

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

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In the Matter of)	
)	
Joint Petition for Expedited Rulemaking)	CI Docket No. 02-22
Establishing Minimum Notice Requirements)	
for Detariffed Services)	
)	
Policy and Rules Concerning the Interstate,)	CC Docket No. 96-61
Interexchange Marketplace, Implementation)	
of Section 254(g) of the Communications Act)	
of 1934, as amended)	
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**COMMENTS OF THE
ASSOCIATION OF COMMUNICATIONS ENTERPRISES**

The Association of Communications Enterprises (“ASCENT”),¹ through undersigned counsel, and pursuant to Public Notice, DA 02-271 (released February 6, 2002), hereby comments upon issues raised in the Joint Petition for Expedited Rulemaking Establishing Minimum Notice Requirements for Detariffed Services (“Petition”) filed by the American Association of Retired Persons (“AARP”), Consumer Action (“CA”), Consumer Federation of America (“CFA”), Consumers Union (“CU”), the Massachusetts Union on Public Housing Tenants (“MUPHT”), the National Association of Regulatory Commissioners (“NARUC”), the National Association of Consumer Agency Administrators (“NACAA”), the National Association of State Utility Consumer

¹ ASCENT is a national trade association representing smaller providers of competitive telecommunications and information services. The largest association of competitive carriers in the United States, ASCENT was created, and carries a continuing mandate, to foster and promote the competitive provision of telecommunications and information services, to support the competitive communications industry, and to protect and further the interests of entities engaged in the competitive provision of telecommunications and information services.

Advocates (“NASUCA”), and the National Consumer’s League (“NCL”) (collectively, the “Joint Petitioners”) in the above-referenced proceeding. In the Petition, the Joint Petitioners request that the Commission institute a rulemaking proceeding for the purpose of “impos[ing] a minimum 30 day notice requirement” which would limit a carrier’s ability to modify rates for interstate, domestic interexchange services which have been detariffed by the Commission.²

Inasmuch as the advanced notice requirement sought by the Joint Petitioners would significantly increase carrier costs of doing business, ASCENT respectfully urges the Commission to deny the Petition. In light of the rate information disclosure rules already adopted by the Commission these additional costs would not be adequately counterbalanced by the marginal increases in consumer knowledge about carrier rates, terms and conditions of service. Equally important, however, the imposition of a minimum 30-day limitation on carriers’ ability to respond to marketplace changes would withhold from all consumers the benefits of rapid carrier innovation of new product offerings and response to consumer pricing demands. Thus, while obviously motivated by a desire to promote more perfect consumer knowledge, the Joint Petitioners’ request holds the potential to undermine a primary benefit which the Commission sought to provide to consumers in detariffing interstate, domestic interexchange services to begin with.

The Joint Petitioners “share the concerns that the current rules are not adequate to assure that consumers can make informed choices among competing suppliers of toll services.”³ To remedy this perceived inadequacy, the Joint Petitioners propose the addition of the following language to section 42.10 of the Commission’s Rules

² Petition, p. 1.

³ Id.

A non-dominant IXC shall give written notice to its presubscribed customers via bill insert, postcard, or letter, of any materials change to the rates, terms or conditions at least thirty days before such change takes effect.⁴

ASCENT disagrees with the Joint Petitioners' assessment that the Commission's implementing rules and policies are insufficient to provide consumers with an adequate basis upon which to base "informed" telecommunications services choices. Actually, quite the opposite is true. In acting to detariff interstate toll telecommunications services, the Commission took care to ensure the availability of relevant rate, term and condition information to consumers. The Commission first made clear that "it is highly unlikely that interexchange carriers that lack market power could successfully charge rates, or impose terms and conditions, for interstate, domestic, interexchange services in ways that violate Sections 201 and 202 of the Communications Act."⁵ The Commission then ensured the availability of sufficient consumer knowledge by directing nondominant interexchange carriers to "make available to the public information concerning the current rates, terms and conditions for all of their interstate, domestic, interexchange services".⁶

⁴ Id., p. 7.

⁵ Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as Amended (Second Report and Order), 11 FCC Rcd. 20730 (1996), ¶ 84 ("Detariffing Second Report and Order").

⁶ Id., ¶ 85.

This requirement, the Commission held, would “promote the public interest by making it easier for consumers . . . to compare carriers’ service offerings.”⁷ Information concerning material rates, terms or conditions of service are, pursuant to the Commission’s rules, to be made available to consumers promptly upon the carrier’s adoption of such modifications. The requisite information is to be set forth in easily-understandable language and, in order to facilitate the resolution of consumer complaints, carriers are required to maintain such information, “as well as documents supporting the rates, terms and conditions of the carriers’ interstate, domestic, interexchange offerings . . . for a period of at least two years and six months following the date the carrier ceases to provide services on such rates, terms and conditions.”⁸

⁷ Id.

⁸ Id., ¶ 87.

Even as it adopted these public information disclosure requirements, however, the Commission was keenly aware of its obligation to balance the need to provide consumers with information had to be balanced against the financial and operations burdens to be placed upon carriers in order to provide that information. Increasing carriers' costs of doing business, the Commission was aware, would at some point inure to the detriment of all consumers since those additional costs would in many circumstances need to be spread over the totality of a complying carrier's customer base. Thus, "[i]n order to minimize the burden on nondominant interexchange carriers," the Commission specifically declined to "require nondominant interexchange carriers to make rate and service information available to the public in any particular format, or at any particular location."⁹ While the Commission "encourage[d] carriers to consider ways to make such information more widely available, for example, posting such information on-line, mailing relevant information to consumers, or responding to inquiries over the telephone,"¹⁰ in light of the costs attendant upon the public notice requirement -- costs which would "vary based on the area or number of customers served by such carriers (e.g., advertising expenditures, promotional mailings or billing inserts)",¹¹ carriers were left to determine on their own how best to make such information available to the public.

This is hardly the first time the Commission has made a policy judgment in favor of

⁹ Id., ¶ 86.

¹⁰ Id., footnote 236.

¹¹ Id., ¶ 57. The Commission has also recognized that the costs attendant upon direct customer notification, while costly for any carrier, will be especially costly for smaller carriers. 2000 Biennial Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers; Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers (First Report and Order), 16 FCC Rcd. 11218 (2001), ¶ 18.

“declin[ing] to adopt . . . proposals . . . that would be most costly for subject carriers to implement.”¹² While supporting proposed efforts of carriers to educate the public on the availability of telecommunications services, the Commission has “declined to require carriers jointly to fund educational efforts,” holding such activities to be “business decisions properly left to the discretion of the carrier” and thus “inappropriate for the Commission to mandate.”¹³ And even as it has “urged the dissemination of information,” specifically noting that “billing inserts may be one appropriate means, among others, to ensure customer awareness,” it has disagreed with commenters which have suggested “that carriers should be required to provide billing inserts to customers” in order to accomplish a wider dissemination of information than necessary in the Commission’s view to safeguard consumer interests without unduly burdening carriers.¹⁴

¹² Truth-in-Billing and Billing Format, (First Report and Order and Further Notice of Proposed Rulemaking), 14 FCC Rcd. 7492 (1999), ¶ 102.

¹³ Toll Free Service Access Codes (Second Report and Order), 12 FCC Rcd. 11162 (1997), ¶ 87.

¹⁴ Implementation of 911 Act; the Use of N11 Codes and Other Abbreviated Dialing Arrangements (Fifth Report and Order), 16 FCC Rcd. 22264 (2001), ¶ 36.

In the present context, the Commission has struck the appropriate balance between the need to provide information concerning rates, terms and conditions of service to consumers in order to facilitate the making of informed telecommunications service decisions, on the one hand, and the need to avoid the imposition of unreasonable costs of doing business on the other. As the Commission notes, carriers are required to provide consumers with the same information on rates, terms and conditions of service as previously provided under the Commission's tariff regime, albeit in a more easily understandable fashion now.¹⁵ The balance already struck by the Commission is an appropriate one which should not be altered as urged by the Joint Petitioners. Notwithstanding a certain decisional benefit which a minimum 30-day advanced notice would accord consumers, the Commission must refrain from placing this burden upon nondominant interexchange carriers because the requirement would severely limit the ability of such carriers to react swiftly to market forces. The Commission has historically placed particular importance upon fostering that degree of flexibility necessary for telecommunications carriers to do just that.¹⁶ In the present context, the

¹⁵ See *Detariffing Second Report and Order*, 11 FCC Rcd. 20730, ¶ 25 (“end-users rarely, if ever, consult these tariff filings, and few of them are able to understand tariff filings even if they do examine them. . . nondominant interexchange carriers will generally provide customers rate and service information that currently is contained in tariffs, in an accessible format in order in order to market their services and to retain customers.”)

¹⁶ Rule Making to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 Ghz Frequency Band, to Reallocate the 29.5-30.0 Ghz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services (Fourth Report and Order), 13 FCC Rcd. 11655 (1998) (“afford[ing] LMDS licensees the flexibility to respond to marketplace demands”); Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets (Policy Statement), 15 FCC Rcd. 24178 (“increas[ing] a licensee's ability to respond to marketplace demands”); Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service (Fifth Report and Order) 12809 (1997) (“We choose to impose few restrictions on broadcasters and allow them to make decisions that will further their ability to respond to the marketplace.”); “Spectrum Management Principles for the Twenty-First Century”, Remarks of Commissioner Susan Ness, June 10, 1996 (“We must give licensees greater flexibility to respond to marketplace needs. The mantra for

Commission has clearly stated that its policy goal extends to all aspects of the telecommunications environment:

[t]he actions we take here will further the pro-competitive, deregulatory objectives of the 1996 Act by fostering increased competition in the market for interstate, domestic, interexchange telecommunications services. . . . After our policy of complete detariffing has been implemented, carriers in the interstate, domestic, interexchange marketplace will be subject to the same incentives and rewards that firms in other competitive markets confront. We seek ultimately to accomplish the same result in every telecommunications market, because we believe that effectively competitive markets produce maximum benefits for consumers, carriers and the nation's economy.¹⁷

It would be wholly inconsistent with this broad Commission policy determination for the Commission to now severely restrict the ability of nondominant interexchange carriers to respond to market forces as advocated by the Joint Petitioners.¹⁸

licensing spectrum today is flexibility.”); Michele C. Farquhar, Chief of the FCC’s Wireless Telecommunications Bureau, Remarks Before the Personal Communications Industry Association Spring Government Conference, May 15, 1996 (“competition will mean new opportunities for wireless services as they respond to marketplace demands, and our regulations must be flexible enough to enable companies to respond quickly in this environment.”); Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services (Second Report and Order), 9 FCC Rcd. 1411 (1994) (“The absence of tariff filing requirements and the attendant notice periods should promote competitive market conditions by enabling CMRS providers to respond quickly to competitors’ price changes. Carriers will be motivated to win customers by offering the best, most economical service packages.”)

¹⁷ *Detariffing Second Report and Order*, 11 FCC Rcd. 20730, ¶ 4.

¹⁸ Indeed, although presumably not the intended result, the Joint Petitioners’ requested imposition of a minimum 30-day window during which rates could not be altered would represent a significant erosion in the flexibility which carriers possessed to modify rates even under the Commission’s now defunct tariffing regime, which required merely one day’s notice to the Commission to institute rate changes. And since the Joint Petitioners’ proposal does not differentiate between rate increases and rate decreases, consumers would be precluded from benefitting from rate decreases throughout that minimum 30-day period as well.

ASCENT also disagrees with the assessment of the Joint Commenters that the Commission's rules and regulations leave consumers without sufficient recourse to remedy perceived inappropriate carrier behavior. Even in the event a contract between a nondominant carrier and a consumer reserves to the carrier the right to change its rates, terms or conditions, it is inaccurate to state that "[i]f the customer does not accept the agreement in toto the sole remedy is to seek another carrier."¹⁹ To be sure, in the absence of a specific term commitment, a consumer retains the ability to quickly and easily switch interexchange carriers in the present highly competitive interstate, domestic interexchange services market. Indeed, consumers may avail themselves of that option -- in response to a carrier rate increase, for any other reason, or for no reason at all.²⁰ A consumer which believes he or she has been the victim of inappropriate carrier behavior, however, is not limited to merely selecting another carrier. Simply by detariffing the provision of interstate, domestic interexchange services²¹ the Commission has not relinquished its authority, pursuant to Section 201 of the Communications Act, to ensure that "[a]ll charges, practices, classifications, and regulations for an in connection with such communications service, shall be just and reasonable and any such charge, practice, classification, or regulation that is unjust

¹⁹ Petition, p. 4.

²⁰ ASCENT notes that in those cases where a consumer has affirmatively elected to enter into a specific term commitment, the Joint Petitioners' primary concern -- the ability of a nondominant IXC to unexpectedly raise a consumer's rate(s) -- is not likely to be present; relatively more sophisticated "term commitment" arrangements are ordinarily entered into by large telecommunications users who, in return for such commitments, obtain reciprocal commitments concerning, among other things, rate stability.

²¹ The points raised by ASCENT are equally applicable to the provision of international services market, which the Commission has likewise formally detariffed, and likewise imposed upon carriers significant consumer information disclosure requirements. *See 2000 Biennial Regulatory Review; Policy and Rules Concerning the International, Interexchange Marketplace* (Report and Order), 16 FCC Rcd. 10647 (2001).

or unreasonable is hereby declared to be unlawful.²²

²² 47 U.S.C. § 201. Indeed, the Commission has recently “emphasize[d] that if market forces are insufficient to cause non-dominant and interexchange carriers to offer prices or terms that are just, reasonable, and non-discriminatory consistent with Section 201 and Section 202 of the Act, parties may file complaints that we can investigate and adjudicate. . .” Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers (Second Report and Order), 16 FCC Rcd. 19613 (2001), ¶ 189.

Nor has the Commission diminished in any respect the ability of consumers to utilize the Commission's formal and informal complaint processes to enjoin carrier violations of its rules and regulations.²³ On the contrary, the Commission has acted to simplify the lodging of complaints by consumers, even going so far as to provide a convenient forum within which such complaints may be transmitted to the Commission via the Internet. It has further revamped the official web page to assist consumers with the filing of complaints concerning general telephone-related issues, "including billing disputes, cramming, taxes on phone bill, telephone company advertising practices, telephone information services, unsolicited telephone marketing calls and faxes and accessibility by persons with disabilities to telecommunications equipment and services," as well as slamming and the resolution of general telecommunications service problems without resort to the filing of a complaint.²⁴ While these avenues remain available to consumers, recourse to such measures will likely be utilized only rarely as a result of the primary concern of the Joint Commenters -- unreasonable rate increases. As the Commission has formally recognized, "nondominant interexchange carriers cannot successfully price their services anticompetitively in this market. . . market forces effectively discipline nondominant carriers even in the absence of a dominant carrier."²⁵

Consistent with the above, the Association of Communications Enterprises respectfully requests that, in order to maintain necessary carrier flexibility to respond to marketplace conditions and to simultaneously promote the vibrant competition which will benefit all telecommunications consumers, the Commission refrain from imposing additional consumer

²³ See 47 C.F.R. §§ 1.711 - 1.736.

²⁴ See Federal Communications Commission, Consumer Information Bureau Home Page, "Consumer Complaint Forms", www.fcc.gov.

²⁵ Policy and Rules Concerning the Interstate, Interexchange Marketplace (Second Report and Order), 11 FCC Rcd. 20730 (1996), ¶ 25 ("Detariffing Second Report and Order").

notification requirements upon nondominant interexchange carriers as urged in the Petition.

Respectfully submitted,

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