

October 2, 1998

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To: FCC Chairman William E. Kennard
FCC Commissioner Harold W. Furchtgott-Roth
FCC Commissioner Susan Ness
FCC Commissioner Michael K. Powell
FCC Commissioner Gloria Tristani

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CC Docket No. 96-61 "Tariff Forbearance"
Appeal for the Retention of the Public Disclosure Requirement

Dear Chairman Kennard and Commissioners:

We, of ECONOBILL, a telecommunications consulting firm, are writing in protest to the proposed amendment (Sec. 254) to the Communications Act of 1934. We sent our first letter to the Commission dated December 2, 1997, addressed to FCC Secretary Ms. Magalie Roman Salas, and entitled "Petition for Reconsideration." Our second letter, dated January 15, 1998, and addressed "Before the Federal Communications Commission" was entitled "Reply to the Opposition." Additionally, August 19, 1998, three of us, Mr. Rod Cordiner of On Line Marketing, Mr. Dovid Rosenthal of ECONOBILL, and myself, traveled to Washington to personally express our concerns. We met with FCC Common Carrier Bureau staff members: from the Policy Division, Ms. Melissa Newman and Ms. Andrea Kearney; from the Regulatory Division, Mr. R. L. Smith; and from the Enforcement Division, Mr. Bob Spangler (who informed us of his intention to retire) and Ms. Cynthia Brown. Following the suggestion given by Ms. Kearney and Ms. Newman, we respectfully submit our written plea to you.

The FCC Communications Act of 1934 established the requirement that non-dominant interexchange telecommunications carriers file tariffs with the FCC and stipulated that these tariff filings be disclosed to the public. Recently, the FCC proposed to eliminate tariffing and to dispense with the public disclosure requirement.

Our meeting in Washington last August with the Policy and Program Planning Division of the FCC Common Carrier Bureau exposed us to the view commonly held by the FCC, that detariffing is imminent. It was made clear to us, however, that detariffing and the elimination of the public disclosure requirement are separate issues. It is the objective of this correspondence to urge the Commission to preserve the public disclosure requirement, just as the non discriminatory doctrine is being preserved.

1351 East Tenth Street
Brooklyn, New York 11230

718-376-6666 718-339-0300
212-751-1111 Fax: 718-336-6666
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Arguing against mandated public disclosure the Commission asserts that there now exist mechanisms to ensure that the telecommunications consumer enjoy fair business practices:

1. Today there is competition among carriers, and market forces can be relied upon to regulate prices. The end-user can inform himself of his options through his exposure to advertising or by making phone calls to various competing carriers.
2. In the face of discriminatory pricing, which is illegal, the public has recourse to the complaint process with the FCC.

In response to the first point, above, we note, from our experience as telecommunications consultants, that the telecommunications field is too complex and the consumer options too numerous for the end-user to achieve on the basis of ads or a few phone calls, a thorough understanding of what his real choices are. Our experience has shown that it is a common—indeed, an expected—occurrence that when a person asks one question to one carrier during two successive phone calls, he receives two different answers. The customers are not the only ones—the carrier employees themselves are inadequately informed. This is strong support for the existing system of public disclosure, through which the consumer has personal access to carrier documentation which will provide him comprehensive information of his options. It is the usual practice that rather than visit the tariff library himself, the individual will retain a consultant to review the carriers' documents on his behalf.

The carriers' failure to provide complete information to the end user is not totally innocent. The complexity of the telecommunications industry offers the carriers an opportunity for secrecy, and, accordingly, when they can get away with it, they are not responsible to the public. In the interest of securing contracts with specific attractive customers the carriers are known to offer reduced pricing, new services and special features, which they do not intend to publicize. Under the present system the carriers are required to submit to the FCC written documentation of these contracts and permit public access to them. Only because of public disclosure other customers have the opportunity to enjoy the same benefits, which otherwise would have remained secret.

The public disclosure requirement provides one crucial benefit, and without it a large portion of telecommunications end users would be harmed. We are referring to those who have already signed a contract with a carrier. In acknowledgment of the fact that the telecommunications market conditions are constantly changing for the better, the FCC Act of 1934, through the Non-Discrimination Doctrine (Sec. 201 and 202), permits the end user during the term of his contract to switch to another contract with the same carrier, provided he agrees to follow certain established criteria. Thus, the end user need not be "locked in" to a contract with antiquated pricing and services.

While tariffing and the public disclosure requirement are currently under reconsideration, the Non-Discrimination Doctrine is not being questioned. **However, in the absence of the public**



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disclosure requirement there is no way the Non-Discrimination provision can operate, for without public disclosure how can it be possible for the end user to glean information regarding the creation of more competitive contracts which could be suitable for him? Furthermore, how can he prove his claim by means of written documentation, without which the carrier is under no obligation to accede to his request? Public access to the tariffs (or contracts) allows the end user to keep abreast of all new developments in the marketplace. The availability of the entirety of carrier documentation allows the end user, or his consultant, to select a more attractive contract, and, with this document in hand, he can easily arrange with the carrier to switch. How can the Commission bring about the demise of the Non-Discrimination Policy, which is inviolable, and which will inevitably be washed away with the cessation of the public disclosure requirement—like throwing the baby out with the bath water?

Regarding the second point, above, the Commission's complaint process, as it currently exists, does not adequately serve the average consumer.

In August 1998 our staff met with Bob Spangler, Deputy Chief of the Enforcement Division of the FCC Common Carrier Bureau. Mr. Spangler outlined the two ways of filing a complaint:

- A. The formal hearing calls for a mandatory settlement. However, it costs tens of thousands of dollars and can take years to settle. Hence, the only plaintiffs who make use of this means are large corporations.
- B. The informal hearing is free and relatively simple, but does not obligate the FCC to force the carrier to pay for wrongdoing. Rather, the Commission acts as a peace maker.

Thus, in the informal hearing, which is the only type of complaint most people can afford, the Commission cannot be relied upon to provide a resolution, far less monetary restitution to the plaintiff. Understandably, the plaintiff is unwilling to go through the process. We have been in business for over fifteen years, and among our clients, which are small- to medium-sized businesses, fewer than 5% would even consider filing a complaint.

With respect to discriminatory claims our concern is that the consumer would be at a great disadvantage if the documents cease to be publicly available. In the absence of tariff filings (or a reasonable substitute) and without the public disclosure policy a plaintiff would have nothing in print to substantiate his claim. It would be impossible for the end user to prove on the basis of hearsay (i.e., verbal testimony) that he deserves more competitive pricing.

Billing errors (overbilling) is another area of concern. Contracts are often misplaced or lost, by the carrier or the customer or both. When the carrier errs or oversteps the pricing agreement, the customer needs to have recourse to the carrier's records for proof in writing. Otherwise, it's "my word against his," which will not bear any weight in a hearing.



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These considerations expose a contradiction inherent in the proposition that the complaint process replace the public disclosure requirement. Indeed, public access to carrier documentation is essential for the complaint process to be effective!

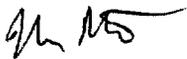
Through our daily interaction with telecommunications carriers and end users, we encounter recurring situations that give rise to the following constructive suggestions. We offer these to the Commission for their consideration. Firstly, we feel the best place to keep tariff or telecommunications contract information is, if at all possible, in a central communications office in Washington, D.C., such as in the FCC building. Furthermore, it should be the responsibility of the FCC to make known to the public where this documentation is available.

Secondly, we suggest that the Commission attempt to make the complaint process more appealing to the end user. It is essential to publicize the fact that this process exists and is offered to everyone universally. May we suggest a means to accomplish this: it should be the obligation of the carrier to print on the telephone bill a few times each year an announcement that complaints can be addressed to the FCC. In addition, the complaint process should be revised to offer the plaintiff a reasonable chance for a satisfactory settlement without substantial expense in time or money.

In conclusion, in our view the primary advantage to the present system is the availability of carrier documentation to the public. While we are in favor of the tariffing requirement, we are able to accept its termination. The public disclosure requirement, incorporating the Non-Discrimination Doctrine, however, are vital safeguards to consumer rights and should, unquestionably, be maintained.

We are very concerned with the outcome of the proposed amendment to the Act of 1934, particularly regarding the status of the public disclosure requirement. If we can be updated on any developments, we will be grateful to hear from you.

Sincerely,



Nissan Rosenthal
President
NR:rm

cc: Ms. Cynthia Brown Mr. Jordan Goldstein Ms. Andrea Kearney
 Ms. Melissa Newman Mr. R. L. Smith



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