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June 20, 2000

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
TW-A325  
445 Twelfth Street, SW  
Washington, DC 20554

Re: Ex Parte contacts in CC Docket No. 96-61, Comments on Modifications to  
Detariffing Transition Plan

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Dear Secretary Salas:

In accordance with Section 1.1206(b)(2) of the Commission's Rules, 47 C.F.R. § 1.1206(b)(2), notice is hereby given of an *ex parte* meeting regarding the above-captioned proceeding. On June 19, 2000, Jim Blaszak and Ellen Block, of Levine, Blaszak, Block & Boothby, LLP, on behalf of the Ad Hoc Telecommunications Users Committee, ABB Business Services, Inc., BP Amoco, Dana Corporation, Nestlé USA, Inc., Schneider National Incorporated, the Securities Industry Association, Target Corporation and U.S. Bancorp (collectively the "Business Consumers"), met with Sarah Whitesell, Legal Advisor to Commissioner Tristani, and Rebecca Beynon, Legal Advisor to Commissioner Furchtgott-Roth. On June 20, 2000, Ms. Block met with Jordan Goldstein, Legal Advisor to Commissioner Ness, and Mr. Blaszak and Ms. Block met with Jane Jackson, Chief of the Competitive Pricing Division of the Common Carrier Bureau, as well as members of the Competitive Pricing Division's staff, including Judy Nitsche, Renee Levey, Josephine Scarlett, and Vienna Jordan.

In these meetings, the Business Consumers' representatives discussed their comments and reply comments filed in this proceeding and the points reflected in the attached handouts.

An electronic copy of this *ex parte* letter is being filed via the Federal Communications Commission's Electronic Comment Filing System. If you have any questions or concerns please do not hesitate to contact the legal assistant handling this filing, Victoria Curtis, at (202) 857-2559.

Respectfully submitted,

James S. Blaszak  
Ellen G. Block

#### Attachments

cc w/o attachments: Ms. Sarah Whitesell, Legal Advisor to Commissioner Tristani  
Ms. Rebecca Beynon, Legal Advisor to Commissioner Furchtgott-Roth  
Mr. Jordan Goldstein, Legal Advisor to Commissioner Ness  
Ms. Jane Jackson, Chief of the Competitive Pricing Division, Common Carrier Bureau  
Ms. Judy Nitsche, Competitive Pricing Division, Common Carrier Bureau  
Ms. Renee Levey, Competitive Pricing Division, Common Carrier Bureau  
Ms. Josephine Scarlett, Competitive Pricing Division, Common Carrier Bureau  
Ms. Vienna Jordan, Competitive Pricing Division, Common Carrier Bureau

## **Carrier-Induced Confusion in the Marketplace**

A major player in the retail industry wished to purchase several dozen private line circuits (and associated access links) from its facilities in the mid-Atlantic states to a data center in the Southeast. The carrier required the customer to agree to the filing of a contract tariff for those services, even though they are domestic services subject to the Detariffing Order. The contract accompanying the "contract tariff" contains substantive provisions but states that the "contract tariff" will prevail in the event of a conflict.

A large consulting firm was assured by its carrier that a contract then under negotiation would not be subject to the carrier's tariff. The carrier said that it would not tariff either the domestic or the international portions of the deal.

A large clothing manufacturer was told by the carrier that it must sign a "master services" contract for a newly negotiated contract tariff. The carrier said that the master contract was necessary because the FCC had compelled the carrier to withdraw its tariffs, and the contract was needed to fill the gaps left by the withdrawn tariff.

A mid-Western manufacturing company was told by its carrier that the Commission has prohibited the carrier from correcting any errors in the contract tariff for domestic and international services that was filed before the effective date of the Detariffing Order. The carrier then assured the customer that, even though an erroneous tariff might remain on file, the terms of the contract would prevail if they conflicted with the filed tariff.

## **The Commission Should Not Amend The Transition Plan**

1. The Business Consumers would prefer that international services, as well as domestic services, be detariffed; but recognize that the Commission declined to do so in 1996 and that no record currently exists to support a Commission decision to change its position on detariffing of international services.
2. Carrier requests that the Commission defer detariffing of negotiated service arrangements that contain domestic and international services (mixed offerings) until it detariffs international services is a request for an indefinite and possibly protracted postponement of detariffing of an overwhelming portion of negotiated service arrangements.
  - a. Benefits of detariffing will be delayed.
  - b. Filed rate doctrine will continue to apply.
3. The transition plan as it applies to mixed offerings is neither difficult to understand or accommodate.
  - a. Carriers have created confusion in the marketplace.
  - b. The filed rate doctrine danger continues because Bureau intentions do not control the judiciary.
  - c. No legitimate public interest considerations justify exposing customers to uncertainty regarding applicability of the filed rate doctrine.
  - d. Current tariffing of mixed offerings is inconsistent with the Transition Plan.
4. If the Commission becomes convinced that some customers of mixed offerings are “hopelessly confused,” it can allow tariffing of mixed offerings at the customers option, provided that the same rates, terms and conditions would be available for tariffed and detariffed mixed offerings.