

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Access Charge Reform)
)
Hyperion Telecommunications, Inc.)
and Time Warner Petitions for)
Forbearance, Complete Detariffing)
for Competitive Access Providers)
and Competitive Local Exchange)
Carriers)

CC Docket No. 96-262 /

CC Docket No. 97-146

To: The Commission

**REPLY COMMENTS OF THE
RURAL INDEPENDENT COMPETITIVE ALLIANCE**

The Rural Independent Competitive Alliance ("RICA"), by its attorneys, hereby files these reply comments in response to comments filed pursuant to the Commission's request to "update and refresh" the records in the above-captioned proceedings on whether, in the Commission's words, "mandatory detariffing of CLEC interstate access service rates would provide a market-based deterrent to excessive terminating access charges."¹

RICA is opposed to mandatory detariffing on the grounds that such action would undermine effective competition in the delivery of competitive local exchange services to rural

¹ *Commission Asks Parties to Update and Refresh Record on Mandatory Detariffing of CLEC Interstate Access Services*, Public Notice, DA 00-1268 (rel. June 16, 2000)("Public Notice"). The Commission's invitation arises from a recent court decision upholding a 1996 Commission order requiring mandatory detariffing for all interstate, domestic, interexchange services of nondominant interexchange carriers. *See MCI WorldCom v. FCC*, 209 F.3d 760 (D.C.Cir. 2000).

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areas across the United States.

I. Commenters In Support of Mandatory Detariffing Base Their Arguments on the False Premise that Access Charges are Excessive

As set forth in RICA's Comments, the Commission's inquiry is based on the false assumption that CLEC access charges are excessive.² However, the large interexchange carriers ("IXCs") continue to perpetrate this false assumption by describing CLECs as having "unreasonably high" and "supracompetitive" rates and as having "excessive" rates due to their "bottleneck power over access by long-distance carriers."³

AT&T and Sprint continue to allege that CLEC access rates are excessive because the rates exceed the amounts charged by the incumbent LEC serving the same territory, although the Commission summarily rejected this argument.⁴ AT&T uses the access rates charged by the ILEC in the same territory as the watermark for which mandatory detariffing should begin. According to AT&T, those CLECs that "insist on charging supracompetitive rates," *i.e.*, rates that exceed those of the incumbent LEC, should be required to negotiate intercarrier contractual arrangements rather than file tariffs.⁵ Sprint seeks to quantify the "excessive" rates by stating its

²See RICA's Comments at 3.

³See Worldcom's Comments at 3-4; AT&T's Comments at 1; and Sprint's Comments at 2-3.

⁴See *Sprint Communications Company, LP v. MCG Communications, Inc.*, Memorandum Opinion and Order, File No. EB-00-MD-002, FCC 00-206 (rel. June 9, 2000) at para. 6 ("[w]e decline Sprint's invitation to hold that any access rate that is higher than the ILEC's is necessarily unjust and unreasonable under section 201(b)).

⁵AT&T's Comments at 9. In its Reply Comments in the Access Charge Reform proceeding, RICA demonstrated that AT&T's proposed tariff mechanism is defective in several respects. See RICA Reply Comments in Docket 96-262 filed November 29, 1999 at 9-10.

belief that “the difference between the tariffed access charges of the CLECs and the amounts charged by the ILECs serving the same territories could amount to \$1 billion on an annual basis for the long-distance industry, at current volume levels” and compares the “billions of dollars” that it claims that customers will ultimately have to pay with the reductions from the recently adopted CALLS plan.⁶

In arguing for mandatory detariffing, Worldcom not only asserts that CLEC access rates are excessive, but it also claims that some CLECs are using the Commission’s tariff process to “extort payments from IXCs.”⁷ However, instead of providing any evidence of situations in which a CLEC’s charges were deemed to be unreasonable or situations in which CLECs have used the tariff process to “extort” payments from IXCs, Worldcom merely references the controversy over what constitutes excessive access charges and notes in particular the emergency relief petitions filed by RICA and the Minnesota CLEC Consortium as examples of groups of CLECs that are seeking “a preliminary injunction to prevent AT&T from refusing to accept their access services.”⁸ Yet, these petitions do not provide any evidence that CLECs are extorting payments from AT&T in that they are petitions from small and rural CLECs requesting that the Commission maintain the status quo while it decides what constitutes excessive access charges. RICA urges the Commission to reject all arguments based upon the false assumption that CLEC

⁶Sprint’s Comments at 2. Although Sprint claims that CLEC charges are excessive, it only favors mandatory detariffing if the Commission does not adopt its proposal that CLEC access rates not exceed a ceiling which would be the rates of the incumbent LEC. Sprint Comments at 2-3.

⁷Worldcom at 4.

⁸Worldcom’s Comments at 3.

access rates are excessive and refrain from requiring mandatory detariffing for CLECs.

II. Commenters Agree with RICA That Mandatory Detariffing Increases Administrative Burden

In its Comments, RICA demonstrated that mandatory detariffing increases, rather than decreases, the administrative burden for small, rural carriers.⁹ Most Commenters agree that mandatory detariffing would increase administrative costs. *See e.g.*, Minnesota CLEC Consortium Comments at 7-8. In contrast, the Ad Hoc Telecommunications Users Committee (“Ad Hoc”) argued that detariffing “lowers transactions costs for service providers by eliminating the need to expend resources on preparing and filing tariffs.”¹⁰ RICA contends that Ad Hoc failed to take into account the vast time and expense that is involved in negotiating with each and every IXC in the country to ensure compensation for terminating access services and each and every IXC offering services to its subscribers for originating service. Additionally, the process of negotiating contracts tends to favor large IXCs. *See* RICA’s Comments at 4-5; Sprint’s Comments at 3-4 (process of negotiating contracts tends to favor the largest IXCs and the largest CLECs over their smaller competitors).

⁹RICA’s Comments at 4-5.

¹⁰Ad Hoc at 3.

III. Conclusion

Although the recent court decision makes it possible for the Commission to require mandatory detariffing of CLECs, it is clear from the record that there is no need to require mandatory detariffing at this time. Additionally, it is clear that to impose on newly-born CLECs the administrative burden of negotiating individual contracts would severely cripple, and in the cases of small, rural CLECs, kill their chances of survival.

Respectfully submitted,

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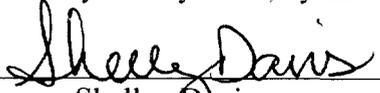
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CERTIFICATE OF SERVICE

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