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FEDERAL COMMUNICATIONS COMMISSION PROPOSES DETARIFFING AND STREAMLINING MEASURES REGARDING INTERNATIONAL INTEREXCHANGE SERVICES

Washington, D.C. – The Federal Communications Commission (FCC) took action today to promote further deregulation of international long distance services. In a Notice of Proposed Rulemaking (NPRM), the Commission adopted pro-consumer proposals to reduce further, as part of its Biennial Regulatory Review under Section 11 of the Communications Act, the regulatory burdens imposed on non-dominant carriers' provision of international interexchange services.

The Commission's recent deregulatory policies, in conjunction with market forces, decreasing accounting rates, and increasing liberalization and privatization encouraged by the World Trade Organization (WTO) Basic Telecom Agreement, have resulted in a substantial increase in the level of competition in the international interexchange marketplace that has benefited consumers through increased choices and lower rates. This NRPM initiates the International Bureau's rulemaking proceeding that will examine whether competitive conditions in the international interexchange marketplace are now such that tariffs are no longer necessary to protect competition and consumers. In addition, the NPRM seeks comment on whether detariffing requirements for the provision of international services should mirror those for domestic services.

The Commission tentatively concludes in the NPRM that Section 10 of the Communications Act requires the Commission to forbear from Section 203's requirement that carriers file tariffs for the provision of international, interexchange services. The Commission tentatively concludes that tariffs, with limited exceptions, are no longer necessary: (1) to ensure that carriers offer international services at just and reasonable rates, terms, and conditions; and (2) to protect consumers. The Commission also tentatively concludes that complete detariffing is in the public interest and will promote competition. Accordingly, the Commission proposes to require only carriers classified as dominant, for reasons other than an affiliation with a foreign carrier that possesses market power, to continue to file tariffs.

The Commission's actions will enable consumers to contract with telephone carriers for their international interexchange services as they would contract for other services in an unregulated industry. Moreover, the Commission's tentative conclusion to

detariff international interexchange services seeks to remove the harmful effects to consumers of the "filed rate doctrine" that permits telephone carriers unilaterally to alter rates, terms, and conditions for service by filing a tariff with the Commission.

In addition, the Commission makes the following tentative proposals in the NPRM:

Limited Exceptions for Permissive Detariffing: The Commission tentatively concludes that permissive, or voluntary, detariffing is in the public interest for international dial-around services; and for the first 45 days of service to new customers that choose their long distance provider through their local service provider.

Public Disclosure Requirement: The Commission proposes to adopt a public disclosure requirement that non-dominant interexchange carriers make available to the public information concerning current rates, terms, and conditions for all of their international interexchange services. This information would have to be made available in at least one location during regular business hours, and those carriers that maintain Internet websites, would be required to post this information on-line.

Maintenance of Price and Service Information: The Commission also proposes to require non-dominant interexchange carriers to maintain supporting price and service information regarding their international interexchange service offerings which would be made available to the Commission upon request.

Complete Detariffing of International Commercial Mobile Radio Services (CMRS): The Commission proposes to revisit its former conclusion that permissive or voluntary detariffing of CMRS providers for international services on unaffiliated routes is in the public interest. The Commission tentatively concludes that the complete detariffing of international interexchange services provided by CMRS providers for affiliated and unaffiliated routes would be in the public interest.

Filing of Carrier-to-Carrier Contracts: The Commission tentatively concludes that only the following should be required to file carrier-to-carrier contracts under Section 43.51 of the Commission's rules: (1) interexchange carriers classified as dominant for reasons other than a foreign affiliation under Section 63.10 of the Commission's rules; and (2) interexchange carriers, whether classified as dominant or non-dominant, contracting directly for services with foreign carriers that possess market power.

The Commission invites parties to comment on these proposals and tentative conclusions and on any other relevant issues, including transition issues, concerning the detariffing of international interexchange services provided by non-dominant carriers. With respect to each issue, parties are asked to specify the bases upon which they believe the Commission can make the findings required to meet the statutory criteria for forbearance.

Copies of the NPRM are available electronically on the Commission's web site at www.fcc.gov. In addition, this proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Other rules pertaining to oral and written presentations are set forth in 47 C.F.R. §1.1206(b) of the Commission's rules as well.

Comments are due November 17, 2000. Reply comments are due December 4, 2000. Comments and reply comments will be available for public inspection during regular business hours in the FCC Office of Public Affairs Reference and Information Center, Room CY-A257, 445 Twelfth Street, S.W. Washington, D.C. 20554. Copies also can be obtained from International Transcription Services, Inc. at 1231 20th Street, S.W., Washington, D.C. 20036, or by calling ITS at (202) 857-3800 or by faxing ITS at (202) 857-3805.

Action by the Commission October 18, 2000, by Notice of Proposed Rulemaking (FCC 00-367). Chairman Kennard, Commissioners Ness, Furchtgott-Roth, Powell and Tristani with Commissioner Furchtgott-Roth issuing a statement.

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IB Docket No. 00-202

International Bureau Contact: Lisa Choi, (202) 418-1460.

CONCURRING STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH

Re: 2000 Biennial Regulatory Review; Policy and Rules Concerning the International, Interexchange Marketplace, IB Docket No. 00-202, Notice of Proposed Rulemaking (rel. October 18, 2000).

I applaud the Commission's decision to detariff the vast majority of international telecommunications services. Tariffs are anachronistic regulatory tools that have outlived their usefulness. Eliminating the burdensome requirement that companies file monumental tariff documents and that the FCC reviews them is a step in the right direction. Moreover, detariffing eliminates the filed rate doctrine defense against many consumer claims and moves the telecommunications marketplace closer to a fully competitive traditional open market – with regulation as the exception rather than the rule.

Nonetheless, some aspects of today's Notice trouble me. Fundamentally, the Notice is designed to create symmetry with the 1997 decision to de-tariff domestic long distance service that was recently affirmed by the Court of Appeals.[1] I understand the goal of symmetry, however I cannot support extending antiquated regulatory requirements to international services simply because we imposed them domestically. Instead, I believe the better approach would be to propose to eliminate these obligations internationally and call for comment on changing these requirements domestically. In a fast changing technological environment, our rules need to evolve quickly as well. Waiting until the 2002 biennial review or later – as some have proposed -- to revisit this requirement reflects regulation on "rotary dial" time not "Internet" time.

Two examples illustrate this residual outdated approach. Today's Notice proposes that all non-dominant international interexchange services make information available on the Internet concerning current rates, terms, and conditions for all of their international interexchange services. Although one can dispute the ultimate necessity of such a rule in a fully competitive market, such public disclosure may be sensible as we transition away from the highly regulatory (but information intensive) world of tariffs. The Notice goes from the marginally useful to the completely useless, however, when it also proposes that carriers make such rate, term, and condition information available in "at least one location during regular business hours . . .. "[2] In today's wired world, Internet access is available in the vast majority of communities. Whether the one mandated physical location for the file is Washington, D.C. or Hilo, HI, it will virtually always be easier for all but a random handful of Americans to access the records from the Internet than to travel to the carrier's office. It's not that the requirement is all that burdensome, it simply does not make any sense in today's wired world. Moreover, the mandate creates a regulatory requirement that we are duty bound to enforce. Do we really wish to define and police "regular business hours" or what it means to "make available"?[3]

Second, the Notice also adopts an old school view of what it means to give notice to consumers about rates and terms. Based primarily on concerns about the sufficiency of notice, the NPRM permits tariffs for dial-around services and new customers of international carriers.[4] More specifically, the Notice posits that consumers in these contexts have no way to receive notice of

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1 MCI Worldcom, Inc. v. FCC, 209 F.3d 760 (D.C. Cir. 2000).

2 ¶ 5.

3 The Commission has already had difficulty defining and enforcing these terms in the broadcast context. *See Queen of Peace Radio*, 15 FCC Rcd. 1934 (EB 2000)(imposing $ 7000 forfeiture for failure to maintain open files during "normal business hours"), *recon. denied*, 15 FCC Rcd. 7538 (EB 2000), application for review granted and forfeiture cancelled, 2000 WL 1051790 (2000).

4 See ¶ 20.

the rates and terms for these services because there is not necessarily an existing relationship between the parties. Placing hundreds of pages long documents in some government building in Washington DC is a far cry from the meaningful notice that can be placed on an Internet website. Yet, in the NPRM, for services where it matters most, the Commission chooses to allow the 1950's style notice of federal tariffs over the 21st Century notice of the Internet. Posting such information on the Internet achieves the same goal – while removing government paperwork and limiting the filed rate doctrine defense for carriers.

In each of these examples, the majority is not willing to entertain these streamlined alternatives because it will create asymmetry with the domestic proceeding. However, I believe that such a deregulatory, pro-consumer tact that takes advantage of current technological access at least deserves public comment. We rarely have a chance to thoughtfully examine the utility of new regulatory requirements in light of rapid technological change – we should not squander that opportunity here. In the end, I would rather have a useful and updated rule, than an outdated, but symmetrical one.