

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

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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	)	
	)	
	)	

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**OPPOSITION OF IDT CORPORATION**

IDT Corporation (“IDT”), by its attorneys and pursuant to the Federal Communications Commission’s (“FCC” or “Commission”) February 6, 2002 *Public Notice*,<sup>1</sup> submits these comments in opposition to the petition filed in the above-captioned matter seeking modification of the Commission’s *Second Report and Order*<sup>2</sup> regarding consumer notice for changes to the rates, terms or conditions for detariffed domestic interexchange services.

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<sup>1</sup> *Pleading Cycle Established for Comments on Joint Petition Seeking Expedited Rulemaking Filed by AARP, Consumer Action, Consumer Federation of America, Consumers Union, the Massachusetts Union On Public Housing Tenants, the National Association of Regulatory Commissioners, the National Association of Consumer Agency Administrators, the National Association of State Utility Consumer Advocates and the National Consumers League*, CI Docket No. 02-22, DA 02-271 (Rel Feb. 6, 2002) (“Public Notice”).

<sup>2</sup> *In the Matter of 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; 4 Comm. Reg. (P&F) 1199 (October 29, 1996)(FCC 96-424).

## ARGUMENT

In the “Joint Petition Seeking Expedited Rulemaking To Establish Minimum Notice Requirements For Recently Detariffed Services,”<sup>3</sup> filed by AARP, Consumer Action, Consumer Federation of America, Consumers Union, the Massachusetts Union On Public Housing Tenants, the National Association of Regulatory Commissioners, the National Association of Consumer Agency Administrators, the National Association of State Utility Consumer Advocates and the National Consumers League (“Petitioners”), Petitioners request “an expedited proposed rulemaking (or further proposed rulemaking) to impose a minimum 30 day notice requirement on recently detariffed domestic toll services.”<sup>4</sup> For the reasons stated herein, IDT opposes the Petitioners’ request and asserts that Petitioners have failed to demonstrate any basis upon which the Commission should undertake such a rulemaking.

Petitioners state, “[I]n the absence of the proposed rule change to the FCC’s recent ‘detariffing’ rules, there is an obvious potential impact on state commission resources, as the new rules will likely ultimately result in an increase in the number of complaints to be handled by state offices.”<sup>5</sup> As a matter of principle, IDT does not believe the Commission should initiate rulemakings where its existing rules *may* have a *potential* impact on state commission resources or, even if an impact is likely, that a rulemaking is automatically required. Rather, IDT believes the Commission should limit the initiation of rulemakings to those instances where its rules have caused or are likely to cause a demonstrable, harmful effect to consumers, industry members and/or regulators.

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<sup>3</sup> Joint Petition Seeking Expedited Rulemaking To Establish Minimum Notice Requirements For Recently Detariffed Services (filed October 29, 2001)(“Petition”).

<sup>4</sup> Joint Petition at 1.

<sup>5</sup> Joint Petition at 2.

In the present proceeding, the Petition was filed several months after the Commission's domestic detariffing took effect, yet the Petitioners provided no evidence whatsoever that the detariffing rules have had any impact on any state utility commission and/or any commission's resources or abilities to meet its obligations. Furthermore, several months have passed since the Petition's filing without any evidence added to the record indicating that the detariffing rules have had a harmful impact on state regulatory commissions or even that there has been an increase in the number of complaints handled by state utility regulators. In the absence of any demonstrated or likely harm to consumers or regulators, any action on the Petitioners' request would be baseless.

The Petitioners also allege that listing rate increases on carriers' websites as well as providing notice of increases on a toll free number "is not adequate protection nor is it an effective substitute for actual advance written notice."<sup>6</sup> Again, Petitioners' comments rate high for hyperbole but short for support. Petitioners provide no evidence whatsoever that written notice (presumably included in a bill or separate notice) serves as a more effective means of informing consumers than making rate and service information available on a company website, through a toll free number and by other means. Petitioners imply that having subscribers log on to a website or call a toll-free number places too much of an obligation upon consumers, but Petitioners' recommended alternatives still require subscribers to actively engage in reading subscriber notices or their bill and accompanying material – acts which the Petitioners and the Commission know subscribers often do not undertake. Ultimately, Petitioners' request that notice be given in written, mailed form should be denied, because Petitioners have failed to establish that written notice is more effective than notice given through other means and

that these other means have failed to further the goal of informing subscribers of changes in their rates and terms and conditions of their service.

Petitioners also examine the Customer Service Agreements of several large interexchange carriers and, noting their similar policies reserving the right to impose rate increases at any time, conclude that consumers therefore lack the ability to make “*informed* decisions in the marketplace.”<sup>7</sup> However, the Commission should not determine this proceeding’s outcome based upon the rights reserved by certain carriers, but rather, by the processes actually implemented by carriers to permit consumers to make informed decisions. In this regard, many carriers do not impose rate increases at any time, but simply reserve the right to act in such a manner. How carriers *actually* notify subscribers of rate increases becomes a measure of carriers’ customer service policies to be compared to the policies of their competitors. If the Petitioners had reviewed the policies various carriers actually use to notify subscribers, they would have found that these policies vary widely and contain diverse and effective means of informing subscribers. As such, subscribers are not only provided with a basic level of customer service, they are provided additional levels of service that can be evaluated by subscribers and compared against other carriers. IDT asserts that the Commission should continue to grant carriers the freedom to design customer service procedures according to the needs of their subscribers rather than require carriers to implement Commission-designed procedures that may not reflect the particular needs of a carrier’s subscribers.

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<sup>6</sup> Joint Petition at 5-6 (footnote omitted).

Curiously, the Petitioners invoke the Commission’s language in support of detariffing to strengthen their request to impose a 30-day notice period. Specifically, the Petitioners cite the Commission’s “pledge to use [its] complaint process to enforce vigorously [its] statutory and regulatory safeguards against carriers that attempt to take unfair advantage of American consumers.”<sup>8</sup> However, IDT asserts that because the Commission has made this pledge, imposing a thirty-day notice period is unnecessary, and that a process already exists to prevent unfair treatment of consumers. Moreover, the Commission’s pledge highlights the fact that the Petitioners have not presented one instance where consumers have, in fact, been taken advantage of unfairly.

Despite IDT’s assertions that the requested rulemaking is unnecessary, in the event the Commission concludes that it should undertake a rulemaking to implement the Joint Petitioners’ request for thirty days written notice prior to a change in rates and significant terms and conditions, IDT respectfully requests that the Commission, at a minimum, consider the following modifications to the proposed rule. First, any rate decrease or any change in the terms and conditions that does not increase rates or add new or increased subscriber obligations should not be subject to the proposed notice, as the Joint Petitioner’s concern for consumer protection would not be advanced by a notice when there is no possibility of subscriber harm. Second, the Commission should not require thirty days’ notice prior to a rate increase or material change to the terms and conditions as this requirement actually exceeds most individual states’ notice requirements for rate increases for intrastate services. To impose notice obligations which exceed those obligations implemented by the various public service commissions is contrary to the (presumed) purpose of the Petition: to provide subscribers with a level

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<sup>8</sup> Joint Petition at 3, FN 8, *quoting*, 11 FCC Rcd at 20733, ¶ 5.

of consumer protection comparable to that which public service commissions have imposed for rates and services under their jurisdiction. IDT asserts that any mandatory notice period should not exceed seven days, which, given the increased public availability of competing service providers' rates and terms of service, presents sufficient time for a consumer to switch service providers. Finally, the Commission should permit notice to be given by methods other than those indicated in the Petition, including, but not limited to: posting rate increases and/or certain changes in the terms and conditions of service on a carrier's website, notifying the subscriber by telephone call (including a message left on an answering machine) or email and/or publication in a newspaper of general circulation.

## CONCLUSION

Petitions for increased consumer protection should not be taken lightly. They should not be responded to reflexively, either. Throughout the lengthy detariffing proceedings, the Commission was keenly aware of the consumer benefits of detariffing and, in the end, the Commission struck a reasonable balance between carriers' needs for relaxed regulation and consumers' needs for access to information. Several months into the new detariffed regime, Petitioners present no evidence to demonstrate that the Commission's decisions were unwise or in need of revision. Petitioners provide no evidence that detariffing has hindered consumers' ability to make informed decisions or has otherwise harmed state regulators' ability to protect consumers. In the absence of any evidence to support their Petition, the Commission should deny the Joint Petitioner's request to initiate a rulemaking to institute a minimum notice requirement to be imposed for changes in rates and significant terms and conditions of interexchange service.

Respectfully submitted,

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