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October 6, 1998

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **EX PARTE**
CC Docket No. 96-61

Dear Ms. Salas:

Yesterday, October 5, 1998, Andrew Schwartzman and Cheryl Leanza of the Media Access Project, on behalf of TRAC, and the undersigned, on behalf of the Telecommunications Management Information Systems Coalition, met with Commissioner Michael K. Powell and his legal advisor Kyle Dixon to discuss the above-captioned proceeding.

We focused on several points during the discussion: (1) consumers and small businesses continue to require access to full pricing information for domestic interexchange carrier services and should not have to rely solely on marketing or advertising information; (2) price collusion should not be a concern in a robustly competitive long distance market; (3) any risk of collusive pricing is muted by Sections 201-202 of the Communications Act of 1934, as amended, and the federal and state antitrust laws; and (4) a public disclosure requirement for domestic, mass market interexchange service rates will not invoke the filed rate doctrine. The discussion otherwise was restricted to arguments made in the parties' respective filings submitted in the above-captioned proceeding and in the attached document.

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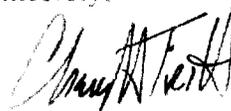
Ms. Magalie Roman Salas

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Two copies of this letter have been submitted to the Secretary of the Commission for inclusion in the public record, as required by Section 1.1206(b)(2) of the Commission's rules.

Sincerely,



Cheryl A. Tritt

Counsel for Telecommunications

Management Information Systems Coalition

Attachments

cc: Commissioner Powell (w/o attachments)
Kyle Dixon (w/o attachments)

TRAC and TMIS Coalition

- Telecommunications Research Action Center is a tax-exempt consumer education and advocacy organization based in Washington, D.C. For the last ten years, TRAC has published *Tele-Tips*, a periodic newsletter that provides comprehensive consumer information and rate comparisons on interstate long distance telephone service. TRAC also produces a website for this purpose.
- The Telecommunications Management Information Systems Coalition is composed of three companies formed for the purpose of participating in this proceeding -- Salestar, CCMI, and Tele-Tech. These companies are small businesses of long standing that have provided essential pricing information to their customers for the past 10-25 years. They all gather, on behalf of their customers, publicly available pricing information and then abstract this information and create databases or other software pricing tools utilizing this information.

FCC ACTION SOUGHT

TRAC and the Coalition urge the Commission to reinstitute its earlier-adopted public disclosure requirement for mass market services. A return to all of the prior tariffing requirements is not necessary to obtain the benefits of a public disclosure requirement.

- Elimination of the information disclosure requirement is contrary to the public interest.
- Without a public disclosure requirement, consumers make informed decisions about complex choices available from multitude of carriers.
- Given the difficulty of obtaining this information independently, small to medium-sized businesses and residential customers need assistance obtaining it.
- Information gathered and distributed to customers by the Coalition includes not only rates, but also charges such as the SLC, PICC, and the Universal Service pass-through, which is helpful for both consumers and regulators because these charges are difficult for consumers to understand and evaluate. TRAC collects and distributes similar information to consumers.

Contrary to FCC's conclusion, billing and marketing materials are not sufficient.

- Billing information is available only to existing customers, not potential customers making initial service decisions.
- At best, marketing materials are incomplete. Carriers advertise only the services they have targeted for specific customers.
- At worst, marketing materials are inaccurate or confusing. A National Consumers League study showed 71% of survey participants found telecommunications advertising to be "confusing," with 28% finding it "very confusing."
- Bills have been notoriously inaccurate and difficult to understand -- a National Regulatory Research Institute study shows between 20-25% of survey respondents reported billing errors in past 12 months, with a majority involving long distance billing problems.

Without consumer disclosure information, the FCC will be unable to enforce Section 254(g).

- The FCC's initial decision concluded that publicly-available information was necessary for this purpose, and that carrier certifications were insufficient.
- Without additional information on the record, the FCC reversed course.
- Although the FCC and state agencies can still obtain this information, they have limited resources and continue to rely upon public as guardians of complaint process.
- Many states that have implemented partial detariffing have continued to require some sort of price list, *e.g.*, Delaware, Oregon, Arizona, New Mexico, Colorado, Washington, and Connecticut, which indicates that the availability of this information still serves important enforcement purposes
- At the same time that information is becoming more difficult to obtain, the FCC has raised the threshold for pleading formal complaints, further limiting the likelihood of effective enforcement by the public.

FCC concerns about price coordination are not eliminated by abandoning the information disclosure requirement.

- In a competitive market more information helps the market to function more efficiently. The FCC has long characterized the long distance market as robustly competitive.
- The FCC also acknowledged that large and sophisticated competitors will still be able to obtain each other's pricing information without tariffing. Elimination of an information disclosure requirement thus fails to address any threat (if any exists) of price collusion but definitely deprives consumers served by TRAC of access to this information.
- Disclosure of actual current prices is highly unlikely to serve as a vehicle to coordinate prices because it provides no advance assurance that competitors would follow any price increase. For example, when DOJ investigated and settled allegations of airline price fixing, the settlement prohibited the dissemination of pricing information for fares that were not currently for sale, but it permitted the continued dissemination of current fares.
- Any remaining hypothetical risk of collusive pricing is diminished by availability of Section 201 of the Act and federal and state antitrust laws, upon which the Commission has consistently relied. Reliance on these remedies can mute any remaining risks of collusion without depriving consumers of access to important information

Consumer information disclosures do not implicate the filed rate doctrine.

- As TRAC and the Coalition have demonstrated, rates provided pursuant to a public disclosure requirement do not meet the definition of a tariff under Supreme Court analysis.