

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

MAR 11 2002

In the Matter of)
)
Joint Petition for 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 Utility Commissioners,)
The National Association of Consumer Agency)
Administrators, The National Association of State)
Utility Consumer Advocates, and The National)
Consumers' League)
)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CI Docket No. 02-22 /

COMMENTS OF
MOULTRIE INFOCOMM, INC.

Moultrie InfoComm, Inc. ("Moultrie InfoComm") hereby submits its Comments pursuant to the Public Notice issued in the captioned proceeding.¹ The Joint Petitioners urge the Federal Communications Commission to impose a federal rule that would require all carriers providing domestic interstate, interexchange services to give their customers 30 to 60 days' notice "in advance of any material change to the customer's existing terms of service document."²

¹ Public Notice, *Pleading Cycle Established for Comments on Joint Petition for Expedited Rulemaking Filed by AARP, et al.*, CI Docket No. 02-22, DA 02-271, released Feb. 6, 2002.

² AARP, Consumer Action, Consumer Federation of America, Consumers Union, The Massachusetts Union on Public Housing Tenants, The National Association of Regulatory Utility Commissioners, The National Association of Consumer Agency Administrators, The National Association of State Utility Consumer Advocates, and The National Consumers' League, Joint Petition Seeking Expedited Rulemaking To Establish

074

Although the Joint Petitioners ostensibly seek to protect consumers in a post-tariff environment, in fact, they are asking for much more notification than was required under the eliminated tariff rules.³ When tariffs were required for domestic, interexchange services, the tariff rules required carriers to give from one to 15 days' notice before a change went into effect.⁴ Consequently, granting Petitioners' request for 30-60 days' notice would undermine the Commission's decision to remove tariff-filing and associated notification requirements. Granting the request also would contravene the rationale behind the elimination of the tariff notification requirement. The Commission found in the detariffing docket that notices via carrier websites would provide sufficient notice to customers.⁵

The underlying basis for the Petitioners' request is that carriers are allowed to change, unilaterally, the terms of their toll services. This is not a new development resulting from the removal of tariffs. Even when tariffs were in effect, carriers

Minimum Notice Requirements for Recently Detariffed Services, at 2-3, filed Oct. 29, 2001 ("Joint Petition").

³ The FCC eliminated the requirement that providers of domestic interstate, interexchange services file tariffs describing their rates and conditions. *See 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*, Second Report and Order, CC Docket No. 96-61, 11 FCC Rcd 20730 (1996) ("Second Report and Order").

⁴ *See* 47 CFR Sec. 61.23 and 61.58 (one day's notice for nondominant carrier filings and 15 days' notice for dominant carrier filings, with certain exceptions).

⁵ *See* Second Report and Order, 11 FCC Rcd at 20745-46 ("Moreover, tariffs may not be the best vehicle for disclosure of rate and service information for nondominant interexchange carriers 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.").

initiated the changes to their terms of service, including the terms & conditions for existing customers. The Commission addressed this reality in its discussion of the Filed Rate Doctrine, which allows common carriers to file their rates with the regulatory agency in lieu of notifying each customer.⁶ Therefore, Petitioners offer no basis for the Commission to change the assumptions under which it removed the advance-notice requirements that accompanied tariff filings.

Petitioners state that “[t]here are few other market-based services or product [SIC] that Americans use or buy [for which] the price is not readily known at the time of purchase.” Joint Petition at 6. In fact, there are few products or services for which customers are given advance notice of changes in the terms of service. For instance, when an airline changes its terms of service, it does not notify customers of such changes by written advance notices. Customers purchasing tickets find out about terms of service through carrier websites or customer service departments or, perhaps, through travel agencies. Similar notification of changes in the terms of long-distance telephone services is no less adequate than the notice provided for airline customers. Arguably, consumers of toll telephone services now have more information about the conditions of their services than they had under the prior tariff regime because tariffs were on file at the FCC’s offices and not readily available by the average consumer.

⁶ *Id.* at 20754-55, n. 122 (“Consequently, if a carrier unilaterally changes a rate by filing a tariff revision, the newly-filed rate becomes the applicable rate unless the revised rate is found to be unjust, unreasonable or unlawful under the Communications Act.”)

Terms and conditions are now easily accessible to customers through websites and customer service departments.

Petitioners argue that notice provided by website postings and toll-free customer service departments “is not adequate protection for consumers nor is it an effective substitute for actual advance written notice.” Joint Petition at 5-6. Similar arguments were made during the course of the Commission’ proceeding on the elimination of tariff filing requirements.⁷ Petitioners now seek to raise issues that have already been addressed and rejected in the detariffing proceeding. Alternatively, Petitioners should have raised these points in a petition for reconsideration of the detariffing order. The deadline for filing a petition for reconsideration has long expired and the Commission should not permit Petitioners to address their points in a petition for rulemaking filed well beyond the timeframe allowed for reconsideration.

Paper notifications that are mailed to individual customers are an expensive proposition. A small carrier such as Moultrie InfoComm does not have the financial or personnel resources needed to send such notifications each time it makes a change to its terms and conditions. In the event the Commission decides to impose the requested notification requirement, Moultrie InfoComm respectfully requests an exemption for the smaller interexchange carriers. Moultrie InfoComm, for example, serves fewer than one one-thousandth of one percent (.0001%) of the nations’ interstate, interexchange

⁷ See *e.g.*, 11 FCC Rcd at 20742, n. 50 and accompanying text, citing comments of Alaska, Alabama PSC, Ohio Consumers’ Counsel, Penn. Office of Consumer Advocate, Tenn. Attorney General, and Consumer Federation of America/Consumers’ Union, among others.

carriers.⁸ Furthermore, imposing costly regulatory requirements on the small, emerging carriers would be contrary to the Telecommunications Act of 1996 and the Commission's own policies of fostering competition in the telecommunications markets.

Respectfully Submitted,

MOULTRIE INFOCOMM, INC.



David A. Irwin

Loretta J. Garcia

Irwin Campbell & Tannenwald, P.C.

1730 Rhode Island Avenue, NW

Washington, DC 20036

Tel.: (202) 728-0400

Fax: (202) 728-0354

Its Counsel

March 11, 2002

⁸ This calculation is based on the FCC's most recent report on interexchange carriers showing 101.7 million households with telephones. See Alexander Belinfante, Ind. Analysis Div., FCC, *Telephone Subscribership in the United States (Data Through July 2001)*, at 6, released Feb. 7, 2002.