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FEDERAL COMMUNICATIONS COMMISSION
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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 the
GENERAL SERVICES ADMINISTRATION

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Summary

In these Reply Comments, GSA responds to parties who contend that the Commission should not permit competitive LECs to file tariffs for access services. GSA concurs with the great majority of competitive LECs, as well as incumbent LECs and their IXC customers who do not support a policy of mandatory detariffing for access charges.

In the first place, contrary to assertions by several parties, mandatory detariffing will not provide a level playing field for competitive and incumbent LECs. Many comments show that reliance on bilateral negotiations will favor the larger IXCs and stronger competitive LECs over newer or smaller carriers. Requirements for carriers with unequal bargaining power to establish rates through negotiations will lead to market distortions, including below–cost pricing for some carriers, over–recovery from other carriers, and a weakened ability for some participants to compete effectively in the marketplace.

In addition, GSA states that the Commission should reject claims that competitive LECs' access fees are unreasonably high, and that these charges can be effectively controlled by detariffing. First, competitors demonstrate that comparisons with the charges of incumbent LECs do not take important variables into account. Second, an IXC explains that rather than mandating a <u>de</u>tariffing regime, the Commission should strengthen <u>tariff</u> regulation of the competitive LECs' charges.

Finally, GSA explains that most parties dispute assertions that detariffing will reduce costs and encourage competitive entry. Indeed, competitive LECs explain that detariffing would significantly <u>increase</u> their costs and also add to administrative burdens on the Commission. Moreover, lead times necessary for competitive LECs to negotiate charges with hundreds of IXCs may limit service options for end users.

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REPLY COMMENTS of the GENERAL SERVICES ADMINISTRATION

The General Services Administration ("GSA") submits these Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") on the Public Notice ("Notice") released on June 16, 2000. The Notice seeks comments and replies on mandatory detariffing of interstate access services provided by competitive local exchange carriers ("LECs").

I. INTRODUCTION

On April 28, 2000, the Court of Appeals for the District of Columbia Circuit upheld the Commission's 1996 order requiring detariffing of the interstate services of nondominant interexchange carriers ("IXCs").[1] In view of the Court's rulings

1 *MCI WorldCom v. FCC,* 209 F.3.d 760 (D.C. Cir. 2000); *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96–61, Second Report and Order, 11 FCC Rcd 20730 *("IXC Detariffing Order").*

concerning detariffing of services to end users, the Commission released the instant Notice seeking comments on services provided to IXCs.[2]

GSA submitted Comments responding to the Notice. In those Comments, GSA discussed the need to distinguish services provided to IXCs by competitive local exchange carriers ("LECs") from services provided to end users by IXCs. In short, tariffs for services provided to end users present a barrier to competition.[3] On the other hand, tariffs for services provided to IXCs serve an important function in promoting more competition. Consequently, while urging the Commission to detariff the IXCs' services, GSA urged the Commission not to prescribe mandatory detariffing of the competitive LECs' access offerings.[4]

More than 20 parties, including competitive LECs, incumbent LECs, IXCs, and an association of end users, also submitted comments. In these Reply Comments, GSA responds to the positions advanced by those parties.

II. THE COMMISSION SHOULD NOT HEED CLAIMS THAT MANDATORY DETARIFFING WILL PROVIDE A LEVEL PLAYING FIELD FOR ALL CARRIERS.

Among the carriers submitting comments, only one provides an unqualified endorsement of mandatory detariffing of access services by competitive LECs. WorldCom states that complete detariffing by direction of the Commission would promote the Commission's goal of reducing regulatory burdens, without exposing the carriers obtaining access to discriminatory or unreasonable treatment.[5] WorldCom

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2 *In the Matter of Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers*, CC Docket Nos. 97–146 and 96–262, Public Notice, DA 00–1268, released June 12, 2000, pp. 1–2.

3 Comments of GSA, July 12, 2000, pp. 1–2.

4 *Id.*

5 Comments of WorldCom, p. 5.

also asserts that mandatory detariffing would avoid continuing complaint proceedings concerning competitive LECs that bill IXCs for services that the same IXCs have requested the LECs to withdraw.[6]

In spite of WorldCom's claims, GSA concurs with the many carriers who urge the Commission to find that mandatory detariffing would not be in the public interest. The Association for Local Telecommunications Services ("ALTS") speaks for these carriers when it states:

> [t]he access market is significantly different from the interexchange market where the Commission found mandatory detariffing to be in the pubic interest. Here, neither the competitive LECs, nor their customers (the IXCs), nor their competitors (the incumbent LECs) support such a policy.[7]

ALTS continues by observing that those carriers who are potentially most aggrieved by tariffs for access charges do not believe that mandatory detariffing is the appropriate means to address their concerns.[8]

Indeed, the IXCs who pay the access charges explain that mandatory detariffing is not the most efficient way to maintain surveillance over the market. For example, Sprint states that reliance on bilateral negotiations could have important adverse public policy consequences.[9] Sprint explains that "such a process tends to favor the largest IXCs and the largest competitive LECs over their smaller competitors."[10] Sprint notes that the Regional Bell Operating Companies ("RBOCs"), who are beginning to

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6 *Id.*, pp. 3–6.

7 Comments of ALTS, p. ii.

8 *Id.*

9 Comments of Sprint Corporation ("Sprint"), p. 3.

10 *Id.*

enter the interstate market on a significant scale, are in a good position to impede competition by instructing their affiliates not to obtain access from competitive LECs.[11]

AT&T also does not endorse detariffing of the competitive LECs' access services. Indeed, AT&T states that mandatory detariffing is "unnecessary to allow market forces to control" what it perceives as a small but rapidly growing segment of the competitive LEC industry that is abusing its control over access to a group of end users.[12]

Although IXCs raise objections to mandatory detariffing, by far the strongest opposition is from competitive LECs. For example, Winstar states:

> The negative effects of mandatory detariffing will far outweigh any possible positive effects. . . . IXCs have a far more powerful bargaining position than competitive LECs and, in many cases, have the ability to force competitive LECs into unfair agreements.[13]

Winstar also echoes concerns expressed by GSA that mandatory detariffing may create situations where connections are not completed because IXCs and LECs have not reached agreements on access charges.[14]

Focal Communications, a facilities–based provider of voice and data services to end users, value–added resellers, and Internet service providers ("ISPs"), raises additional objections to mandatory detariffing.[15] Indeed, this competitive LEC identifies eight reasons why mandatory negotiation is not a suitable way to establish interstate access charges.[16] Most of these objections stem from the fact that IXCs have

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11 *Id.*, p. 4.

12 Supplemental Comments of AT&T Corp. ("AT&T"), pp. 1–2.

13 Comments of Winstar Communications ("Winstar"), p. 2.

14 *Id.*; and Comments of GSA, pp. 3–4.

15 Comments of Focal Communications ("Focal"), p. 1.

16 *Id.*, pp. 4–12.

superior bargaining power in dealing with most competitive LECs.[17] As Focal explains, requiring parties with unequal bargaining power to establish rates through negotiation will lead to market distortions.[18] These distortions include below-cost pricing for some carriers, over–recovery from other carriers, and a greatly weakened ability of some participants to compete effectively in the marketplace.[19]

A large incumbent carrier also disputes the wisdom of mandatory detariffing of competitive LECs' access charges. In comments setting forth the interests of the Bell Atlantic companies and the companies formerly affiliated with GTE Corp., Verizon states that mandatory detariffing would not resolve concerns of excessive charges by competitive LECs.[20] Verizon explains that "forcing competitive LECs to proceed by contract rather than a tariff simply makes the process less public." [21]

GSA concurs with the concerns expressed by the carriers cited above and other carriers that prohibitions against tariffs may limit communications options and impede achievement of the Commission's policies for extending competition for interexchange and local exchange services. Therefore, GSA urges the Commission not to adopt mandatory detariffing for competitive LECs' access services.

III. CONTRARY TO ASSERTIONS, MANDATORY DETARIFFING IS UNNECESSARY TO MAINTAIN SURVEILLANCE OVER ACCESS CHARGES

A consumer association objects to the policy of continuing to allow competitive LECs to file tariffs for access services because of marketplace issues resulting from

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17 *Id.*, p. 5.

18 *Id.*

19 *Id.*

20 Comments of Verizon Companies ("Verizon"), p. 3.

21 *Id.*

LEC bottleneck control over terminating access. The Ad Hoc Telecommunications Users Committee ("Ad Hoc") states that tariffing enables LECs to set terminating access charges at unreasonably high levels.[22]

GSA urges the Commission to reject contentions that competitive LECs' access charges are unreasonably high, and that these charges can be effectively controlled by mandatory detariffing of access services. Competitive LECs rebut assertions that their access charges are unreasonable by undermining the premises on which these claims are based.[23]

Most assertions of high charges by competitive LECs rest on comparisons between competitors' access charges and the access charges of incumbent LECs.[24] A consortium of competitive LECs lists reasons why these comparisons are not meaningful.[25] First, competitive LECs' access charges frequently contain different components and rate elements than incumbent LECs' access charges.[26] Second, the majority of access lines provided by most incumbent LECs are in lower–cost urban and suburban areas. Since the access charges of carriers reflect costs averaged over their study areas, rates throughout the incumbents' entire territories reflect their lower urban costs. Third, on a start–up basis, competitive LECs' access rates must reflect their costs for network construction and their subscribership.[27]

In addressing the issue of competitive LECs' access charges, the Commission also questioned claims that these charges were excessive. For example, in the Fifth

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22 Comments of Ad Hoc, p. 5.

23 See, for example, Joint Comments of MGC Communications, Inc., ITC^DeltaCom, Inc. and BroadStreet Communications, Inc., pp. 8–12.

24 Comments of the Minnesota CLEC Consortium, pp. 2–3.

25 *Id.*

26 *Id.*

27 *Id.*

Report and Order released last year in the instant proceeding, the Commission noted that there were strong rebuttals to assertions by an IXC that competitive LECs' access charges were excessive.[28] Also, the Commission stated that there was no clear basis for comparison of competitive LECs' charges with the charges of incumbent LECs.[29]

The Commission visited the issue again this year with the same conclusion. In a Memorandum and Opinion and Order concerning a dispute between Sprint and MGC Communications, the Commission stated that its rules and orders do not support the position that a competitive LEC's access charge is unjust or unreasonable simply because the competitive LEC's charge exceeds the incumbent LEC's charge.[30]

Moreover, in comments responding to the Notice, an IXC explains that regardless of the merits of assertions that some competitive LECs' access charges are excessive, mandatory detariffing for all competitive LECs is not the appropriate remedy.[31] Global Crossing states that rather than mandating a detariffing regime, the Commission should heighten its tariff regulation of competitors' access charges.[32] As an end user of services provided by IXCs and LECs, GSA concurs with this position.

IV. COMMENTS DEMONSTRATE THAT MANDATORY DETARIFFING WOULD PLACE A SIGNIFICANT BURDEN ON COMPETITORS.

Ad Hoc contends that mandatory detariffing will reduce costs by eliminating the need for competitive LECs to prepare and file tariffs.[33] Ad Hoc also asserts that

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28 Fifth Report and Order and Further Notice of Proposed Rulemaking, released August 27, 1999, para. 187.

29 *Id.*

30 *Sprint Communications Company, L.P. v. MGC Communications, Inc.*, FCC 00–206.

31 Comments of Global Crossing North America ("Global Crossing"), p. 1.

32 *Id.*, pp. 1–2.

33 Comments of Ad Hoc, p. 3.

mandatory detariffing will encourage entry by allowing carriers to protect competitively sensitive pricing data.[34] GSA disagrees.

GSA has explained that mandatory detariffing will not reduce competitive LECs' costs.[35] Competitive LECs would still be required to file and maintain intrastate tariffs to meet rules established by state regulators.[36] The FEAs' experience as end users of interexchange and local telecommunications services demonstrates that state regulators believe LECs see a trade–off between intrastate access charges and the charges for basic local exchange services in meeting their overall intrastate revenue needs.[37] Higher intrastate access charges allow lower basic local rates, and vice versa.

To prevent allegations that they are not taking the appropriate steps to hold down basic service rates, state regulators are likely to continue tariffing requirements for intrastate access. Federal detariffing coincident with state tariffing will place the maximum cost and regulatory burden on competitive LECs — requirements to negotiate individual contracts and to prepare tariffs.

Ad Hoc's contention that competitive LECs seek proprietary treatment of their access charges is a "red herring." Indeed, competitive LECs responding to the Commission's Notice state that they would prefer to file tariffs with rates visible to the public. For example, Focal explains that requiring IXCs and competitive LECs to negotiate interstate access charges would constitute a barrier to market entry because a competitive LEC could not initiate services until it had obtained agreements with

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34 *Id.*, p. 4.

35 Comments of GSA, pp. 7–8

36 *Id.*

37 *Id.*, p. 7.

hundreds of IXCs.[38] Moreover, this competitive LEC explains that reliance on negotiated agreements would increase the administrative burdens on the Commission.[39] The Commission would be required to resolve numerous disputes between IXCs and competitive LECs that were not able to successfully negotiate access prices.[40] Moreover, Focal notes it is likely that the Commission would receive many consumer complaints and requests for damages if customers were not able to select a combination of IXC and competitive LEC because the carriers had not concluded an agreement concerning access charges.[41]

Another competitive LEC, Prism Communications, observes that it cannot establish which particular IXCs will be required to use its services.[42] Thus, agreements must be concluded with all IXCs. As a result:

> Mandatory detariffing will force exorbitant transaction costs that will hinder Prism's ability to provide local exchange service.[43]

Also, Prism explains that costs for administration of negotiated agreements will continue while the agreements are in force, and lessen funds available for reductions in access charges during this period.[44]

In short, a regime without filed tariffs will place additional burdens on the Commission, carriers, and end users. For these additional reasons, GSA urges the Commission to reject mandatory detariffing of access services by competitive LECs.

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38 Comments of Focal, p. 8.

39 *Id.*, p. 11.

40 *Id.*

41 *Id.*

42 Comments of Prism Communications ("Prism"), p. 2.

43 *Id.*

44 *Id.*, p. 4.

V. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to implement the recommendations set forth in these Reply Comments.

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