ¶ 4. See also Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113 (1996).

2. On December 2, 1996, MCI Telecommunications Corporation (MCI) filed with the United States Court of Appeals for the District of Columbia a petition for review of the IXC Tariff Forbearance Order. On December 18, 1996, MCI filed with the Commission a Motion for Stay Pending Judicial Review of the IXC Tariff Forbearance Order.⁵ On December 23, 1996, America's Carriers Telecommunication Association (ACTA) filed with the Commission a "Supplemental Motion Supporting MCI Telecommunications Corporation's Motion for Stay Pending Judicial Review."⁶

3. The motions filed by MCI and ACTA fail to demonstrate that a stay is warranted under applicable legal standards.⁷ In particular, we find that petitioners have failed to demonstrate that they would suffer irreparable injury if the IXC Tariff Forbearance Order were not stayed.⁸ We are not persuaded by petitioners' unsubstantiated claims of irreparable harm, particularly in light of the nine-month period provided for transitioning to detariffing.⁹ We therefore deny MCI's and ACTA's motions.

4. Accordingly, IT IS ORDERED that the "Motion for Stay Pending Judicial Review" filed by MCI Telecommunications Corporation on December 18, 1996, IS DENIED.

⁵ On December 24, 1996, 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 jointly filed an opposition to MCI's motion for stay pending judicial review.

⁶ Because ACTA raises issues different than those MCI raises, we treat ACTA's submission both as a pleading in support of MCI's motion as well as a separate motion for stay.

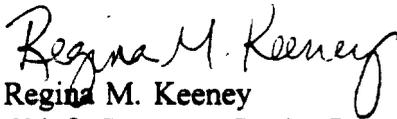
⁷ See, e.g., Wisconsin Gas Co. v. Federal Energy Regulatory Commission, 758 F.2d 669, 673-74 (D.C. Cir. 1985) (*per curiam*); Washington Metropolitan Area Transit Authority v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Ass'n v. Federal Power Commission, 259 F.2d 921, 925 (D.C. Cir. 1958).

⁸ A concrete showing of irreparable harm is an essential factor in any request for a stay. Reynolds Metals Co. v. Federal Energy Regulatory Comm'n, 777 F.2d 760, 763 (D.C. Cir. 1985); Wisconsin Gas, 758 F.2d at 674. As the U.S. Court of Appeals for the District of Columbia Circuit has observed, "economic loss does not, in and of itself, constitute irreparable harm." Wisconsin Gas, 758 F.2d at 674. Even if the alleged harm is not fully remediable, the irreparable harm factor is not satisfied absent a demonstration that the harm is "both certain and great: . . . actual and not theoretical." *Id.*

⁹ IXC Tariff Forbearance Order at ¶¶ 89-91.

5. IT IS FURTHER ORDERED that the "Supplemental Motion Supporting MCI Telecommunications Corporation's Motion for Stay Pending Judicial Review" filed by America's Carriers Telecommunication Association on December 23, 1996, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION


Regina M. Keeney
Chief, Common Carrier Bureau