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January 25, 2005

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: In the Matter of AT&T Petition for Forbearance From Enforcement of Section 204(a)(3) Of The Communications Act, WC Docket No. 03-256

Dear Ms. Dortch:

Today, Sherry Ingram, Greg Vogt, and the undersigned, on behalf of Verizon, met with Tamara Preiss, Steve Morris, and Fred Campbell of the Wireline Competition Bureau to discuss the above captioned proceeding. The attached material was used during the discussion.

Please do not hesitate to contact me with any questions.

Sincerely,

/s/Joseph Mulieri

Attachment

cc: T. Preiss
S. Morris
F. Campbell



***In The Matter of: AT&T Petition For Forbearance
From Enforcement of Section 204(a)(3) Of The
Communications Act (“Deemed Lawful” Petition)***

WC Docket No. 03-256

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Congress Intended Section 10 Forbearance To Be Used Only To Deregulate.

- It is inconsistent with Section 10 for the Commission to forbear from enforcing Section 204(a)(3) in order to increase regulation.
- In its *Streamlined Tariff Order*, the FCC concluded that as a legal matter it could exercise forbearance authority only to reduce or eliminate tariff filing requirements.
- Section 204(a)(3) is a deregulatory provision, and removal of this section would increase regulation.
- Since the level of competition in the telecommunication market has increased since 1996, Section 204(a)(3) is consistent with promoting competition.

The Commission Cannot Use Section 10 Forbearance From Applying Regulation To Itself

- Section 10’s language specifically authorizes the Commission only to forbear from regulations that apply to carriers or telecommunications services.
- Section 204(a)(3) does not impose any regulation on carriers or their services.
- Section 204(a)(3)’s “deemed lawful” provision requires the Commission, not the carrier, to treat tariffs filed pursuant to this section as lawful unless they are suspended and investigated.
- The FCC cannot use forbearance to eliminate the “deemed lawful” portion of Section 204(a)(3) because it was designed to direct FCC actions in a way that achieves deregulatory ends.
- Section 10 is not available to eliminate any provision of the Communications Act, otherwise it would establish precedent that would allow the FCC to substantially rewrite its own statutory limitations; Congress clearly could not have intended such a result.

Granting AT&T's Petition Would Essentially Second-Guess The Deregulatory Policy Choices Congress Made When It Enacted Section 204(a)(3)

- Congress provided LECs with this “regulatory relief” as a way to achieve its overall goal of deregulating the telecommunications industry over time.
- Under the pre-Section 204(a)(3) “deemed lawful” system, the uncertainty about what rates would eventually apply led to general instability and uncertainty.
- This uncertainty made it very difficult to make investment decisions or to plan and deploy new products and services.
- Section 204(a)(3) was part of a package of interrelated provisions designed to streamline and bring certainty to the tariff process.
- In its enactment of this Section, Congress attempted to “strike a better balance between consumer protections and market deregulation.”
- Congress retained Section 204 investigations and Section 208 complaints that enable customers and the Commission to challenge the lawfulness of rates.
- The FCC has already twice rejected AT&T's arguments that Section 204(a)(3) leads to inequitable results.

Forbearance From Applying Section 204(a)(3) Is Not In The Public Interest

- In the 1996 Act, Congress found that the reduction or elimination of regulation as competition develops was in the public interest.
- Section 204(a)(3) has served the public interest through tariffing certainty and increased competition.
- Long distance rates have declined during this period. From 1996 to 2002, after the implementation of Section 204(a)(3), interstate toll rates have declined from 12 cents per minute to seven cents per minute.
- Reverting back to this old regulation, with increased uncertainty and unnecessary regulation, could, to the detriment of consumers, thwart the pro-competitive impact the 1996 Act has had on the telecommunications market.
- Because Section 204(a)(3), together with the 5 month deadline for tariff investigations, requires the FCC to address any concerns about proposed rates immediately, consumers are more likely to achieve rate reductions up front, sending more efficient competitive signals to the marketplace.

Section 204(a)(3) Is Part Of The Statutory Scheme That Ensures Charges For Telecommunications Services Are Just And Reasonable.

- The FCC has previously held that other sections of the Communications Act, even with the streamlined provisions of Section 204(a)(3), are effective in ensuring just and reasonable and not unreasonably discriminatory charges.
- Pre-effective Review: The Commission, under appropriate circumstances, may suspend and investigate or reject any tariff proposal filed by a LEC so that the lawfulness of the proposed tariff can be thoroughly considered.
- Post-effective Review: Section 208. Whether or not a tariff has been suspended or investigated, interested parties may file complaints against tariffs that are in effect pursuant to Section 208.
- Post-effective Review: Section 205. Even if all of these protections were to fail, the Commission may, under Section 205, initiate an investigation of the tariff after it becomes effective.

Section 204(a)(3) Helps To Protect Consumers

- Consumers have benefited from the deregulatory provisions of the 1996 Act, including Section 204(a)(3).
- All consumers benefit from a stable and predictable tariff mechanism that encourages investment and rapid service innovation.
- AT&T is not a “consumer” within the meaning of Section 10.
- Consumers would not benefit from AT&T’s proposed action because past history shows that IXCs would not pass through any refunds achieved if “deemed lawful” treatment were modified or eliminated.
- Price Cap Tariff Filings: It is particularly noteworthy that AT&T does not identify any serious problems with evaluating price cap carrier tariff filings.
- Rate of Return Filings: “Deemed lawful” treatment corrects the previous scheme’s inequitable balance where carriers could not recover for undercharges but were forced to disgorge overcharges – besides AT&T’s overcharge claims are overblown.

Conclusion

- The Commission should reject AT&T's petition because it is not a proper use of the Commission's forbearance authority.
- Even if forbearance authority were available here, AT&T has failed to show that Section 10's three-prong test has been met.
- Numerous safeguards and mechanisms already exist to provide carrier-customers, and the Commission, avenues to challenge tariffs of both rate of return and price cap carriers.