

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Joint Petition for Expedited Rulemaking)	
Establishing Minimum Notice Requirements)	
for Detariffed Services)	
)	
Policy and Rules Concerning the Interstate,)	CI Docket No. 02-22
Interexchange Marketplace, Implementation)	
of Section 254(g) of the Communications)	
Act of 1934, as amended)	

COMMENTS OF SBC COMMUNICATIONS INC. IN RESPONSE TO JOINT PETITION

SBC Communications Inc. (SBC), on behalf of its long distance entities, Southwestern Bell Communications Services, Inc. (SBCS) and SNET America, Inc. (SAI), hereby files these comments in response to the Joint Petition referenced in the above captioned docket. The Joint Petition requests that the Commission issue, on an expedited basis, a notice of proposed rulemaking to require non-dominant interexchange carriers (IXC) to provide their customers a minimum of 30 days written notice prior to making any material change to rates, terms and conditions. SBC opposes this request and demonstrates below that the proposed rulemaking proceeding is unwarranted and contrary to the public interest.

As a threshold matter, the Joint Petition does not demonstrate that consumers have been harmed by the absence of an advanced subscriber notification requirement. Indeed it does not even purport to demonstrate that consumers are not being given adequate notice of material changes. Absent such a showing, there is no basis to initiate the rulemaking that petitioners' request.

Second, the proposed notification period would undermine two decades of Commission findings that advance public notice of nondominant IXC rates, terms and conditions is not necessary. As a brief background, prior to adoption of the Telecommunications Act of 1996, the

Commission, beginning in 1982, established a permissive detariffing policy for nondominant IXCs,¹ finding that market forces, coupled with the Section 208 complaint process and the Commission's ability to reimpose tariff filing requirements were sufficient to protect the public interest.² In 1985, the Commission went a step further and established a mandatory detariffing policy for carriers subject to its forbearance policy, relying on the same justifications espoused in the aforementioned orders.³ Ultimately, the mandatory and permissive detariffing policies were vacated by the U.S. Court of Appeals for the D.C. Circuit because it was determined that the Commission lacked statutory authority to prohibit carriers from filing tariffs. As a result, in 1995, the Commission reinstated tariff filing requirements for nondominant IXCs,⁴ but importantly only required these carriers to file tariffs on one-day notice. Significantly, the Commission remained committed to its determination that advance notification of nondominant IXC rates, terms, and conditions is not necessary to protect consumers.

¹ *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Second Report and Order, 91 FCC.2d 59 (1982); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Order on Reconsideration, 93 FCC.2d 54 (1983); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28,292 (June 21, 1983); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, Third Report and Order, 48 Fed. Reg. 46,791 (Oct. 14, 1983); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, Fourth Report and Order, 95 FCC.2d 554 (1983), vacated by *AT&T Co. v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), cert. denied, *MCI Telecommunications Corp. v. AT&T Co.*, 509 U.S. 913 (1993).

² *Fourth Report and Order*, at p. 578.

³ *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Sixth Report and Order, 99 FCC.2d 1020 (1985).

⁴ *Tariff Filing Requirements for Nondominant Common Carriers*, CC Docket No. 93-36, Order, 10 FCC Rcd 13653 (1995).

Following enactment of the Telecommunications Act of 1996, the Commission has continued to adhere to its previous findings that advance notice of nondominant IXC rates, terms and conditions is unnecessary. In the 1996 Forbearance Order, the Commission forbore from tariff filing requirements for nondominant IXCs, again concluding that market forces, the Section 208 complaint process and the Commission's ability to reimpose tariff filing requirements are sufficient to protect consumers.⁵ In so holding, the Commission expressly rejected arguments that advance customer notification is necessary. The Commission determined that consumers would continue to receive rate and other information through the billing process, and, further, that nondominant IXCs as a business practice likely would provide customers such information to retain their customer base.⁶ Instead of adopting an advance notification requirement, the Commission only required carriers to post changes to such information on their Internet webpages within 24 hours and to update any public information sites within five days after the effective date of a change.⁷ The Joint Petition proffers nothing to warrant a Commission re-examination of this determination.

The Commission's conclusion that the market would serve as an effective watchman was absolutely correct. Indeed, SBCS, in the absence of federal notification requirements, provides subscribers 10 days advance notice of price increases. It does so because SBCS believes it is the best way to take care of its customers. As SBCS's practice shows, if the public demands it,

⁵*Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730 (1996) (*1996 Forbearance Order*).

⁶ *Id.*, at ¶¶25 and 39.

⁷ *Id.*, at ¶¶85-86; ¶17.

carriers will provide advance notice. The marketplace, not regulators, should determine whether and when advanced notice should be provided.

Fourth, a 30-day notice requirement absolutely goes too far because it surpasses tariff notice periods previously imposed on nondominant IXCs. If this requirement is adopted, nondominant IXCs would be subject to stricter notification requirements than were previously imposed on AT&T, in certain instances, when it was still classified as a dominant IXC carrier under price cap regulation.⁸ Further, a 30-day notice requirement would extend well beyond 30 days, possibly up to 60 days. From SBC's experience, bill inserts or bill messages are the most economical method of providing consumers notice. All consumers however are not billed on the same day, but in phases during a 30-day billing cycle. So if SBC decided to change its rates after a billing cycle commenced, it would have to wait until the conclusion of the next billing cycle, i.e. 30 days plus, to change its rates, terms or conditions to ensure that all customers had the requisite 30-day notice. Such a result is plainly inconsistent with the deregulatory thrust of the 1996 Act and 20 years of Commission action to eliminate notification requirements for nondominant IXCs.

Fifth, a mandatory notification requirement could prove harmful to competition, and ultimately consumers. This is particularly true where carriers seek to reduce rates. Competitors in a deregulated market must be able to respond dynamically to rate fluctuations in the marketplace and not be constrained by artificial restraints. A mandatory notification requirement, absent any demonstrable need, would limit this ability to respond, thus impeding competition, a result plainly inconsistent with a deregulated, interexchange market.

⁸ Prior to the Commission's classification of AT&T as a nondominant IXC, AT&T could increase its long distance service rates on 14-day notice so long as the rate increase did not exceed band limitations or the price cap ceiling. 47 C.F.R. § 61.58(c)(2) 1995.

Sixth, as the Commission correctly concluded in the 1996 Forbearance Order, the Section 208 complaint process is sufficient to redress any harm to consumers due to unjust or unreasonable prices, rates, or conditions.⁹ Further, the FCC and the states have consumer protection laws in place to protect consumers from deceptive, misleading and anticompetitive practices.

Accordingly, for the foregoing reasons, the Commission should reject the Joint Petition and not initiate a rulemaking proceeding to impose advance notification requirements.

Respectfully Submitted,

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⁹ *1996 Forbearance Order*, at ¶38.