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March 11, 2002

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William F. Caton
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Comments of Competitive Telecommunications Association
In the Matter of Joint Petition for Expedited Rulemaking Establishing
Minimum Notice Requirements for Detariffed Services
CI Docket No. 02-22 /

Dear Mr. Caton:

Enclosed please find an original and four copies of the Comments of Competitive Telecommunications Association in the above-referenced proceeding.

Please acknowledge receipt by date-stamping the enclosed extra copy of this filing and returning it to me in the envelope provided. Please direct all questions regarding this filing to Robert Aamoth at (202) 955-9676 or Heather Wilson at (202) 887-1240.

Respectfully submitted,



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Counsel for Competitive Telecommunications Association

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Before the
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Joint Petition for Expedited Rulemaking) CI Docket No. 02-22
Establishing Minimum Notice Requirements)
for Detariffed Services)

COMMENTS OF
THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

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**Before the
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**COMMENTS OF
THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

The Competitive Telecommunications Association (“CompTel”), by its attorneys, hereby submits these comments in the above-captioned proceeding. CompTel is the premier industry association representing competitive telecommunications providers and their suppliers in the United States. CompTel’s member companies include the nation’s leading providers of interexchange services and, as such, CompTel has an interest in this proceeding.

SUMMARY

CompTel has considered the Joint Petition¹ filed by the National Association of Regulatory Commissioners (“NARUC”) and a number of consumer advocate groups² in light of similar notice requirements that have been proposed by individual states, or which might be adopted by individual states in the future. Although providing advance written notification of changes to domestic toll service rates potentially imposes enormous costs on interexchange carriers (“IXCs”), CompTel does not oppose a rulemaking to establish a federal minimum notice requirement, so long as such a requirement preempts all different or inconsistent state requirements, applies only to domestic 1+ services, is not applicable to business customers, and is limited to a seven-day minimum notice period.

Unless the rulemaking seeks to adopt a minimum notice requirement that is fair, flexible and preemptive of state notice requirements, CompTel cannot support a rulemaking that simply adds another layer of administrative burden and costs to the IXCs, whose profit margins are already razor-thin in this intensely competitive market segment. Such a requirement ultimately and negatively affects consumers by raising rates and threatening competition, especially in the low-volume residential market. CompTel believes the marketplace should determine whether this type of notification is valued by enough customers to justify a

¹ In the Matter of Joint Petition for Expedited Rulemaking Establishing Minimum Notice Requirements for Detariffing Services; Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, CI Docket No. 02-22, Oct. 29, 2001 (“Joint Petition”)

² Joint Petitioners include AARP, Consumer Action, Consumer Federation of America, Consumers Union, the Massachusetts Union On Public Housing Tenants, the National Association of Consumer Agency Administrators, the National Association of State Utility Consumer Advocates, and the National Consumers League.

requirement that IXCs provide it to some or all subscribers.

Lastly, if the Commission adopts a proposed rulemaking regarding this issue, and does not limit the scope of the rulemaking to domestic residential 1+ customers, CompTel urges the Commission to require incumbent local exchange carriers (“ILECs”) to provide individual IXCs with advance written notice of any change in interstate access rates and other fees that factor into an IXC’s rates. If IXCs are expected to give end-user subscribers advance notice of rate changes, it is only fair that IXCs should receive similar advance notification from ILECs regarding access rate changes that affect their underlying costs.

DISCUSSION

I. CompTel Does Not Oppose a Rulemaking that Proposes Adopting a National, Preemptive Notification Requirement.

Although a minimum notification requirement would increase costs for many IXCs, and would disproportionately burden smaller IXCs, CompTel does not oppose the Commission’s efforts to adopt a nationwide minimum notification requirement, as long as such a requirement would preempt any similar requirements that individual states might adopt in the future. Under the Commission’s detariffing regime,³ IXCs are now subject to numerous state-imposed requirements regarding their relationship with their customers. These requirements can vary from state to state, requiring IXCs to devote time and resources to monitoring and complying with these requirements. Such requirements may include a minimum notice to customers regarding changes in IXC rates. Therefore, CompTel does not oppose a rulemaking

³ The details of the Commission’s detariffing regime are set forth in their *Second Report and Order (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, 1996) and ensuing implementation orders.

directed at establishing a nationwide requirement that would preempt similar state requirements. Such an approach, although still costly to IXCs, would help keep their costs in check by obviating compliance with a potentially accelerating array of dissimilar state requirements. This would also help the states by limiting the amount of resources they need to commit to this issue in the absence of a national requirement.

Should the Commission adopt a rulemaking to establish a nationwide, preemptive minimum notice requirement, CompTel urges the Commission to limit the rule's application to residential customers, and specifically, to domestic 1+ rate increases or restructuring. All other rates should be excluded from a minimum notice requirement. For some rates, such as international direct-dial rates, adjustments are made based on constantly changing underlying costs and it would be impractical as well as extremely burdensome to require IXCs to provide any advance written notice. For other rates, such as dial-around, the lack of a subscriber relationship and other factors make it impractical and unduly expensive to provide advance written notice.

Although it is not clear from the language in the Petition, CompTel believes that the proposed minimum notice requirement should not apply to business customers because IXCs provide service to most business customers pursuant to individually-negotiated contracts. It is up to each business customer to determine whether they wish to include a minimum notice requirement for any rate changes as part of their negotiated contract with the IXC. Therefore, a Commission-imposed requirement is not necessary to protect the interests of this customer class.

Additionally, CompTel urges the Commission to consider a seven (7) day minimum notice period rather than the 30 day period proposed by NARUC. Seven days' notice provides customers with enough advance notification to enable them to migrate their service to a

different IXC before the rate increase takes effect. It should also be noted that a 7 day advance notice requirement would require the carrier to anticipate the price increase at least 37 days in advance. Further, because billing cycles depend on when the customer initiated service, in order for the minimum notice to be 7 days, assuming the rate changes are input into the IXC's toll switches at one time, some customers will get 37 days notice, and almost all will get significantly more than 7 days notice. It also bears emphasis that seven days' advance written notice is a significant improvement over the Commission's previous tariffing regime,⁴ and is indeed more than the Commission contemplated when it mandated detariffing.⁵

A shorter minimum notice period gives IXCs the flexibility they need to adjust their rates quickly in response to underlying cost changes that can occur often, unpredictably, and on short notice. For example, IXCs must factor in the cost of ILEC access rate increases and other variable costs associated with providing domestic +1 toll service. Further, a shorter notice period than proposed in the petition is justified because customers today often have immediate access to IXCs' rates through online access or via toll-free numbers.⁶ This immediate access allows customers to check their rates as often as they wish. Therefore, CompTel urges the Commission to consider a seven day minimum notice requirement that mitigates these costs while still providing ample advance notice to customers.

⁴ In its *Second Report and Order*, the Commission found that "tariffs may not be the best vehicle for disclosure of rate and service information ... to residential and small business customers, because such 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." *Second Report and Order* at ¶ 25.

⁵ The Commission concluded in its *Second Report and Order*, that under detariffing, carriers would likely be required, as a matter of contract law, to give advance notice of rate increases and other changes that may adversely affect customers. *Id.* at ¶ 56.

⁶ *Id.* at ¶ 86.

Lastly, should the Commission adopt a notification requirement, it should not specify the manner in which IXCs provide the written notification. Rather, it should permit the IXC to select the form of notification that is most appropriate to its circumstances, and CompTel requests a clarification that notification via email constitutes written notification for purposes of any requirement the Commission may impose. Allowing carriers the ability to consider various options provides the carriers with the flexibility necessary to respond to customer needs, taking into consideration costs and administrative burdens associated with calculating rates.

II. CompTel Opposes Adoption of a Federal Notification Requirement That Does Not Have Preemptive Authority.

In the event the Commission decides not to propose the type of preemptive notification rule discussed in the previous section, CompTel strongly opposes a rulemaking looking toward the adoption of a federal advance written notice requirement. Any such requirement that is in addition to, rather than in place of, state requirements is both unnecessary and unreasonably costly to IXCs. Not only would IXCs have to bear the cost of sending out advance written notices to their customers of any rate changes, but they also would have to bear the cost of tracking and ensuring compliance with a variety of different and possibly inconsistent state requirements. Ultimately, these costs get passed on to customers through higher rates.

Although the Petition does not expressly state that the proposed minimum notice requirement would be limited in its application to the mass market, CompTel believes that any other application would be overbroad. As discussed above, business customers do not need this type of protection because they typically negotiate individual service contracts with the IXC.

Further, the cost of compliance with a minimum notice requirement imposes a disproportionate burden on the smallest IXCs, requiring those carriers to spend greater resources in terms of personnel and administration to comply with notice requirements. While larger IXCs

must also comply with these requirements, smaller IXCs often do not have the manpower or budgetary resources that larger IXCs have at their disposal. Small carriers are the least able to absorb these additional costs and compete with larger IXCs. It is CompTel's fundamental policy mandate to see that competitive opportunity is maximized for *all* its members, but CompTel has always highlighted the concerns of its smallest members, who often do not have the financial means to participate individually in policy proceedings. Because the adoption of a federal notice requirement without preemptive effect would pose an enormous financial hardship for smaller carriers, CompTel opposes such a proposal.

Further, the cost burden imposed by varying federal and state notification requirements will further chip away at the IXCs' already razor-thin profit margins, thereby providing a disincentive for IXCs to serve residential and other low-volume subscribers, including subscribers in rural or remote areas. This is antithetical to the Commission's policy of furthering the public interest through the promotion of competition. As the Commission has recognized, one of the [“t]hree principal goals established by the telephony provisions of the 1996 Act [is] ... promoting increased competition, including the long distance services market.”⁷ This is especially true in rural and other underserved areas.⁸ Imposing this additional cost would create an entry barrier for companies looking to enter the residential or low-volume market, and may well persuade current service providers to exit this increasingly less profitable market

⁷ *In the Matter of Local Competition Provisions in the Telecommunications Act of 1996 Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd. 15499, 15505 at ¶ 3 (1996).

⁸ “Consumers in all regions of the Nation, ... including those in rural, insular, and high cost areas ... should have access to telecommunications and information services, including interexchange services ... that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable” 47 U.S.C. § 254 (b)(3).

segment.

Although the joint petitioners argue that the current website postings and recorded announcements of price increase information do not provide “adequate protection for consumers,”⁹ CompTel believes that not all consumers are interested in receiving advance written notification, and certainly not all consumers are willing to pay to receive such notifications. While some consumers prefer such notification, and arguably may indeed be willing to pay the costs of such notification, the proposed rulemaking goes much farther by asking that all subscribers should receive the notification and that all subscribers should pay for this notification (as the underlying costs might be built into averaged IXC rates and passed on to the consumer). In effect, the petition is asking the Commission to adopt a requirement that those (possibly few) customers desiring this type of advance notification should be subsidized by all other subscribers. CompTel urges the Commission to let marketplace forces determine how best to address this demand from a possibly small portion of the subscriber base.¹⁰

Providing greater protection to customers was one of the incentives behind the Commission’s detariffing regime which, in some cases, provides customers with “24-7” access to rate information via the IXC’s website or a toll-free phone number.¹¹ Consumers now have much easier access to information than they did when IXCs filed tariffs with the Commission. CompTel strongly believes that substantial improvements have been made to the relationship

⁹ Joint Petition at 5.

¹⁰ IXCs have the option of offering rate plans that provide advanced written notice to customers who are willing to pay an additional fee for this service. This way, not all customers are charged a fee for service they may not want.

¹¹ “By promoting competition, detariffing will better protect customers against the imposition of rates, terms or conditions that violate the Communications Act.” *Second Report and Order* at ¶ 37.

between service provider and consumer since the Commission's mandatory detariffing order, and that additional federal notification requirements *on top of* state laws and regulations are not necessary at this time.

One of the most significant changes under the Commission's detariffing regime is that states now have the ability to ensure that their citizens are treated fairly through consumer protection and other laws that will no longer be preempted by FCC-filed tariffs.¹² Under the detariffing regime, consumers have the option of approaching state authorities if they feel additional laws or protections are needed. Thus, there is no compelling reason for the Commission to act in this case, because an FCC action is not Petitioners' exclusive, or in all cases, best remedy.

Ultimately, a federal notification requirement on top of individual state requirements will undermine competition in the IXC marketplace by limiting the number of service providers and raising the cost of providing service to low-volume subscribers. CompTel strongly believes, and perhaps NARUC and the other joint petitioners would agree with CompTel, that any regulation or requirement that leads to decreased competition and/or higher rates is not in the best interest of consumers. An additional notification requirement, while possibly benefiting a small number of customers, will impose a significant cost on IXCs and ultimately their customers through higher interexchange rates, and such a result is unnecessary given the existing consumer protection measures in place at the state and federal levels.

¹² When adopting its detariffing regime, the Commission intended that consumers would "pursue remedies under state consumer protection and contract laws in a manner currently precluded by the 'filed-rate' doctrine." *Id.* at ¶ 38.

III. If a Rulemaking is Adopted in this Proceeding, CompTel Urges the Commission to Propose a Requirement that ILECs Provide Advance Notice to IXCs of Interstate Access Rate Changes

Should the Commission decide to propose a minimum notice requirement that is not limited to residential customers, CompTel would urge the Commission to include a requirement that ILECs provide advance written notice to IXCs of any increases in interstate access rates, including rate restructuring. Access costs are a substantial portion of an IXC's costs of providing domestic +1 toll services. Today IXCs do not receive individualized notification of rate changes, thereby denying them the time they need to adjust their rates to reflect cost trends. Particularly if the Commission proposes to adopt a new rule requiring the IXCs to give advance written notification to end-user subscribers of rate changes, it is imperative that IXCs receive individualized notices from ILECs of underlying interstate access rate changes.

Currently, the large price-cap ILECs are only required to provide annual notice of access rates,¹³ but such rates may be unilaterally changed by the ILEC at any time, with little notice to the Commission.¹⁴ In no case does an ILEC, whether subject to price cap or rate of return regulation, provide individualized advance notification to IXCs. The Commission's notification requirements under Section 61.58 (a)(4) of its rules¹⁵ are not adequate in providing IXCs the individualized notice necessary in order to turn around and provide similar

¹³ Local exchange carriers subject to price cap regulation must file a price cap tariff for access service with the Commission on an annual basis. Such tariffs become effective on July 1 of each year. 47 C.F.R. § 69.3 (h). See also, 47 C.F.R. § 61.43. ("Carriers subject to price cap regulation shall submit annual price cap tariff filings that propose rates for the upcoming tariff year")

¹⁴ Although annual tariff filings are required, the Commission allows price-cap ILECs to propose rate or other tariff changes more often than annually. 47 C.F.R. § 61.43. Any tariff proposing an increase in existing rates may be filed by price cap ILECs on 15 days' notice (47 C.F.R. § 61.58 (a)(2)(i)) to the Commission, and any tariff for new services can be filed on one day's notice to the Commission. 47 C.F.R. § 61.58 (b).

individualized notice to their customers. Should the Commission consider adoption of a specific advance written notice requirement, CompTel urges the Commission to amend Section 61.58 (a)(4) to remove the language allowing notice to be “made in a form appropriate to the circumstance,” and instead require advance written notice to each affected IXC.¹⁶ In order to comply with any advance written notice requirement to customers, IXCs must be given the information, including up-to-date access rate figures, necessary to determine their own rates. Therefore, CompTel urges the Commission to include an amendment to its advance notice rules for ILECs in any rulemaking adopted in this proceeding.

¹⁵ 47 C.F.R. § 61.58 (a)(4).

¹⁶ *Id.* Specifically, CompTel proposes the removal of the sentence, “Such notification should be made in a form appropriate to the circumstance, and may include written notification, personal contact or advertising in newspapers of general circulation.” In its place, CompTel proposes that the following sentence be added: “Such notification shall be made by 30 days’ advance written notice to each affected customer.” (Number of days’ notice should correspond with the number of days IXCs have to provide notice to their customers.)

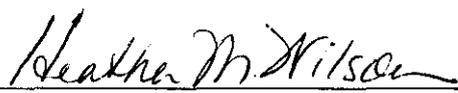
CONCLUSION

CompTel submits that the Commission should respond to the petition filed by NARUC and other parties as stated herein.

DATED: March 11, 2002

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Theresa A. Baum, hereby certify that on this 11th day of March, 2002, I served copies of Comments of Competitive Telecommunications Association in CI Docket No. 02-02 by first-class mail, postage prepaid, or by hand (*) hand delivery on the following:

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