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

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers	)	CC Docket No. 97-146

REPLY COMMENTS OF U.S. TELEPACIFIC CORP.

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SUMMARY

TelePacific urges the Commission not to adopt mandatory detariffing of competitive local exchange carrier ("CLEC") access services. CLECs such as TelePacific already face significant difficulties in collecting payments from certain IXCs for switched access services provided pursuant to their filed tariffs. If the Commission mandates detariffing of access services, CLECs will be significantly disadvantaged in their ability to receive compensation for these services.

Tariffs serve the Commission's objectives of promoting competition and aiding new entrants in the local exchange markets. Filed access tariffs reduce the transaction costs associated with the provision of access services . Without such tariffs, CLECs and IXCs would be forced to negotiate, enter into and maintain numerous individual contracts, placing a substantial burden on smaller CLECs and IXCs. The federal tariffing process also serves to prevent abuses by large IXCs who could gain bargaining power over small CLECs by the unilateral withholding of payment of validly billed charges.

TelePacific maintains that access rates are sufficiently regulated by market forces, so that benchmark rates, as suggested by some commenters, are unnecessary. Furthermore, Section 208 of the Communications Act of 1934, as amended, already provides an avenue for parties to challenge access charges if they believe them to be unreasonably high. Should the Commission determine that the establishment of a benchmark is necessary, however, a benchmark rate model after the access tariff filed by the National Exchange Carrier Association ("NECA") would be appropriate.

Finally, should the Commission require the detariffing of access services, TelePacific urges the Commission to phase-out such tariffs over a period of at least seven years

to ensure that CLECs have the opportunity to establish themselves in the market as viable competitors.

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U.S. TelePacific Corp. d/b/a TelePacific Communications ("TelePacific"), by its attorneys, hereby submits this reply to the comments filed in response to the Commission's request to *Update and Refresh Record on Mandatory Detariffing of CLEC Interstate Access Services*[1] issued in the above captioned proceeding. TelePacific concurs with the broad majority of the commenters, who oppose mandatory detariffing of competitive local exchange carrier ("CLEC") access services.

I. OVERVIEW

TelePacific is a CLEC offering facilities-based local exchange services, including access services, in California and Nevada. TelePacific filed its initial federal tariff in January 1999 and, pursuant to its tariff, has provided switched access services to numerous large and small interexchange carriers ("IXCs").

Like other CLECs, TelePacific has faced significant difficulties collecting payment from certain IXCs for switched access services duly provided pursuant to its tariff. Although TelePacific's federal tariff specifically sets forth its access services and rates, certain

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[1] Commission Asks Parties to Update and Refresh Record on Mandatory Detariffing of CLEC Interstate Access Services, CC Docket Nos. 96-262 and 97-146, Public Notice (rel. June 16, 2000) (the "Notice").

IXCs have repeatedly withheld payment to TelePacific for the provision of such services. Such unlawful actions are not unique to TelePacific and represent a pattern of large IXCs ignoring CLEC access tariffs.[2]

As numerous CLECs and IXCs have stated in their comments, the disparity in size and resources between the largest IXCs and CLECs places tremendous negotiating power in the hands of the IXCs. Even the existence of a validly filed federal tariff has not always deterred the largest IXCs from engaging in improper "self help" and refusing to pay tariffed rates for access services they receive. If the Commission mandates detariffing of access services, CLECs will be significantly disadvantaged in their ability to receive compensation for these services.

As discussed below, tariffs serve the Commission's objectives of promoting competition and aiding new entrants in the local exchange markets. For both smaller CLECs and IXCs, CLEC filed access tariffs are an efficient way to reduce the transaction costs associated with the provisioning of access services. Without the existence of such tariffs, the hundreds of CLECs and IXCs would be forced to negotiate, enter into and maintain individual contracts with each carrier from which or to which traffic might flow. For smaller CLECs and IXCs, the cost of establishing and administering these agreements would be substantial.

The federal tariffing process, with its well-established rules and dispute resolution procedures, when properly and promptly enforced, also serves to prevent abuses by large IXCs who could gain bargaining power over small CLECs by the unilateral withholding payment of validly billed charges.[3] Mandatory detariffing would serve only to tax the resources of smaller CLECs and increase the disparity in bargaining power between the larger IXCs and CLECs.

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[2] *See, e.g.*, *MGC Communications, Inc. v. AT&T Corp.*, 14 FCC Rcd 11647 (1999).

[3] *See, e.g.*, *MGC Communications*, 14 FCC Rcd at 11649-50, para. 5.

To the extent that the desire to mandate detariffing is based on a perception that CLEC access rates are high, certain commenters have suggested that a better method of addressing this issue is to allow tariffing to continue, but to establish benchmark rates for access services.[4] TelePacific urges the Commission to find that access rates are sufficiently regulated by market forces, so that benchmarks are unnecessary. Individual tariffs that are unreasonable may be challenged pursuant to Section 208 of the Communications Act of 1934, as amended (the "Act"). If the Commission determines that the establishment of a benchmark is necessary, however, a benchmark rate modeled after the access tariff filed by the National Exchange Carrier Association ("NECA") would be appropriate.

Finally, should the Commission require the detariffing of access services, TelePacific urges the Commission to phase-out such tariffs over a period of at least seven years to ensure that CLECs have the opportunity to establish themselves in the market as viable competitors.

II. TARIFFING OF CLEC ACCESS CHARGES SERVES THE PUBLIC INTEREST

At the outset, TelePacific notes that the vast majority of commenters are more concerned with the access rates charged by CLECs than the appropriateness of the filing of tariffs, and oppose mandatory detariffing of CLEC access services. IXCs, incumbent local exchange carriers ("ILECs"), and CLECs alike point out that the Commission's proposal would undermine the public interest[5] by forcing CLECs to attempt to negotiate with IXCs that possess

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4 *See* MCI WorldCom Reply Comments at 11 (November 29, 1999); Sprint Reply Comments at 12-14 (November 29, 1999); Focal and Hyperion Reply Comments at 3-4 (November 29, 1999); ALTS Comments at 9-10 (October 29, 1999).

5 *See generally* AT&T Comments (July 12, 2000); Sprint Comments (July 12, 2000); Verizon Comments (July 12, 2000); ALTS Comments (July 12, 2000).

significantly greater bargaining strength,[6] thereby imposing substantial transaction costs on both IXCs and CLECs,[7] and saddling CLECs with greater administrative burdens than the ILECs with which they compete.[8] TelePacific agrees with these criticisms, and urges the Commission to find that the current tariffing system does serve the public interest and should not be altered.

A. CLECs Lack Bargaining Power With Respect to Large IXCs

A principal concern for CLECs is the establishment of relationships with the IXCs serving the CLECs' local exchange customers. Currently, CLECs may file tariffs setting forth the terms of service and rates at which they will provide access services to IXCs. Certain of the largest IXCs, however, routinely and improperly ignore these tariffs and refuse to pay CLECs at their filed tariff rates. For example, Sprint and AT&T have engaged in the practice of accepting access services from various CLECs around the country and refusing to pay the CLECs the tariffed rates for those services.[9] For dozens of CLECs, Sprint has unilaterally determined that it will not pay the tariffed rates and will only compensate CLECs at the same rates as the local ILECs.[10] AT&T has gone one step farther and simply refused to pay certain CLECs for access services.[11]

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6 *See, e.g.*, Allegiance Comments at 6-7 (July 12, 2000); Sprint Comments at 3-4 (July 12, 2000); General Services Administration Comments at 5-6 (July 12, 2000).

7 See, e.g., AT&T Comments at 8 (July 12, 2000); General Services Administration at 6-7 (July 12, 2000); ALTS Comments at 5-9 (July 12, 2000); Time Warner Comments at 8 (July 12, 2000).

8 *See, e.g.*, Allegiance Comments at 8-9 (July 12, 2000); ALTS Comments at 9-10 (July 12, 2000); espire Comments at 8 (July 12, 2000); Focal Comments at 7-8 (July 12, 2000); Prism Comments at 3-4 (July 12, 2000); RICA Comments at 6 (July 12, 2000); Time Warner Comments at 6 (July 12, 2000); Winstar Comments at 8-9 (July 12, 2000); Z-Tel Comments at 3-5 (July 12, 2000).

9 *See, e.g.*, *MGC Communications*, 14 FCC Rcd 11647; Sprint Comments at 15 (October 29, 1999).

10 *See* Sprint Reply Comments at 29-30 (November 29, 1999).

11 *See, e.g.*, *MGC Communications*, 14 FCC Rcd 11647.

Because of the actions of such large, powerful IXCs, CLECs have been forced to seek the Commission's or a court's assistance in obtaining payment.[12] The Commission has recognized the unjustness of IXCs taking such a position. In *MGC Communications*, the Commission observed that, even though AT&T was taking service under a valid federal CLEC tariff, the IXC had unilaterally decided not to pay for those services, although it never tried to prevent its customers from incurring charges on the CLEC's network.[13] The Commission further noted that AT&T could not foist an obligation upon a CLEC to terminate AT&T's relationship with the its end-user customers and thereby place the CLEC in the untenable position of either completing AT&T calls for free or blocking traffic from AT&T's network and risk violating the Commission's rules.[14] Despite the admonition of the Commission, however, this "self help," though unlawful, continues with respect to other CLECs.

It is in this exact position that TelePacific finds itself. Despite filing a federal tariff in January 1999, pursuant to which it is providing switched access services to AT&T, TelePacific is not being compensated by the IXC at its tariffed rates. The only effective redress left to TelePacific has been to seek the Commission's assistance in enforcing its tariff.[15]

The claims of certain IXCs that CLECs employ tariffs and the filed rate doctrine to charge above market rates are unfounded.[16] Under the existing tariff structure, the largest

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12 *See, e.g., MGC Communications,* 14 FCC Rcd 11647; *see also, e.g., Advantel, LLC v. AT&T Corp.*, case no. 1:00cv643 (E.D. Va. filed Apr. 17, 2000).

13 *See MGC Communications*, 14 FCC Rcd at 11657-58, para. 23.

14 *See id.* at para. 20.

15 *See* Formal Complaint, *U.S. TelePacific Corp. v. AT&T Corp.*, no. EB-00-MD-010, para. 23-28 (filed June 16, 2000).

16 *See* MCI WorldCom Comments at 18 (October 29, 1999); ALTS Reply Comments at 8 (November 29, 1999).

IXCs exert considerable market pressure on CLECs by unlawfully refusing to pay CLECs for the access services they provide, and by threatening to block calls to and from the CLEC's end-user customers.[17] Although the CLECs may seek redress from the courts or the Commission, the cost of litigation and the length of time necessary to resolve such disputes are far more burdensome on a small CLEC than on large IXCs. As a result, IXCs, who themselves may be competitors in the local exchange market, currently wield a heavy stick in the negotiation of access rates. Indeed, it appears that, following the FCC's decision in *MGC Communications*, AT&T and the CLEC successfully negotiated a reduction in access charges, although those terms are confidential.

Detariffing will only exacerbate the difficulties CLECs face. Without a tariff to govern the use of CLEC services, the largest IXCs will be able to use their size and resources to dictate access terms to the small CLECs with whom they originate and terminate traffic. As several comments pointed out, increased IXC entry into local exchange markets and BOC entry into long-distance markets, coupled with mandatory detariffing, would provide significant opportunities and incentives for IXCs to engage in anti-competitive conduct designed to drive CLECs out of business.[18]

Smaller CLECs lack the resources and market share necessary to influence negotiations with the large IXCs in a meaningful manner, especially if the IXCs withhold

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17 AT&T has amended its principal interstate tariff to provide "In the absence of access arrangements between the Company and the access provider at a particular Station, a Customer may be unable to place calls from or to the affected Station." *See* AT&T Tariff F.C.C. No. 1, 16th Revised Page 21, effective Aug. 20, 1999, at §2.1.6.A(2).

18 *See* General Services Administration Comments at 5-6 (July 12, 2000); Sprint Comments at 4 (July 12, 2000); Allegiance Comments at 7-8 (July 12, 2000).

payment for services rendered.[19] In practice, CLECs would be forced into one of two equally unpalatable choices: 1) agree to rates for access services set by the largest IXCs, regardless of whether those rates reflect the CLECs' reasonable costs associated with the provision of such services; or 2) expend time and resources that they can ill afford on extended negotiations, regulatory complaints and collection actions in the courts. Either choice places smaller CLECs in a fiscally detrimental position. In short, depriving TelePacific and other small CLECs of the ability to file tariffs would only enhance the IXCs' already strong hand in access rate negotiations.

B. Tariffs Reduce Transaction Costs For Smaller CLECs and IXCs

In addition to curbing the overbearing behavior of large IXCs, tariffs provide CLECs and IXCs with a clear, reliable and efficient means of exchanging price and service information. Although TelePacific provides most of its access services to AT&T, WorldCom and Sprint, smaller IXCs comprise a substantial portion of its access customers. Recently, TelePacific billed over forty separate carriers in one month for access services, and this number is expected to grow as TelePacific expands its operations. Detariffing would force TelePacific to negotiate, sign and administer access service agreements with each of these carriers. As a small CLEC, the legal, regulatory and economic burdens of such an undertaking would be extremely onerous.

Rather than reducing the economic burden, as the Commission suggests in its Notice, detariffing will significantly increase a CLEC's economic burden by forcing the carrier to individually negotiate access service contracts with every potential access customer, existing IXC, and any new market entrants. Under the current system that allows tariffs, neither CLECs

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[19] *See, e.g.*, Allegiance Telecom Comments at 19 (October 29, 1999).

nor small long distance carriers need worry if a customer of a long distance carrier makes a call to a CLEC's end-user customer: the call will be completed and the CLEC will charge the long distance company pursuant to the terms of the CLEC's tariff. If CLECs were required to detariff, however, that same call would create an administrative nightmare. The call would trigger the immediate need for the carriers to negotiate and enter into an access service agreement. As a practical matter, no agreement could be entered into before the call needed to be completed. Under a detariffed system, CLECs either will have to negotiate access terms after the fact or negotiate access agreements with every potential long distance carrier. With literally hundreds of individual carriers offering long distance service,[20] such a process will severely tax the resources of smaller CLECs.

As the Association for Local Telecommunications Services ("ALTS") accurately argued, the transaction costs of such a system would be unduly burdensome for smaller CLECs that depend upon the ability to enter into service relationships quickly and without involved negotiations.[21] The necessity of directing increased resources towards establishing individual service relationships with each IXC will increase the costs associated with switched access services. By insisting on detariffing, the Commission will cause increases in access service costs and inhibit rather than promote competition.

On the other side, smaller IXCs – like small CLECs – also rely on tariffs to enable them to gain access to new markets quickly, on terms that are known in advance, and without the significant expenditures associated with individual rate negotiations. Forcing each IXC to

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[20] Even by December 1996, over 600 carriers with presubscribed customers provided long distance services. *See* Long Distance Market Shares Fourth Quarter 1998, Industry Analysis Division Common Carrier Bureau Federal Communications Commission at 4-5 (March 1999).

[21] ALTS Comments at 5-9 (July 12, 2000).

negotiate with every potential CLEC would impose a similar undue administrative burden on small long distance companies. CLEC access tariffs thus give IXCs a greater ability to enter into competitive markets and begin offering services to end-users more rapidly and efficiently.

C. Tariffs Facilitate the Ability of CLECs to Obtain Investment Funding

Although it is not strictly a regulatory goal, the filing of a federal access tariff can produce the additional benefit of making it easier for a CLEC to obtain start-up and growth financing. A federal tariff on file with the Commission signals to investors that a CLEC is sufficiently established to merit serious consideration. Tariffs and certification documentation are among the first documents that potential investors request and are an essential part of standard due diligence reviews. Based on the tariff, investors are able to determine the types of services a carrier will provide, and the rates at which those services will be provided. Without such a filing, a CLEC would find it more difficult to obtain the funding necessary to operate and expand within its market. Thus, the existence of a tariff facilitates a CLEC's entry into the market and thereby promotes competition.

III. THE COMMISSION SHOULD NOT ESTABLISH INAPPROPRIATE BENCHMARKS FOR ACCESS CHARGES

Some carriers, including IXCs, have stated in recent comments and comments previously filed in the above-cited proceedings that they are most concerned not with the filing of CLEC tariffs, but with interstate access rates charged by CLECs.[22] Many comments in this docket advocate the use of some form of benchmark rate at or under which CLEC access charges

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22 *See, e.g.*, Sprint Reply Comments at 12-15 (November 29, 1999); AT&T Reply Comments at 27-28 (November 29, 1999).

would be presumed reasonable.[23] These comments evidence disagreement over the appropriate benchmark and the appropriate mechanism for dealing with above-benchmark CLEC access charges, *not* over the merits of continued tariffing. The establishment of a benchmark rate, however, is unnecessary.

As discussed above, IXCs have significant power under the current regulatory regime to influence CLEC access rates. Their size and market share, coupled with their ability to challenge individual tariffs or even to refuse to complete calls, place considerable downward pressure on CLECs' access rates, whether those rates are tariffed or not. The vast majority of end-users subscribe to the three largest IXCs and, unless the Commission affirmatively requires IXCs to complete calls, small CLECs will remain especially vulnerable to IXC demands for price concessions. In addition, although the Commission has definitively held IXC self-help efforts unlawful,[24] the mere threat of such behavior, with the coincident possibility of delayed payment and protracted litigation, is a powerful, albeit improper, negotiation tool in the hands of the IXCs. These conditions render additional regulation by the Commission, such as the institution of a benchmark rate, unnecessary.[25]

Establishing a proper benchmark for access charges would provide little or no additional benefit to IXCs, CLECs, or the Commission. Indeed, AT&T refers to the

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23 *See* MCI WorldCom Reply Comments at 11 (November 29, 1999); Sprint Reply Comments at 12-14 (November 29, 1999); Focal and Hyperion Reply Comments at 3-4 (November 29, 1999); ALTS Comments at 9-10 (October 29, 1999).

24 *See MGC Communications,* 14 FCC Rcd 11647.

25 As the Commission has repeatedly stated, where market forces are sufficient the Commission should refrain from unnecessary regulation. *See, e.g., Local Competition and Broadband Reporting Report and Order*, 2000 FCC LEXIS 1628, para. 105 (May 30, 2000)*; see also The FCC and the Unregulation of the Internet*, 1999 FCC LEXIS 3370.

establishment of a benchmark as a "dilatory" endeavor.[26] The enforcement mechanism envisioned by certain IXCs – requiring CLECs who charge above-benchmark rates to undergo full-blown cost justification proceedings – would impose a severe burden on both the Commission and many CLECs who already experience high administrative costs. The alternative enforcement mechanism envisioned by other commenters – requiring IXCs to complain before the Commission if they believe access charges are unjustly high – is already available to the IXCs.[27]

As the Commission has recognized, larger carriers typically have lower unit costs for switching than smaller carriers because of economies of scale.[28] In addition, small CLECs will have start-up costs associated with entering into the telecommunications market that other, more established carriers have long since amortized. It is natural and reasonable that the cost of providing access rates for CLECs will be higher on a per-line basis than for large ILECs.[29] Just as the BOCs' access charges have been reduced over time, CLEC access charges will fall as they

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26 *See* AT&T Reply Comments at 32 (November 29, 1999).

27 Indeed, Sprint recently sought and obtained leave from the United States District Court for the Eastern District of Virginia to bring its counterclaim against Advantel before the Commission, rather than proceed before the Court. *See Advantel, LLC v. AT&T Corp.*, no. 1:00cv643 (E.D. Va. motion granted Apr. 17, 2000).

28 "The Commission has recognized that smaller telephone companies have higher local switching costs than larger incumbent local exchange carriers (ILECs) because the smaller companies cannot take advantage of certain economies of scale." *National Exchange Carrier Assn., Inc. Proposed Modifications to the 1998-99 Interstate Average Schedule Formulas*, 13 FCC Rcd 24255 at n.6 (Dec. 22, 1998).

29 "We acknowledge that CLEC access rates may, in fact, be higher due to the CLECs' high start-up costs for building new networks, their small geographic service areas, and the limited number of subscribers over which CLECs can distribute costs." *Fifth Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 14221, para. 244 (August 27, 1999); *See* Allegiance Telecom Reply Comments at 8 (November 29, 1999).

realize scale and scope economies, and as technological improvements continue to drive down prices.

However, to the extent that the Commission determines that the setting of a benchmark is appropriate, TelePacific urges the Commission to adopt a benchmark based on an examination of access charges filed by small carriers whose operations are similar in scale and scope to the CLECs' operations and not a benchmark based on the largest ILECs' rates, as advocated by some IXCs.[30] One possibility is for the Commission to use NECA rates as a "benchmark" for CLEC access charges. Like CLECs, NECA members do not have the large ILECs' advantages of economies of scale and are forced to spread the cost of their facilities over a smaller customer base. Since the cost structure of a CLEC is more likely to resemble that of a NECA carrier than that of the large ILECs, the NECA rates would provide a significantly more accurate benchmark.[31] Should the Commission adopt such a benchmark, it should serve as a "safe harbor" within which rates are presumed lawful.

IV. IF MANDATORY DETARIFFING IS REQUIRED, THE COMMISSION SHOULD PHASE-OUT TARIFFS OVER AT LEAST SEVEN YEARS

TelePacific emphasizes again the strong opposition to mandatory detariffing evidenced in the initial comments, and argues that permitting CLECs to file tariffs serves the public interest. Should the Commission decide to require the detariffing of access services, however, TelePacific requests that the tariffs be phased-out in order to allow CLECs the opportunity to establish themselves before having to face the additional burdens associated with

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30 As the Commission recently found, CLEC access rates above ILEC rates are not per se unreasonable. *Sprint Communications Co. v. MGC Communications, Inc.*, ___ FCC Rcd ___, 2000 WL 732918 (June 7, 2000). As most CLEC access charges are set above the ILEC rates, such a benchmark would invite extensive litigation and administrative costs.

31 *See* MCI WorldCom Reply Comments at 20 (November 29, 1999); Global Crossing North America, Inc. Comments at 8 (July 12, 2000).

detariffing.[32] Such transitional detariffing will facilitate competition by allowing CLECs a greater opportunity to establish themselves as a viable competitive force in local exchange markets against the well-entrenched ILECs.

As the Commission has recognized, new entrants face significant barriers to entry and high costs associated with establishment of a facilities based network.[33] Typically, a CLEC must devote its first four or five years of operation to building its customer base while expending substantial sums on building its network infrastructure. A new entrant needs to be able to efficiently and rapidly enter into relationships with IXCs and begin to provide service to end-users. As discussed above, a CLEC has neither the resources to also spend a substantial amount of time negotiating with a plethora of IXCs nor the bargaining power to require the largest IXCs to accept reasonable access rates. Without the ability to file a tariff, the new CLECs' growth will likely be inhibited by delays in negotiations or unreasonable rate proposals by the large IXCs.

By allowing CLECs to file a tariff for a period of seven years from the date of their first providing access services, the Commission will provide smaller carriers the opportunity to establish a presence in a local market before facing the burden of negotiating with a host of IXCs. This is consistent with the Commission's treatment of competitive IXCs, who

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32 TelePacific further notes that the detariffing of CLECs puts them at a disadvantage to ILECs, which do not need to negotiate hundreds of agreements with IXCs. While TelePacific acknowledges that, due to the market power of ILECs, there are legitimate reasons to require ILECs to file tariffs, to detariff CLECs without detariffing ILECs is highly disadvantageous towards CLECs. *See* Allegiance Telecom, Inc. Comments at 8-9 (July 12, 2000); AT&T Reply Comments in CC Docket 97-146 at 6-7 (Sept. 17, 1997).

33 *See Implementation of the Local Competition Provisions of the Telecom Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, para. 76 (November 5, 1999).

filed tariffs for over a decade before mandatory detariffing was ordered.[34] Once a CLEC has a reasonable customer base and has completed its initial infrastructure expenditures, the CLEC will be in a stronger position to negotiate with the IXCs.

CONCLUSION

Because of the disparate bargaining power between CLECs and large IXCs and the efficiencies produced by the tariff system, TelePacific strongly urges the Commission to allow CLECs to continue to file tariffs for interstate access services. Such tariffs serve the public interest by facilitating market entry, promoting competition and providing a degree of certainty for small carriers, as discussed above. Furthermore, as the comments in these proceedings generally demonstrate, rate levels, rather than the merits of continued tariffing, remain the primary concern for most carriers. Should the Commission determine that it is necessary to set a benchmark rate by which to evaluate filed rates, TelePacific urges the Commission to model such a benchmark on rates charged by similarly situated carriers, such as NECA members. To the extent that detariffing is mandated, TelePacific requests that the Commission at least allow start-up CLECs to phase out their tariffs over a period of seven years, thereby allowing them the opportunity to become established in the market.

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[34] Although the Commission originally attempted to detariff the non-dominant IXCs much earlier, see In the Matter of Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorizations Therefore, CC Docket No. 79-252 ("Competitive Carrier"), Fifth Report and Order, 98 F.C.C. 2d 1191, 1200 para. 11 (1984) (finding detariffing of competitive IXCs to be in the public interest), Competitive Carrier, Sixth Report and Order, 99 F.C.C. 2d 1020, 1021-1022 para. 2 (1985) (canceling all tariffs for competitive IXCs); MCI Telecom. Co. v. AT&T, 52 U.S. 218 (1994) (striking down the Commission's detariffing order); but see MCI WorldCom v. FCC, 209 F.3d 760 (D.C. Cir. 2000) (enforcing, for the first time, mandatory detariffing upon competitive IXCs), the Commission finally implemented its detariffing order only this year. Therefore, IXCs have had the benefit of many years of operation under federal tariffs.

Respectfully submitted,

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