State and location	Community No.	Effective date of eligibility	Current effective map date
Montana: Fort Peck Indian Reservation, Roosevelt County[1]	300187	October 7, 1996	
Missouri: Holden, city of, Johnson County	290714	October 14, 1996	April 9, 1976 .
Kansas: Hamilton County, unincorporated areas	200123	October 16, 1996	
Nebraska: Sprague, village of, Lancaster County	310495	October 18, 1996	November 1, 1984.
Kansas: Seward County, unincorporated areas	200606	October 22, 1996	September 13, 1977.
Illinois:			
Franklin County, unincorporated areas	170899	October 25, 1996	August 29, 1980.
Orangeville, village of, Stephenson County	170641	.....do	August 16, 1974.
Kentucky: Trimble County, unincorporated areas	210300	.....do	January 14, 1977.
REINSTATEMENTS			
Florida: White Springs, town of, Hamilton County	120102	November 5, 1975 Emerg June 4, 1987 Reg June 4, 1987 Susp October 1, 1996 Rein	June 4, 1987.
Nebraska: Steele City, village of, Jefferson County	310121	June 4, 1975 Emerg June 1, 1987 Reg June 1, 1987 Susp October 14, 1996 Rein	June 1, 1987.
Minnesota: Cannon Falls, city of, Goodhue County	270141	April 5, 1974 Emerg. January 2, 1981 Reg September 6, 1996 Susp October 16, 1996 Rein	September 6, 1996.
REGULAR PROGRAM CONVERSIONS			
Region I			
Massachusetts: West Tisbury, town of, Dukes County	250074	September 29, 1996 Suspension Withdrawn	September 29, 1996.
Region II			
New York:			
Elmira, town of, Chemung County	360151	.....do	Do.
Horseheads, town of, Chemung County	360153	.....do	Do.
Region V			
Ohio: Montgomery County, unincorporated areas	390775	.....do	Do.
Wisconsin: Platteville, city of, Grant County	550154	.....do	Do.
Region IV			
Florida: Sewall's Point, town of, Martin County	120164	October 16, 1996 Suspension Withdrawn	October 16, 1996.
Tennessee:			
Carter County, unincorporated areas	470024	.....do	Do.
Elizabethton, city of, Carter County	475425	.....do	Do.
Jonesborough, town of, Washington County	470198	.....do	Do.
Watauga, city of, Carter County	470331	.....do	Do.
Region V			
Michigan: Arcadia, township of, Manistee County	260306	.....do	Do.

[1] The Fort Peck Indian Reservation has adopted Roosvelt County's Flood Hazard Boundary Map (FHBM) dated 12/4/79 for floodplain management and insurance purposes.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Issued: November 15, 1996.

Craig S. Wingo,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 96–29895 Filed 11–21–96; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 42, 61 and 64

[CC Docket No. 96–61; FCC 96–424]

Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as Amended

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Second Report and Order (Order) released October 31, 1996 relieves nondominant interexchange carriers from filing with the Commission tariffs for interstate, domestic, interexchange services. The Order furthers the pro-competitive and deregulatory objectives of the Telecommunications Act of 1996 by ending a regulatory regime that is no longer necessary for nondominant interexchange carriers in the interstate, domestic, interexchange market and by fostering increased competition in this market.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Melissa Waksman, Attorney, or Christopher Heimann, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this Report and Order contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order adopted October 29, 1996, and released October 31, 1996. The full text of this Second Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc96325.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037. Pursuant to the Telecommunications Act of 1996, the Commission released a Notice of Proposed Rulemaking, 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 (61 FR 14717 (April 3, 1996)) to seek comment on rules to implement section 254(g) of the 1996 Act.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, the Report and Order contains a Final Regulatory Flexibility Analysis which is set forth in the Second Report and Order. A brief description of the analysis follows.

Pursuant to Section 604 of the Regulatory Flexibility Act, the Commission performed a comprehensive analysis of the Second Report and Order with regard to small entities. This analysis includes: (1) A succinct statement of the need for, and objectives of, the Commission's decisions in the Second Report and Order; (2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the Commission's assessment of these issues, and a statement of any changes made in the Second Report and Order as a result of the comments; (3) a description of and an estimate of the number of small entities and small incumbent LECs to which the Second Report and Order will apply; (4) a description of the projected reporting, recordkeeping and other compliance requirements of the Second Report and Order, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for compliance with the requirement; (5) a description of the steps the Commission has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the Second Report and Order and why each one of the other significant alternatives to each of the Commission's decisions which affect small entities was rejected.

The rules adopted in this Second Report and Order are necessary to implement the provisions of the Telecommunications Act of 1996.

Paperwork Reduction Act

OMB Approval Number: 3060–0704.

Title: 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.

Respondents: Business or other for-profit.

Public reporting burden for the collection of information is estimated as follows:

Information collection	Number of respondents (approx.)	Annual hour burden per response	Total annual burden
Detariffing*	0	0	0
Certification requirement	519	0.5 hour	259.5
Tariff cancellation requirement: completely cancel tariffs.	519	2 hours per page (1,252 pages) (one-time)	2,504 (one-time)
Tariff cancellation requirement: revise mixed tariffs to remove domestic services.	519	2 hours per page (36,047 pages) (one-time)	72,094 (one-time)
Information disclosure requirement	519	120 hours (one-time)	62,280 (one-time)
Recordkeeping requirement	519	2 hours	1,038

*The Commission has eliminated the tariffing requirement now imposed on nondominant interexchange carriers for interstate, domestic, interexchange services.

Total Annual Burden: 138,175.5 hours, of which 136,878 will be one-time.

Frequency of Response: Annual, except for tariff cancellation requirement, which will be one-time.

Estimates Costs Per Respondent: $435,000.

Needs and Uses: The attached item eliminates the requirement that nondominant interexchange carriers file tariffs for interstate, domestic, interexchange telecommunications services. In order to facilitate enforcement of such carriers' statutory obligation to geographically average and integrate their rates, and to make it easier for customers to compare carriers' service offerings, the attached Order requires affected carriers to maintain, and to make available to the public in at least one location, information concerning their rates, terms and conditions for all of their interstate, domestic, interexchange services.

Synopsis of Second Report and Order

I. Introduction

1. On February 8, 1996, the Telecommunications Act of 1996 (1996 Act) was enacted. Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56, *codified at* 47 U.S.C. 151 *et seq.* The goal of the 1996 Act is to establish ''a pro-competitive, de-regulatory national policy framework'' in order to make available to all Americans advanced telecommunications and information technologies and services ''by opening all telecommunications markets to competition.'' Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113 (1996). An integral element of this framework is the requirement in Section 10 of the Communications Act of 1934, as amended (Communications Act), that the Commission forbear from applying any provision of the Communications Act, or any of the Commission's regulations, to a telecommunications carrier or telecommunications service, or class thereof, if the Commission

makes certain specified findings with respect to such provisions or regulations. 47 U.S.C. 160(a).

2. On March 25, 1996, the Commission released a Notice of Proposed Rulemaking initiating a review of its regulation of interstate, domestic, interexchange telecommunications services in light of the passage of the 1996 Act and the increasing competition in the interexchange market over the past decade. *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, Notice of Proposed Rulemaking, 61 FR 14717 (April 3, 1996) (*NPRM*). In this Report and Order (Order), we consider issues raised in the *NPRM* relating to tariff forbearance. We also consider, but decline to act at this time on, the Commission's proposal in the *NPRM* to allow nondominant interexchange carriers to bundle customer premises equipment (CPE) with interstate, interexchange telecommunications services. In the *NPRM*, the Commission also raised issues relating to: market definition; separation requirements for nondominant treatment of local exchange carriers in their provision of certain interstate, interexchange services; and implementation of the rate averaging and rate integration requirements in new section 254(g) of the Communications Act. On August 7, 1996, the Commission issued a Report and Order implementing the rate averaging and rate integration requirements. *See 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, Report and Order, 61 FR 42558 (August 16, 1996) (*Geographic Rate Averaging Order*). We will address the market definition and separation requirements in an upcoming order.

3. For the reasons set forth below, we conclude that the statutory forbearance criteria in Section 10 are met for the Commission to no longer require or allow nondominant interexchange carriers to file tariffs pursuant to Section 203 for their interstate, domestic, interexchange services. We conclude that a policy of complete detariffing (*i.e.*, not permitting nondominant interexchange carriers to file tariffs) for such services would further advance the statutory objectives of the forbearance provision, Section 10. We therefore order all nondominant interexchange carriers to cancel their tariffs for interstate, domestic, interexchange services within nine months from the effective date of this Order. In addition, we conclude that our decision to order complete detariffing renders moot the contract tariff and reseller issues raised in the *NPRM*.

4. The actions we take here will further the pro-competitive, deregulatory objectives of the 1996 Act by fostering increased competition in the market for interstate, domestic, interexchange telecommunications services. Since the early 1980's, the Commission has gradually adapted its regulatory regime for such services from one in which all interexchange carriers were subject to the full panoply of Title II regulatory requirements, including Section 203 tariff filing requirements, to one in which pricing and other regulatory requirements have been replaced by market forces. Our decision in this proceeding marks the end of the transformation of the regulatory regime governing interstate, domestic, interexchange services. After our policy of complete detariffing has been implemented, carriers in the interstate, domestic, interexchange marketplace will be subject to the same incentives and rewards that firms in other competitive markets confront. We seek ultimately to accomplish the same result in every telecommunications market, because we believe that effectively competitive markets produce maximum benefits for consumers, carriers and the nation's economy.

5. Our decision to forbear from applying the statutory requirement that compels nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services and to implement a policy of complete detariffing does not signify in any way a departure from our historic commitment to protecting consumers of interstate telecommunications services against anticompetitive practices. We reaffirm our pledge to use our complaint process to enforce vigorously our statutory and regulatory safeguards against carriers that attempt to take unfair advantage of American consumers. Moreover, when interstate, domestic, interexchange services are completely detariffed, consumers will be able to take advantage of remedies provided by state consumer protection laws and contract law against abusive practices.

6. We note that the California Public Utilities Commission recently adopted a complete detariffing regime for intrastate long-distance services offered in California. Public Utilities Commission of the State of California, *Rulemaking on the Commission's Own Motion to Establish a Simplified Registration Process for Non-Dominant Telecommunications Firms*, R. 94–02–003, Interim Opinion, at Appendix A, Rule 7 (released September 20, 1996). We encourage other state regulatory commissions to seek the legislative authority necessary to enable them to adopt a complete detariffing policy when they find, as the California Commission did, that competition is sufficient to obviate the need for tariffing of intrastate long-distance services.

II. Forbearance From Tariff Filing Requirements for Nondominant Interexchange Carriers

A. Background

i. The Telecommunications Act of 1996

7. The 1996 Act provides for regulatory flexibility by requiring the Commission to forbear from applying any regulation or any provision of the Communications Act, to telecommunications carriers or telecommunications services, or classes thereof, if the Commission determines that certain conditions are satisfied. Specifically, the 1996 Act amends the Communications Act to provide that:

> [T]he Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that—
>
> (1) Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory;
>
> (2) Enforcement of such regulation or provision is not necessary for the protection of consumers; and
>
> (3) Forbearance from applying such provision or regulation is consistent with the public interest.

In making the public interest determination, the 1996 Act requires the Commission to consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services. New Section 10(b) also provides that, ''[i]f the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.''

ii. The Competitive Carrier Proceeding

8. In the *Competitive Carrier* proceeding, the Commission pursued pro-competitive and deregulatory goals similar to those underlying the 1996 Act. The Commission examined how its regulations should be adapted to reflect and promote increasing competition in interexchange telecommunications markets, and sought to reduce or eliminate its tariff filing and facilities authorization requirements for nondominant interexchange carriers. In *Competitive Carrier*, the Commission distinguished between two kinds of carriers—those with market power (dominant carriers) and those without market power (nondominant carriers).

9. In a series of orders beginning in 1982, the Commission established a permissive detariffing policy for nondominant carriers, pursuant to which such carriers were permitted, although not required, to file tariffs with the Commission. *See Second Report and Order*, 47 FR 37899 (August 27, 1982); *Fourth Report and Order*, 48 FR 52452 (November 18, 1983); *Fifth Report and Order*, 50 FR 1215 (January 10, 1985). The Commission found that ''there was no evidence that it is in the public interest for us to continue receiving streamlined tariff and Section 214 filings from certain specialized common carriers to prevent them from charging unjust and unreasonable rates or making service unavailable.'' The Commission concluded that market forces, together with the Section 208 complaint process and the Commission's ability to reimpose tariff-filing and facilities-authorization requirements, were sufficient to protect the public interest with respect to nondominant interexchange carriers subject to forbearance. The Commission also noted that firms lacking market power could not charge unlawful rates because customers could always turn to competitors. *Sixth Report and Order*, 50 FR 1215 (January 10, 1985).

10. In 1985, in the *Sixth Report and Order*, the Commission established a mandatory detariffing policy for all carriers subject to the Commission's forbearance policy, because it concluded that policy would further its objectives of ensuring just and reasonable rates, and that it could rely instead on market forces, the complaint process, and its ability to reimpose tariff requirements, if necessary, to fulfill its mandate under the Communications Act. The Commission stated: ''Throughout this rulemaking, we have determined that enforcement of Sections 201 and 202 objectives of just and reasonable rates could be effectuated for certain carriers without the filing of tariffs and through market forces and the administration of the complaint process.'' Carriers subject to forbearance were required to ''file supplements to cancel their tariffs on file with the Commission within six months of the effective date of [the *Sixth Report and Order*].'' In order to facilitate the complaint process and its enforcement of statutory requirements that carriers charge just and reasonable rates, the Commission also ordered carriers to maintain price and service information on file in their offices that could be produced readily upon inquiry from the Commission in order to substantiate the lawfulness of the carriers' rates, terms and conditions for service.

11. The *Sixth Report and Order* subsequently was vacated and remanded by the U.S. Court of Appeals for the D.C. Circuit, on the ground that the Commission lacked the statutory authority to prohibit carriers from filing tariffs. *MCI Telecommunications Corp.* v. *FCC*, 765 F.2d 1186, 1192 (D.C. Cir. 1985). The court, however, did not reach the issue of whether the Commission's earlier permissive detariffing orders were valid. *Id.* at 1196. The Commission, accordingly, continued to apply its permissive detariffing policy to nondominant interexchange carriers until 1992, when the U.S. Court of Appeals for the D.C. Circuit vacated the Commission's permissive detariffing regime in *AT&T Co.* v. *FCC. AT&T Co.* v. *FCC*, 978 F.2d 727 (D.C. Cir. 1992), *cert. denied*, *MCI Telecommunications Corp.* v. *AT&T Co.*, 509 U.S. 913 (1993). The court, in reviewing an FCC decision disposing of a complaint filed by AT&T against MCI, vacated the Commission's *Fourth Report and Order*, thereby invalidating the Commission's permissive detariffing policy for nondominant carriers. *Id.* at 737. While stating that it did ''not quarrel with the Commission's policy objectives,'' the court found that the Communications Act as it existed at that time did not give the Commission authority to adopt such a policy. *Id.* at 736.

12. Prior to the issuance of the U.S. Court of Appeals' decision invalidating the permissive detariffing policy, the Commission adopted a Report and Order in a rulemaking proceeding commenced in response to AT&T's complaint. *See Tariff Filing Requirements for Interstate Common Carriers*, CC Docket No. 92–13, Report and Order, 7 FCC Rcd 8072 (1992). (While adopted prior to the court's finding that the Commission's permissive detariffing policy exceeded the Commission's statutory authority, the order was released after the court vacated the *Fourth Report and Order*). The Commission again determined that permissive detariffing was within its authority under the Communications Act. *Id.* at 8074. The U.S. Court of Appeals for the D.C. Circuit granted summary reversal of the Commission's order based on the court's earlier *AT&T* v. *FCC* decision. *AT&T Co.* v. *FCC*, Nos. 92–1628, 92–1666, 1993 WL 260778 (D.C. Cir. June 4, 1993) (per curiam), *aff'd*, *MCI Telecommunications Corp.* v. *AT&T Co.*, 114 S. Ct. 2223 (1994). In affirming the U.S. Court of Appeal's ruling, the Supreme Court found that Section 203(b)(2) of the Communications Act gives the Commission authority to modify the Communications Act's tariff filing requirement, but not to eliminate it entirely. *MCI Telecommunications Corp.* v. *AT&T Co.*, 114 S. Ct. 2223, 2229–31 (1994). The Commission thereafter modified the tariff filing requirements and established a one-day tariff notice period for all nondominant interexchange carriers after again concluding that traditional tariff regulation of nondominant interexchange carriers is not necessary to ensure just and reasonable rates. *Tariff Filing Requirements for Nondominant Common Carriers*, 58 FR 44457 (August 23, 1993) (*Nondominant Filing Order*), *vacated on other grounds*, *Southwestern Bell Corp.* v. *FCC*, 43 F.3d 1515 (D.C. Cir. 1995) (finding the range of rates provision in the *Nondominant Filing Order* violated Section 203(a) of the Communications Act). The Commission subsequently eliminated the range of rates provision and reinstated the other tariff filing requirements, including the one-day notice period, adopted in the *Nondominant Filing Order. Tariff Filing Requirements for Nondominant Common Carriers*, 60 FR 52865 (October 11, 1995) (*Nondominant Filing Order II*). In addition, under the streamlined regulatory procedures for nondominant carriers established in the *Competitive Carrier* proceeding, such carriers are not subject to price cap regulation, and their tariff filings are presumed to be lawful and do not require cost support data. *See First Report and Order*, 45 FR 76148 (November 18, 1980). Nondominant carriers also are subject to streamlined Section 214 procedures for the construction, extension or operation of new transmission facilities, as well as for the proposed reduction or discontinuance of service.

13. Against this background, Congress enacted Section 401 of the 1996 Act, adding Section 10 to the

Communications Act. As discussed below, we find that this section provides the Commission with the forbearance authority that the courts had previously concluded was lacking. The Commission now has express authority to eliminate unnecessary regulation and to carry out the pro-competitive, deregulatory objectives that it pursued in the *Competitive Carrier* proceeding for more than a decade.

B. Analysis of Statutory Requirements

i. Introduction

14. In the *NPRM*, the Commission tentatively concluded that it could make the determinations necessary to forbear from applying the provisions of Section 203 to nondominant carriers with respect to their interstate, domestic, interexchange services. Specifically, the Commission tentatively found that enforcement of the Section 203 tariff filing requirements with respect to nondominant interexchange carriers: (1) Is not necessary to ensure that such carriers' charges, practices, or classifications are just and reasonable, and are not unjustly or unreasonably discriminatory; and (2) is not necessary for the protection of consumers. The Commission also tentatively found that forbearing from applying Section 203 to nondominant interexchange carriers is consistent with the public interest. The Commission therefore tentatively concluded that it must forbear from applying Section 203 tariff filing requirements to nondominant interexchange carriers with respect to their interstate, domestic, interexchange services. The Commission also tentatively concluded that it should not permit nondominant interexchange carriers to file tariffs for such services (that is, that it should adopt a policy of complete detariffing), because it found that allowing nondominant interexchange carriers to file tariffs on a voluntary basis would not be in the public interest, and that complete detariffing would promote competition in the interstate, domestic, interexchange market, deter price coordination, and better protect consumers.

15. In this section, we consider whether the complete detariffing policy proposed in the *NPRM* satisfies each of the statutory forbearance criteria. We note that our analysis under the first two criteria does not differentiate between our proposal in the *NPRM* to adopt a complete detariffing policy and other detariffing options, such as detariffing on a permissive basis (that is, allowing, but not requiring, nondominant interexchange carriers to file tariffs with respect to their interstate, domestic, interexchange services). Based on the language of the first two statutory criteria, the analysis of all detariffing proposals under the first two forbearance criteria would be the same, because in each case the relevant inquiries are whether tariff filings are necessary to ensure that nondominant interexchange carriers' charges, practices, or classifications are just and reasonable, and are not unjustly or unreasonably discriminatory, and whether tariff filings are necessary to protect consumers. However, the third statutory forbearance criterion, which requires an analysis of whether the proposed forbearance is consistent with the public interest, necessitates an analysis specific to the type of forbearance at issue. Accordingly, in addressing the third criterion, we consider whether adoption of a complete, or permissive, detariffing policy is consistent with the public interest.

ii. Statutory Criteria for Forbearance

a. Are Tariff Filing Requirements Necessary To Ensure that the Charges, Practices, Classifications or Regulations for the Interstate, Domestic, Interexchange Services of Nondominant Interexchange Carriers Are Just and Reasonable, and Are Not Unjustly or Unreasonably Discriminatory?

(1) Background

16. As noted above, the 1996 Act requires the Commission to forbear from applying Section 203 tariff filing requirements to interstate, domestic, interexchange services offered by nondominant interexchange carriers if the Commission determines that the three statutory forbearance criteria are satisfied. With respect to the first criterion, the Commission in the *NPRM* tentatively concluded that tariff filing requirements are not necessary to ensure that nondominant interexchange carriers' charges, practices, classifications or regulations for interstate, domestic, interexchange services are just and reasonable, and are not unjustly or unreasonably discriminatory. The Commission also tentatively concluded that the Communications Act's objectives of just, reasonable, and not unjustly or unreasonably discriminatory rates could be achieved effectively through other means, specifically through market forces and the administration of the complaint process. The Commission therefore tentatively concluded that elimination of tariff filing requirements for nondominant interexchange carriers for their interstate, domestic, interexchange offerings would satisfy the first statutory prerequisite for forbearance.

(2) Comments

17. Many commenters concur with the Commission's tentative conclusion that requiring nondominant interexchange carriers to file tariffs for their interstate, domestic, interexchange service offerings is unnecessary to ensure that charges, practices, and classifications for such services are just and reasonable, and are not unjustly or unreasonably discriminatory. These parties claim that nondominant carriers cannot rationally impose prices or terms that are unjust, unreasonable, or unjustly or unreasonably discriminatory, because any attempt to do so would result in a loss of market share. Several of these parties add that the Section 208 complaint process is adequate to remedy any illegal carrier conduct that does occur. Thus, they conclude that market forces and the administration of the complaint process will prevent nondominant interexchange carriers from behaving anticompetitively in violation of Sections 201(b) and 202(a) of the Communications Act.

18. Other commenters, however, argue that market forces are currently inadequate to ensure that the charges, practices, classifications or regulations of nondominant interexchange carriers are just and reasonable, and are not unjustly or unreasonably discriminatory, because the market for interstate, domestic, interexchange services is not yet fully competitive. In addition, the Tennessee Attorney General and ACTA argue that AT&T is able profitably to charge higher rates than its competitors, demonstrating that existing competition alone does not constrain AT&T's prices, and therefore is not sufficient to regulate the marketplace.

19. Several commenters, including a number of state commissions, argue that in the absence of tariffs, the Section 208 complaint process would not be adequate to ensure that the charges, practices, and classifications of nondominant interexchange carriers are just and reasonable, and not unjustly or unreasonably discriminatory.

These commenters insist that tariffs provide information necessary to enforce Sections 201 and 202 and to investigate fraudulent practices. In addition, they argue that tariffs ensure accurate information in the event of a dispute. They conclude that, without tariffs, consumers and other interested parties will lack adequate information to bring a complaint. TRA adds that the

complaint process is too limited because it focuses only on legal issues, while the tariff review process allows policy analysis as well.

20. TRA argues that eliminating tariff filing requirements in a market that is less than perfectly competitive will enable carriers to discriminate against resellers, many of which are small and mid-sized businesses. TRA claims that the resale market will not survive detariffing, and that such a result is contrary to the objectives of the Communications Act and Commission policy, which recognizes that a vibrant resale market provides residential and small business customers with access to lower rates, puts downward pressure on prices, and helps prevent discriminatory pricing by increasing the number of parties offering similar services.

(3) Discussion

21. We adopt the tentative conclusion in the *NPRM* that tariffs are not necessary to ensure that the rates, practices, and classifications of nondominant interexchange carriers for interstate, domestic, interexchange services are just and reasonable and not unjustly or unreasonably discriminatory. We conclude, consistent with the *AT&T Reclassification Order,* that the high churn rate among consumers of interstate, domestic, interexchange services indicates that consumers find the services provided by interexchange carriers to be close substitutes, and that consumers are likely to switch carriers in order to obtain lower prices or more favorable terms and conditions. In addition, as we found in the *AT&T Reclassification Order,* residential and small business customers are highly demand-elastic, and will switch carriers in order to obtain price reductions and desired features. Because of the high elasticity of demand for interstate, domestic, interexchange services, we find it is highly unlikely that interexchange carriers that lack market power could successfully charge rates, or impose terms and conditions, for interstate, domestic, interexchange services that violate Section 201 or 202 of the Communications Act, because any attempt to do so would cause their customers to switch to different carriers. Thus, we believe that market forces will generally ensure that the rates, practices, and classifications of nondominant interexchange carriers for interstate, domestic, interexchange services are just and reasonable and not unjustly or unreasonably discriminatory. Moreover, if nondominant interexchange carriers service offerings violate Section 201 or Section 202 of the Communications Act, we have other, more effective means of remedying such conduct. Specifically, we can address any illegal carrier conduct through the exercise of our authority to investigate and adjudicate complaints under Section 208.

22. We also reject the unsupported suggestion that current levels of competition are inadequate to constrain AT&T's prices. In the *AT&T Reclassification Order,* we found that AT&T cannot unilaterally exercise market power in the interstate, domestic, interexchange market. We based this finding on, *inter alia,* AT&T's declining market share, the supply elasticity in this market, the fact that both residential and business customers are highly demand-elastic, and an analysis of AT&T's cost, structure, size, and resources. The Tennessee Attorney General and ACTA offer no new evidence that would lead us to alter our conclusion that AT&T lacks market power in this market.

23. We also are not persuaded that tariffs are necessary to constrain the prices and practices of nondominant interexchange carriers with respect to interstate, domestic, interexchange services. As discussed below, we find that evidence of tacit price coordination in the market for interstate, domestic, interexchange services is inconclusive. Moreover, we find that tariff filings by nondominant interexchange carriers for interstate, domestic, interexchange services may facilitate, rather than deter, price coordination, because under a tariffing regime, all rate and service information is collected in one, central location. Therefore, we believe that complete detariffing, along with additional, competitive, facilities-based entry into the interstate, domestic, interexchange market, will help deter attempts to increase rates for interstate, domestic, interexchange services through tacit price coordination. We therefore conclude that complete detariffing of interstate, domestic, interexchange services offered by nondominant interexchange carriers will further the Communications Act's objective that carriers' rates, practices, classifications, and regulations be just, reasonable and not unjustly or unreasonably discriminatory.

24. In the *NPRM,* the Commission acknowledged that the Commission initially relaxed its regulation of nondominant carriers in the *Competitive Carrier* proceeding in part because it concluded that the availability of service from a nationwide dominant carrier subject to full Title II regulation would further constrain nondominant carriers. We therefore sought comment on whether the absence of a nationwide dominant carrier should affect our determination to forbear from requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services. No commenter addressed this issue, and we conclude that the absence of a dominant interexchange carrier in today's competitive interstate, domestic, interexchange market should not alter our analysis, because nondominant interexchange carriers cannot successfully price their services anticompetitively in this market. In addition, the Commission has previously found that market forces effectively discipline nondominant carriers even in the absence of a dominant carrier. *See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services,* 59 FR 18493 (April 19, 1994).

25. We also reject the claim that, without tariffs, consumers and other parties will lack sufficient information to challenge the lawfulness of nondominant interexchange carriers' rates, terms and conditions for domestic service, in particular on the ground that such carriers' rates, practices, and classifications are unjustly or unreasonably discriminatory. In the absence of tariffs, customers will still receive rate information in the same manner they always have, through the billing process. In addition, carriers likely will be obligated to notify their customers of any changes in their rates, terms and conditions for service as part of their contractual relationship. 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. We further believe that nondominant interexchange carriers will generally provide customers rate and service information that currently is contained in tariffs, in an accessible format in order to market their services and to retain customers. Nevertheless, we acknowledge that, even in a competitive market, nondominant interexchange carriers might not provide complete information concerning all of their interstate, domestic, interexchange service offerings to all consumers, and that some consumers may not be able to determine the particular rate plans that are most appropriate for them, based on their individual calling patterns. (For

example, nondominant interexchange carriers might engage in targeted advertising concerning particular discounts and rate plans that might be the least costly, and most appropriate, plan for some, but not all, consumers.) Accordingly, and in light of considerations regarding the enforcement of the 1996 Act's geographic rate averaging and rate integration requirements, we will require carriers to provide rate and service information to the public, as we discuss below. In addition, as the Commission did in the *Sixth Report and Order,* we will require nondominant interexchange carriers to maintain price and service information and to make such information available on a timely basis to the Commission upon request. We therefore conclude that, in the absence of tariffs for nondominant carriers' interstate, domestic, interexchange services, consumers and other parties will have access to sufficient information about such services for purposes of bringing complaints. On June 12, 1996, the Office of Management and Budget approved the Commission's proposal in the *NPRM* to require nondominant interexchange carriers to maintain at their premises price and service information regarding their interstate, interexchange offerings that they can submit to the Commission upon request. *Notice of Office of Management and Budget Action,* OMB No. 3060–0704 (June 12, 1996). In reviewing the proposed information collection requirements in the *NPRM,* including the proposal to eliminate tariff filing requirements by nondominant interexchange carriers for interstate, domestic, interexchange services, the Office of Management and Budget ''strongly recommend[ed] that the [Commission] investigate potential mechanisms to provide consumers, State regulators, and other interested parties with some standardized pricing information.''

26. We reject TRA's claim that the complaint process is inadequate to protect consumers. TRA maintains that the Commission addresses only legal issues in a complaint proceeding, whereas in the tariff review process, the Commission can address policy issues as well. TRA is incorrect, however. Regardless of whether the inquiry is part of a complaint or a tariff review proceeding, the Commission can address all relevant legal and policy issues. In the particular context of Section 208 complaint proceedings, we will continue to examine legal, and, where appropriate, policy matters to give full effect to the requirements that a carrier's rates, terms, and conditions are just, reasonable, and not unreasonably discriminatory, as well as the requirements of our rules and orders.

27. Contrary to TRA's assertions that the resale market will not survive in the absence of tariffs, we conclude that our decision to forbear from requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services will not affect such carriers' obligations under Sections 201 and 202 to charge rates, and to impose practices, classifications and regulations, that are just and reasonable and not unjustly or unreasonably discriminatory. In addition, as discussed below, we will require nondominant interexchange carriers to provide rate and service information on all of their interstate, domestic, interexchange services to consumers, including resellers. Thus, resellers will be able to determine whether nondominant interexchange carriers have imposed rates, practices, classifications or regulations that unreasonably discriminate against resellers, and to bring a complaint, if necessary.

28. For the reasons discussed herein, we conclude that tariffs are not necessary to ensure that the rates, practices, classifications, and regulations of nondominant interexchange carriers for interstate, domestic, interexchange services are just and reasonable and not unjustly or unreasonably discriminatory. We therefore conclude that the proposal to adopt complete detariffing meets the first of the statutory forbearance criteria.

b. Are Tariff Filing Requirements for the Interstate, Domestic, Interexchange Services of Nondominant Interexchange Carriers Necessary for the Protection of Consumers?

(1) Background

29. In the *NPRM,* the Commission tentatively concluded that requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services is not necessary to protect consumers, and that such tariff filing requirements could harm consumers by undermining the development of vigorous competition.

(2) Comments

30. A number of parties support the Commission's tentative conclusion that requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange service offerings is not necessary to protect consumers. Several of these parties claim that nondominant interexchange carriers cannot rationally charge prices, or impose terms and conditions that harm consumers without losing customers. In addition, many parties assert that the complaint process is adequate to remedy any illegal carrier conduct that violates the Communications Act and harms consumers.

31. Several commenters also support the Commission's tentative conclusion that tariff filing requirements actually harm consumers by impeding the development of vigorous competition and by leading to higher rates.

32. A number of state commissions and other commenters assert, however, that, without tariffs, the complaint process would not be adequate to protect consumers. They claim that the complaint process is cumbersome, expensive and time-consuming, and that without tariffs, consumers will lack sufficient information on which to base a complaint that a carrier has violated Section 201 or 202, or failed to comply with the rate averaging and rate integration requirements of Section 254(g). A number of state commissions and other parties also assert that detariffing will impede state regulatory or law enforcement functions, because state officials depend on information contained in tariffs filed with the Commission to protect consumers, to prevent fraudulent practices, and to promote state objectives and policies, such as ensuring that rates for intraLATA services are no higher than those for interLATA services. In addition, some state commissions are concerned that tariff forbearance by the Commission might preempt state tariff filing requirements because Section 10(e) of the Communications Act provides that ''a State commission may not continue to apply or to enforce any provision of this Act that the Commission has determined to forbear from applying.'' Several parties add that tariffs also ensure that the Commission has access to accurate information in the event of a dispute.

33. The Ad Hoc Users and BellSouth maintain, however, that, even in the absence of tariffs, carriers will make price and service information available to the public through methods such as advertising, bill inserts and brochures; and that those methods are more effective at informing consumers than tariff filings, which are not readily available to consumers and which most consumers therefore never examine.

34. Some commenters suggest that, if the Commission detariffs, the Commission should limit forbearance from tariff filing requirements to individually-negotiated service

arrangements. They urge the Commission to retain tariff filing requirements for mass market services offered to residential and small business customers because, they claim, tariffs are necessary to protect consumers of such services.

35. In addition, American Telegram argues that tariffs are necessary to protect consumers with respect to terms and conditions, but not rates and charges, of nondominant interexchange carriers. American Telegram asserts that tariffs are necessary to protect consumers with respect to terms and conditions of service, because, without tariffs, each customer would have to challenge its individual contract with the carrier in order to establish the illegality of the carrier's terms or conditions for service. American Telegram claims that, by contrast, when a tariff is challenged, any changes to the tariffed terms and conditions apply automatically to all customers of that service.

(3) Discussion

36. We adopt the tentative conclusion in the *NPRM* that tariff filings by nondominant interexchange carriers for interstate, domestic, interexchange services are not necessary to protect consumers. Rather, as discussed above, we find that it is highly unlikely that interexchange carriers that lack market power could successfully charge rates, or impose terms and conditions, for interstate, domestic, interexchange services that violate Sections 201 and 202 of the Communications Act. We therefore conclude that market forces, our administration of the Section 208 complaint process, and our ability to reimpose tariff filing requirements, if necessary, are sufficient to protect consumers.

37. We also adopt the tentative conclusion that in the interstate, domestic, interexchange market, requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services may harm consumers by impeding the development of vigorous competition, which could lead to higher rates. We agree with NYNEX that ''forbearance will promote competition and deter price coordination, which can threaten competitive benefits.'' By promoting competition, detariffing will better protect consumers against the imposition of rates, terms, or conditions that violate the Communications Act.

38. We reject the argument that, for interstate, domestic, interexchange services offered by nondominant interexchange carriers, the complaint process is inadequate to protect consumers. As an initial matter, we note that we are not simply relying on the complaint process to protect consumers. Rather, as set forth above, we believe that market forces, together with the complaint process, will adequately protect consumers. In addition, we find that our complaint process is adequate to redress any harm to consumers should a nondominant interexchange carrier establish prices, or impose terms and conditions, that violate Sections 201 or 202, or engage in other conduct that violates the Communications Act or our regulations. Moreover, we note that in the absence of tariffs, consumers will be able to pursue remedies under state consumer protection and contract laws in a manner currently precluded by the ''filed-rate'' doctrine.

39. While we agree with those commenters that argue that the Commission and the public may need access to information concerning carriers' rates, terms and conditions to ensure carrier compliance with the requirements of Sections 201, 202, and 254(g) of the Communications Act, we are not persuaded that tariffs filed pursuant to Section 203 are the only, or most effective, means of disseminating such information. As an initial matter, we note that the majority of complaints by consumers about the lawfulness of carriers' rates, terms, or conditions for interstate, domestic, interexchange services are based on information obtained through the billing process, rather than information obtained from carriers' tariffs. As set forth above, we believe that nondominant interexchange carriers likely will provide rate and service information currently contained in tariffs to their customers in order to establish a legal relationship with such customers or as part of the billing process. Moreover, nondominant carriers likely will publicize their rates, terms and conditions for service in order to maintain, or improve, their competitive positions in the market. We therefore conclude that the public will have access to sufficient information to bring to the Commission's attention possible violations of the Communications Act without the risk of anticompetitive effects inherent in tariff filing requirements.

40. Additionally, we find no basis for the claim that the detariffing of the interstate, domestic, interexchange services of nondominant interexchange carriers will significantly impede state regulatory or law enforcement functions. The rules we adopt in this proceeding will not interfere with, and in fact may facilitate, a state agency's ability to obtain directly from carriers price and service information regarding interstate, domestic, interexchange services. Our action here also does not affect state tariff filing requirements for intrastate services. Section 10(e) of the Communications Act, which provides that ''a State commission may not continue to apply or to enforce any provision of this Act that the Commission has determined to forbear from applying,'' does not prohibit states from requiring nondominant interexchange carriers to file tariffs with respect to their intrastate, interexchange services based on our action here.

41. We reject the suggestion that tariffs are necessary to protect consumers of mass market interstate, domestic, interexchange services provided by nondominant interexchange carriers, and therefore that the Commission should limit forbearance only to individually-negotiated service arrangements. We find that the reasons supporting our conclusion that tariff filings are not necessary to protect consumers of interstate, domestic, interexchange services provided by nondominant interexchange carriers apply to all such services, and not only to those provided pursuant to individually-negotiated arrangements. Specifically, any increase in competition resulting from the elimination of tariffs will redound to the benefit of consumers of all interstate, domestic, interexchange services. For example, we believe that eliminating tariffs for mass market services will increase carriers' incentive to reduce prices for such services, and reduce their ability to engage in tacit price coordination. In addition, detariffing of mass market services will likely provide greater protection to consumers, because, as discussed below, carriers will likely be required, as a matter of contract law, to give customers advance notice before instituting changes that adversely affect customers. Carriers will also continue to provide rate information to customers as part of the billing process, and in order to market their services and to retain customers.

42. Similarly, we do not agree with American Telegram's claim that tariffs are necessary to protect consumers with respect to terms and conditions, but not rates and charges, of interstate, domestic, interexchange services provided by nondominant interexchange carriers. Just as we believe that competition is sufficient to ensure that nondominant interexchange carriers' charges for interstate, domestic, interexchange services are just and reasonable, and not unreasonably discriminatory, and to protect consumers, we believe that competitive forces will ensure that nondominant

carriers' non-price terms and conditions are reasonable. Moreover, we concur with BellSouth that even non-price tariff filings can be used to facilitate tacit coordination by carriers. In addition, we reject American Telegram's argument that tariffs concerning nondominant carriers' terms and conditions for interstate, domestic, interexchange service are necessary to protect consumers, because, without such tariffs, each customer seeking to challenge a carrier's terms or conditions would have to show that its individual contract is unlawful. Nondominant interexchange carriers are likely to use standard contracts for most services rather than individually negotiate a different contract with each customer. As a result, following a successful challenge to a carrier's standard service agreement, that carrier is likely to modify the unlawful contract with all of its customers, rather than face additional complaints or litigation in which the previous determination that the contract is unlawful would likely be given preclusive effect. As in nearly every other business that is conducted without tariffs, we find that tariffs by nondominant interexchange carriers for interstate, domestic, interexchange services are not necessary to protect consumers. In the absence of such tariffs, consumers will not only have our complaint process, but will also be able to pursue remedies under state consumer protection and contract laws.

43. For the reasons discussed herein, we conclude that tariffs for the interstate, domestic, interexchange services of nondominant interexchange carriers are not necessary to protect consumers. We therefore conclude that the proposal to adopt complete detariffing meets the second of the statutory forbearance criteria.

c. Is Forbearance From Applying Section 203 Tariff Filing Requirements to the Interstate, Domestic, Interexchange Services Offered By Nondominant Interexchange Carriers Consistent With the Public Interest?

(1) Background

44. The third statutory criterion requires us to determine whether forbearance from applying Section 203 tariff filing requirements to the interstate, domestic, interexchange services of nondominant interexchange carriers is consistent with the public interest. In making this determination, the statute specifically requires us to consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services. In addition, Section 10(b) provides that, ''[i]f the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.'' In the *NPRM*, the Commission tentatively concluded that it should not permit nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services of nondominant interexchange carriers, because complete detariffing of such services will promote competition and deter price coordination in the interstate, domestic, interexchange market, and will better protect consumers.

(2) Comments

45. Several commenters, including large consumers of telecommunications services, agree with the Commission's tentative conclusion that complete detariffing of nondominant interexchange carriers' interstate, domestic, interexchange services is in the public interest. These commenters argue that allowing nondominant interexchange carriers to continue to file tariffs undermines the development of vigorous competition because: (1) Tariffs delay a carrier's ability to respond to market changes; (2) even under streamlined tariff filing procedures, the preparation, filing, and defense of tariffs imposes substantial uneconomic costs on carriers; (3) absent tariffs, a carrier could no longer refuse to accommodate a customer's request for services tailored to its specific needs on the ground that the request is beyond the scope of the carrier's tariff; (4) tariffs reduce incentives to engage in competitive price discounting, because competitors can respond to any price change before it has the desired effect of capturing market share. Several parties further argue that tariffs facilitate coordinated pricing by enabling carriers to ascertain their competitors' rates, terms, and conditions for service at one, central location. APCC argues that forbearance from tariff filing requirements would eliminate a regulatory requirement that is especially burdensome on small carriers. Some of these commenters additionally argue that complete detariffing would eliminate the possible invocation of the ''filed-rate'' doctrine. It is well established that, pursuant to the ''filed-rate'' doctrine, in a situation where a filed tariff rate, term or condition differs from a rate, term, or condition set in a non-tariffed carrier-customer contract, the carrier is required to assess the tariff rate, term, or condition. *See Armour Packing Co.* v. *United States,* 209 U.S. 56 (1908); *American Broadcasting Cos., Inc.* v. *FCC,* 643 F.2d 818 (D.C. Cir. 1980). 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. *See Maislin Industries, U.S., Inc.* v. *Primary Steel, Inc.,* 497 U.S. 116 (1990).

46. Interexchange carriers and other commenters contend that complete detariffing is not in the public interest, because prohibiting nondominant interexchange carriers from filing tariffs with respect to interstate, domestic, interexchange services will impede competition and increase carriers' costs. Specifically, these parties argue that complete detariffing would: (1) Significantly increase transaction costs by forcing nondominant interexchange carriers to conclude literally millions of written agreements with customers in order to establish legally enforceable contractual relationships; (2) make casual calling options more difficult, if not impossible; and (3) prevent carriers from reacting quickly to market conditions because carriers would be forced to notify each individual customer of any changes to their rates, terms, and conditions before such changes could be effective. (Casual calling refers to services that do not require a consumer to open an account or otherwise presubscribe to a service, including use of a third-party credit card, collect calling, or dial-around through the use of an access code. Several parties argue that tariffs are essential to casual calling services because callers use the services on a temporary basis without a preexisting contractual relationship, and that tariffs are the only cost-efficient way to establish a legal relationship with casual callers.) ACTA further argues that any increased transaction costs would be especially burdensome on small carriers that have fewer resources. LDDS contends that the increased transaction costs due to detariffing would discourage nondominant interexchange carriers from serving certain market segments (*e.g.*, low-usage residential, small business, and casual callers), thereby decreasing competitive choices for these customers. In addition, several parties argue that tariffs actually promote competition by sending accurate economic signals and disseminating rate and service information to consumers and competitors. In particular, they argue that residential and small business

customers require access to such information to obtain the best rates available, and that small nondominant interexchange carriers need such information to compete with larger interexchange carriers. Several parties further argue that complete detariffing would not deter price coordination, to the extent it exists, both because rate and service information would continue to be available to competitors and because the existing streamlined tariff filing procedures prevent price signalling. A few parties suggest that, if the Commission is concerned about tacit price coordination, it could remedy the problem by requiring nondominant interexchange carriers to file tariffs on no more than one day's notice, rather than not permitting such carriers to file tariffs.

47. Interexchange carriers and several other commenters that oppose complete detariffing contend that permissive detariffing would be consistent with the public interest. They maintain that: (1) Permissive detariffing would be the most deregulatory and pro-competitive option because carriers could determine the most efficient means to establish contractual relations with their customers (*e.g.*, carriers could file tariffs for such mass market offerings as residential and small business services, reducing transactions costs to carriers and consumers); (2) the ''filed-rate'' doctrine would no longer apply if the Commission adopted a permissive detariffing regime, because the tariffed rate would no longer be the only legally permissible rate; (3) price coordination would be difficult, if not impossible, with permissive detariffing because carriers would at best have fragmentary information concerning their competitors' rates, terms, and conditions; and (4) casual calling options would still be feasible with permissive detariffing.

48. Several commenters, however, argue that permissive detariffing, that is, allowing nondominant interexchange carriers to file tariffs if they wish to do so, is not in the public interest. Several of these parties argue that permissive detariffing is contrary to the public interest, because it would allow nondominant interexchange carriers to ''game'' the system by filing tariffs when it serves their interest to do so, for example, to take advantage of the ''filed-rate'' doctrine or to engage in price signaling. Contrary to the interexchange carriers' assertions, these parties claim that the ''filed-rate'' doctrine would continue to exist if detariffing were implemented on a permissive basis. TRA, which opposes any detariffing at all, argues that permissive detariffing would enable carriers to discriminate against resellers.

49. Some commenters suggest that the Commission limit forbearance from tariff filing requirements to individually-negotiated service arrangements and retain tariff filing requirements for mass market services offered to residential and small business customers, because tariffs allow carriers to establish a legal relationship with customers quickly and inexpensively. In addition, several parties urge the Commission to limit the scope of forbearance only to certain nondominant interexchange carriers, or to certain types of information. For example, TRA and ACTA suggest that the Commission should forbear from applying Section 203 tariff filing requirements to those carriers with less than a certain percentage of the market and that are not affiliated with certain incumbent local exchange carriers, such as the BOCs.

50. In addition, several commenters contend that it is premature to detariff now, in light of the dynamic changes occurring in the market, such as the reclassification of AT&T in October 1995, and the opening of all telecommunications markets to increased competition following enactment of the 1996 Act. These commenters urge the Commission to defer any decision concerning forbearance from tariff filing requirements until it can evaluate the effect of these changes on the interstate, domestic, interexchange market.

51. Finally, several parties commented on how the Commission should treat the BOCs upon their entry into the interstate, domestic, interexchange services market in order to promote competition in this market. A number of BOCs and other parties argue that detariffing will only provide competitive benefits if we also detariff the BOCs once they enter the interstate, domestic, interexchange market. They argue that failure to do so, would place the BOCs, which they claim lack market power in the interstate, domestic, interexchange market, at a competitive disadvantage vis-a-vis existing interexchange carriers, which currently control the market, and would inhibit competition, thereby undermining Congress' objective in passing the 1996 Act. Others argue that, because the BOCs exercise market power in the exchange access market, the Commission should require the BOCs to file tariffs for interstate, domestic, interexchange services until the Commission has experience with the type and level of safeguards necessary to prevent cross-subsidization and other unlawful practices.

(3) Discussion

52. We adopt the tentative conclusion in the *NPRM* that not allowing nondominant interexchange carriers to file tariffs for the provision of interstate, domestic, interexchange services is consistent with the public interest, with the limited exception, as discussed below, of AT&T's provision of 800 directory assistance and analog private line services. Section 10(b) specifically requires the Commission, in determining whether forbearance from enforcing a provision of the Communications Act or a regulation is in the public interest, to consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services. We find that a regime without nondominant interexchange carrier tariffs for interstate, domestic, interexchange services is the most pro-competitive, deregulatory system. Specifically, we find that not permitting nondominant interexchange carriers to file tariffs with respect to interstate, domestic, interexchange services will enhance competition among providers of such services, promote competitive market conditions, and achieve other objectives that are in the public interest, including eliminating the possible invocation of the filed rate doctrine by nondominant interexchange carriers, and establishing market conditions that more closely resemble an unregulated environment. Moreover, we find that permitting nondominant interexchange carriers to file tariffs on a voluntary basis would undermine several of these benefits, and therefore is not in the public interest.

53. The record in this proceeding supports our tentative conclusion that not permitting nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services will promote competition in the market for such services. Even under existing streamlined tariff filing procedures, requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services impedes vigorous competition in the market for such services by: (1) Removing incentives for competitive price discounting; (2) reducing or taking away carriers' ability to make rapid, efficient responses to changes in demand and cost; (3) imposing costs on carriers that attempt to make new offerings; and (4) preventing consumers from seeking out or obtaining service

arrangements specifically tailored to their needs. (These findings are consistent with the Commission's findings in the *Competitive Carrier* proceeding. *Sixth Report and Order.* The Commission recently reiterated these findings in the *Regulatory Treatment of Mobile Services Order,* 59 FR 18493 (April 19, 1994).) Moreover, we believe that tacit coordination of prices for interstate, domestic, interexchange services, to the extent it exists, will be more difficult if we eliminate tariffs, because price and service information about such services provided by nondominant interexchange carriers would no longer be collected and available in one central location.

54. In addition, requiring tariffs for interstate, domestic, interexchange services offered by nondominant interexchange carriers impedes competition by preventing customers from seeking out or obtaining price and service arrangements tailored to their needs. As Ad Hoc Users and others note, carriers, in some cases, have refused to accommodate customers' requests for particular service terms on the ground that the requested terms are not contained in the carriers' tariffs, and that the Commission would reject any term or condition for service that differed from the carriers' general tariffs. Eliminating tariff filings by nondominant interexchange carriers will prevent such carriers from refusing to negotiate with customers based on the Commission's tariff filing and review processes. As a result, carriers may become more responsive to customer demands, and offer a greater variety of price and service packages that meet their customers' needs.

55. Complete detariffing would also further the public interest by eliminating the ability of carriers to invoke the ''filed-rate'' doctrine. As noted above, courts have long held that, in a situation where a filed tariff rate, or other term or condition, differs from a rate, term, or condition set in a non-tariffed carrier-customer contract, the carrier is required to impose the tariffed rate, term or condition. While the Commission has held that unilateral changes that alter material terms and conditions of long-term service arrangements are reasonable only if justified by substantial cause, the filed rate doctrine provides carriers with the ability to alter or abrogate their contractual obligations in a manner that is not available in most commercial relationships. In addition, complete detariffing would further the public interest by preventing carriers from unilaterally limiting their liability for damages. Accordingly, by permitting carriers unilaterally to change the terms of negotiated agreements, the filed rate doctrine may undermine consumers' legitimate business expectations. Absent filed tariffs, the legal relationship between carriers and customers will much more closely resemble the legal relationship between service providers and customers in an unregulated environment. Thus, eliminating the filed rate doctrine in this context would serve the public interest by preserving reasonable commercial expectations and protecting consumers.

56. Eliminating tariffs for the interstate, domestic, interexchange services of nondominant interexchange carriers will not, as some suggest, reduce such carriers' incentive or ability to offer discounts or respond quickly to market changes by forcing them to give customers advance notice of all changes to their rates, terms, and conditions for service. Our experience over the past several years indicates that interexchange carriers' competitive offerings to residential and small business customers are typically optional calling plans in which consumers must affirmatively elect to participate. In order to induce customers to participate in such plans, carriers have widely advertised the terms and availability of these calling plans. Thus, detariffing of interstate, domestic, interexchange services is likely to have little, if any, impact on nondominant interexchange carriers' incentives or ability to engage in competitive price discounting. In addition, as a matter of contract law, nondominant interexchange carriers would not necessarily be required to provide notice before instituting changes that benefit, or do not adversely affect in a material way, customers (*e.g.*, reducing rates). For example, carriers could expressly reserve the right to make rate reductions or new discounts immediately available to existing customers. Carriers could also include in their service contracts provisions giving them flexibility to alter specific, incidental contract terms in a manner not adverse to the customer. *See* Restatement (Second) of Contracts § 34 (1981) (discussing the analogous practice of allowing one or both parties to a contract to select certain terms during the performance of the contract). Such carriers would, however, likely be required, as a matter of contract law, to give advance notice of those changes that adversely affect customers (*e.g.*, rate increases). We conclude that it would not be unduly burdensome for nondominant interexchange carriers to provide customers advance notice of the latter changes through billing inserts or other measures. Such notice would provide greater protection to consumers and is more pro-competitive than allowing carriers to increase their rates by filing tariff changes with the Commission on one day's notice.

57. We recognize that detariffing may change significant aspects of the way in which nondominant interexchange carriers conduct their business. Contrary to the suggestion of some parties, however, tariffs are not the only feasible way for carriers to establish legal relationships with their customers, nor will nondominant interexchange carriers necessarily need to negotiate contracts for service with each, individual customer. As some parties note, such carriers could, for example, issue short, standard contracts that contain their basic rates, terms and conditions for service. Moreover, parties that oppose complete detariffing have not shown that the business of providing interstate, domestic, interexchange services offered by nondominant interexchange carriers should be subject to a regulatory regime that is not available to firms that compete in any other market in this country. We conclude that requiring nondominant interexchange carriers to withdraw their tariffs and conduct their business as other enterprises do will not impose undue burdens on such carriers, substantially increase their costs, or, as LDDS suggests, force such carriers to abandon segments of the market to the detriment of residential and small business customers. Moreover, we reject ACTA's argument that detariffing will disproportionately burden small, nondominant interexchange carriers. While some of the increased administrative costs that carriers may incur initially as a result of the shift to a detariffed environment are likely to be fixed (such as the cost of developing short, standard contracts), many such costs will vary based on the area or number of customers served by such carriers (*e.g.*, advertising expenditures, the cost of promotional mailings or billing inserts). Nonetheless, we find that, on balance, the pro-competitive effects of not allowing nondominant interexchange carriers to file tariffs for their interstate, domestic, interexchange services outweigh any potential increase in transactional or administrative costs resulting from the shift to a detariffed environment.

58. We are also not persuaded that complete detariffing will make casual calling impossible. We believe nondominant interexchange carriers have options other than tariffs by which

they can establish legal relationships with casual callers pursuant to which such callers would be obligated to pay for the telecommunications services they use. For example, a carrier could seek recovery under an implied-in-fact contract theory if a customer has used the carrier's services, with knowledge of the carrier's charges, but has not executed a written contract. Under this theory, the customer's acceptance of the services rendered would evidence his agreement to the contract terms proposed by the carrier. By providing billing or payment information (*e.g.*, credit card information or a billing number) and completing use of the telecommunications service, casual callers may be deemed to have accepted a legal obligation to pay for any such services rendered. (Similarly, a casual caller who uses a carrier's access code to obtain service from the carrier may be deemed to have accepted an outstanding offer from the carrier to provide casual calling service, and therefore be obligated to pay for any services rendered.) We do not believe that these options will prove unduly burdensome for carriers. In any event, we conclude that, on balance, the competitive benefits of complete detariffing of nondominant interexchange carriers' interstate, domestic, interexchange services outweigh any potential increased costs resulting from the shift to detariffing. We further believe that the nine-month transition period established by this Order, will afford carriers sufficient time to develop efficient mechanisms to provide casual calling services in the absence of tariffs.

59. We reject the suggestion that eliminating tariff filing requirements for nondominant interexchange carriers' interstate, domestic, interexchange services would impede competition for such services by reducing information available to consumers and small nondominant interexchange carriers. As discussed above, nondominant interexchange carriers are likely to make rate and service information, currently contained in tariffs, available to the public in a more user-friendly form in order to preserve their competitive position in the market, and as part of their contractual relationship with customers. In addition, as we discuss below, we will require nondominant interexchange carriers to provide rate schedules for all of their interstate, domestic, interexchange services to consumers.

60. As noted, several parties, asserting that complete detariffing is not in the public interest, instead argue that permissive detariffing would be in the public interest. We reject their arguments for several reasons. Contrary to the assertions of AT&T and others, we believe that a permissive detariffing regime would not necessarily eliminate possible invocation of the ''filed-rate'' doctrine by nondominant interexchange carriers. Section 203(c) provides that a carrier may not ''charge, demand, collect, or receive a greater or less or different compensation * * * than the charges specified in the schedule then in effect.'' Thus, it is possible that, once a carrier files a tariff with the Commission, even if it is on a permissive basis, Section 203(c) may require the carrier to provide service at the rates, and on the terms and conditions, set forth in the tariff until or unless the carrier files a superseding tariff cancelling, or changing the rates and terms of, the tariff. Because the filed rate doctrine is a legal doctrine developed by judicial precedent, it is not entirely clear how courts would apply the filed rate doctrine if nondominant interexchange carriers were permitted to file tariffs and the filed tariff rate differed from the rate set in a non-tariffed contract. We believe that only with a complete detariffing regime, under which the carrier-customer relationship would more closely resemble the legal relationship between service providers and customers in an unregulated environment, can we definitively eliminate these possible anticompetitive practices and protect consumers.

61. Another consideration that precludes us from finding that permissive detariffing of the interstate, domestic, interexchange services of nondominant interexchange carriers is in the public interest is that, unlike complete detariffing, permissive detariffing would not eliminate the collection and availability of rate information in one centralized location. Although we recognize that nondominant interexchange carriers under a complete detariffing regime would still be able to obtain information concerning their competitors' rates and service offerings, we believe that tacit price coordination, to the extent it exists, will be more difficult. In contrast, allowing nondominant interexchange carriers to file tariffs on a voluntary basis would create the risk that carriers would file tariffs merely to send price signals and thus manipulate prices. In this respect, we are not persuaded by Frontier and CSE who argue that permissive detariffing would eliminate any risk of coordinated pricing because carriers could not be certain of their competitors' rates, terms, and conditions for service. Carriers could use tariffs to engage in price signalling, because any nondominant carrier that opted to file a tariff would be bound by its terms until or unless the carrier cancelled or modified the tariff through a new tariff filing, and thus competing carriers would be certain of such carrier's rates, terms and conditions for service while its tariff is in effect.

62. In addition, we note that permitting nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services imposes administrative costs on the Commission, which must maintain and organize tariff filings for public inspection. In light of our conclusion that market forces, the complaint process, and our ability to reimpose tariff filing requirements are adequate to protect consumers and ensure that nondominant interexchange carriers' rates, terms and conditions for interstate, domestic, interexchange services are just, reasonable and not unreasonably discriminatory, we believe that the public interest would be better served by the Commission devoting these resources to its enforcement duties.

63. With two limited exceptions described below, we also do not believe that there is a sound basis for concluding that forbearance is in the public interest only with respect to certain interstate, domestic, interexchange services, such as individually negotiated service arrangements offered by nondominant interexchange carriers. We find that the competitive benefits of not permitting nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services, discussed above, apply equally to all segments of the interstate, domestic, interexchange services market. Moreover, as discussed above, we reject the argument that detariffing mass market services offered to residential and small business customers will lead to substantially higher transactions costs. Similarly, we are not persuaded that the public interest benefits differ depending on the type of tariffed information that is at issue. The public interest benefit of removing carriers' ability to invoke the ''filed-rate'' doctrine applies equally with respect to terms and conditions as to rates. Moreover, permitting or requiring large nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services would not eliminate the risk of tacit price coordination among such carriers, and would raise the possibility that such carriers' tariffed rates would become a price umbrella. Finally, we agree with AT&T that there is no basis

to differentiate among nondominant interexchange carriers, because all such carriers are unable to exercise market power in the interstate, domestic, interexchange market.

64. Nor do we believe that we should delay our decision to detariff the interstate, domestic, interexchange services of nondominant interexchange carriers. Because we find the statutory criteria for forbearance are met at this time for all interstate, domestic, interexchange services offered by nondominant interexchange carriers, we are required by the 1996 Act to forbear from applying Section 203 tariff filing requirements to these services. Should circumstances change such that the statutory forbearance criteria are no longer met, we have the authority to revisit our determination here, and to reimpose Section 203 tariff filing requirements.

65. Finally, with respect to the regulatory treatment of BOC interexchange affiliates upon their entry into the interstate, domestic, interexchange market, we find no basis to exclude such carriers from the purview of this Order if they are classified as nondominant in their provision of interstate, domestic, interexchange services. We note that we are addressing the issue of whether incumbent local exchange carriers, including the BOCs, should be classified as dominant or nondominant in their provision of interstate, domestic, interexchange services in a separate ongoing proceeding. *See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area,* CC Docket No. 96–149, Notice of Proposed Rulemaking, 61 FR 39397 (July 29, 1996).

66. For the reasons explained herein, we find that complete detariffing of interstate, domestic, interexchange services offered by nondominant interexchange carriers is in the public interest, and that permissive detariffing of such services is not in the public interest.

iii. Authority To Eliminate Tariff Filings

a. Background

67. In the *NPRM,* the Commission sought comment on whether it has the authority under Section 10 of the Communications Act not to permit carriers to file tariffs.

b. Comments

68. Several interexchange carriers and others argue that the plain language of Section 10 authorizes the Commission only to refrain from requiring tariffs, but not to prohibit carriers from voluntarily complying with Section 203. AT&T contends that the Commission has used the term ''forbearance'' to apply only to permissive detariffing, and used the terms ''cancellation'' of all filed tariffs and ''elimination'' of future filings in adopting complete detariffing in the *Competitive Carrier* proceeding. AT&T adds that Congress used different terms in other provisions of the Communications Act to authorize the Commission to adopt complete detariffing. Specifically, AT&T argues that Congress gave the Commission authority to specify certain provisions of Title II of the Communications Act as ''inapplicable'' to CMRS providers. AT&T claims that by failing to use this term in Section 10, and instead using such permissive terms as ''forbear from applying'' or ''enforcing,'' Congress did not intend to give the Commission authority to adopt complete detariffing.

69. Other parties, however, argue that the 1996 Act gives the Commission legal authority to prohibit carriers from filing tariffs. Ad Hoc Users argues that the Commission has used the term ''forbearance'' to refer to both mandatory and permissive detariffing. Ad Hoc Users further argues that federal agencies and the courts have construed similar statutory provisions as authorizing federal agencies to adopt mandatory deregulation. Specifically, Ad Hoc Users contends that: (1) The Commission adopted mandatory detariffing for CMRS based on Section 332(c)(1)(A) of the Communications Act, which gave the Commission authority to specify certain provisions of Title II of the Communications Act as ''inapplicable'' to CMRS providers; and (2) the Civil Aeronautics Board (CAB) mandatorily deregulated the airline industry based on an amendment to the Federal Aviation Act that gave the CAB authority to ''exempt'' certain domestic air carriers from the requirements of the Federal Aviation Act if it found that such exemption was ''consistent with the public interest.'' Ad Hoc Users argues that these statutory grants of authority are substantially similar to Section 10, and that AT&T's argument (*i.e.,* that Section 10 only allows permissive deregulation) could be made about each of those statutes.

c. Discussion

70. We conclude that the Commission has authority under Section 10 to refuse to permit nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services. We reject the argument advanced by AT&T and others that by using the term ''forbear,'' Congress intended to authorize the Commission merely to ''refrain from enforcing'' its regulations or provisions of the Communications Act where the statutory forbearance criteria are met, and not to authorize the Commission to refuse to permit nondominant carriers to comply with such regulations or provisions voluntarily. We conclude that the plain meaning of the statute does not support their argument, and that federal agencies and the courts have construed similar statutory provisions as authorizing agencies to bar regulated entities from filing rate schedules and other tariff equivalents.

71. As noted, AT&T and others argue that the dictionary definition of the term ''forbear'' authorizes the Commission to detariff only on a permissive basis. We agree with Ad Hoc Users that, in this context, such reliance solely on dictionary definitions is inappropriate, and can be misleading, where the historical usage of a term endows that term with a distinct meaning. The Commission has consistently used the term ''forbear,'' or a variation thereof, to refer to mandatory, as well as to permissive, detariffing. For example, in the *Sixth Report and Order,* the Commission stated that its mandatory detariffing proposal, if adopted, ''would result in the cancellation of all *forborne* carrier tariffs currently on file with the Commission and would eliminate future federal tariff filings by carriers treated by *forbearance.*'' Similarly, in *Regulatory Treatment of Mobile Services,* the Commission stated that it would ''forbear from requiring or permitting tariffs of interstate service offered directly by CMRS providers to their customers,'' based on the Commission's authority to specify any provision of Title II as ''inapplicable'' to any CMRS provider.

72. The courts and Congress have also used the term ''forbear'' to apply to circumstances involving this agency's authority to refuse to permit carriers to file tariffs. In *MCI Telecommunications Corp.* v. *FCC,* the U.S. Court of Appeals for the D.C. Circuit used the term ''forbearance'' to refer to our previous mandatory detariffing policy, noting that ''[t]he Sixth Report * * * changed the permissive forbearance arrangement to a mandatory one.'' *MCI Telecommunications Corp.* v. *FCC,* 765 F.2d 1186, 1189 (D.C. Cir. 1985). In addition, in describing the Commission's previous tariff forbearance policy, the Senate Commerce, Science, and Transportation Committee applied the term ''forbearance'' to the entire *Competitive*

Carrier proceeding, encompassing both mandatory and permissive detariffing. *See* Telephone Operator Consumer Services Improvement Act of 1990, S. Rep. No. 439, 101st Cong., 2d Sess. 3 n.10 (1990) *reprinted in* 1990 U.S.C.C.A.N. 1577, 1579 (stating that ''[t]he FCC has chosen to 'forbear' from regulating the rates of 'non-dominant' carriers because they do not possess market power and thus have little ability to charge unjust or unreasonable rates in violation of the Communications Act of 1934,'' and citing, *inter alia,* the *Sixth Report and Order*).

73. It was against this background that Congress adopted Section 10(a). Accordingly, we concur with Ad Hoc Users that the term ''forbear'' must be construed within its historical and regulatory context, and not in a vacuum.

74. We further note that in construing a similar statutory provision, the U.S. Court of Appeals for the D.C. Circuit rejected a virtually identical argument that Congress had only provided the CAB authority to deregulate the airline industry on a permissive basis. In an amendment to the Federal Aviation Act, Congress granted the CAB authority to ''exempt'' domestic air carriers from statutory requirements of the Federal Aviation Act. *National Small Shipments Traffic Conference, Inc.* v. *CAB,* 618 F.2d 819, 822 n.2, 823, 827 (D.C. Cir. 1980). The CAB used this authority to prohibit certain air carriers from filing tariffs and certain intercarrier agreements. In *National Small Shipments Traffic Conference, Inc.,* petitioners argued that the CAB's ''authority to exempt airlines from certain requirements cannot be used to prohibit airlines from filing [intercarrier] agreements * * * if they choose to do so.'' *Id.* at 835. The court rejected this argument, noting that the CAB's exemption authority was ''broad'' and that its refusal to permit airlines to file intercarrier agreements was consistent with Congress' deregulatory purpose. *Id.*

75. Moreover, the action we take here is consistent with the Commission's order adopting complete detariffing for domestic CMRS providers. In Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 (OBRA), Congress granted the Commission authority to declare ''inapplicable to [any commercial mobile] service or person'' any provision of Title II, subject to certain limitations. This grant of authority, while not identical, is similar to the Commission's authority under Section 10. In response to this grant of authority under Section 6002(b), the Commission determined that it would ''forbear from requiring or permitting tariffs for interstate service offered directly by CMRS providers to their customers.''

76. In addition, we conclude that Section 203, which was ''enacted to control monopoly abuse'' by the carriers, does not grant to carriers a statutory right to file tariffs. As noted in the 1996 Act's legislative history, ''given that the purpose of this legislation is to shift monopoly markets to competition as quickly as possible, the Committee anticipates this forbearance authority will be a useful tool in ending unnecessary regulation.'' Thus, it seems inconceivable that Congress intended Section 10 to be interpreted in a manner that allows continued compliance with provisions or regulations that the Commission has determined were no longer necessary in certain contexts.

iv. Summary of Findings and Conclusions

77. We therefore conclude that tariffs are not necessary to ensure that the rates, practices, classifications, and regulations of nondominant interexchange carriers for interstate, domestic, interexchange services are just and reasonable and not unjustly or unreasonably discriminatory. In addition, we conclude that tariffs for the interstate, domestic, interexchange services of nondominant interexchange carriers are not necessary to protect consumers. Moreover, we find that complete detariffing of interstate, domestic, interexchange services provided by nondominant interexchange carriers is in the public interest, and that permissive detariffing of such services is not in the public interest. Accordingly, pursuant to the requirements of Section 10, we conclude that we must forbear from applying Section 203 tariff filing requirements to the interstate, domestic, interexchange services offered by nondominant interexchange carriers and not permit nondominant interexchange carriers to file tariffs for their interstate, domestic, interexchange services. We also conclude that the Commission has authority under Section 10 to refuse to permit nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services. We therefore order that nondominant interexchange carriers cancel all tariffs for such services currently on file with the Commission, subject to the procedural details specified below, and prohibit nondominant interexchange carriers from filing tariffs for such services in the future.

C. Maintenance and Disclosure of Price and Service Information; Certifications

i. Background

78. In the *NPRM,* the Commission tentatively concluded that, if it were to adopt a complete detariffing policy, nondominant interexchange carriers would be required to maintain at their premises price and service information regarding all of their interstate, domestic, interexchange service offerings, which they could submit to the Commission upon request. In addition, the Commission tentatively concluded that it would require nondominant providers of interexchange telecommunications services to file certifications stating that they are in compliance with the geographic rate averaging and rate integration requirements of Section 254(g) in order to ensure compliance with those requirements. The Commission further tentatively concluded that it would rely on the complaint process under Section 208 to bring violations of Section 254(g) to its attention.

ii. Comments

79. Several commenters recommend that, if the Commission adopts detariffing, it should require nondominant interexchange carriers to make their rates available to the public in some other fashion, such as by posting pricing information on-line, submitting current rate information to the Commission, or making such information available to any member of the public upon request. These commenters argue that the public needs such information to determine whether a carrier is complying with the geographic rate averaging and rate integration requirements of Section 254(g) as well as with the nondiscrimination requirements of Section 202. Several of these commenters further argue that consumers, especially residential and small business customers, need information on rates, terms and conditions to compare carriers' service offerings. Several small businesses that analyze tariff information for business and residential customers argue that they need such information to conduct their businesses.

80. Other commenters, however, oppose any record-keeping requirement. They argue that imposing such a requirement would eliminate any cost savings resulting from detariffing. Several parties further insist that carriers will make rate and service information available to consumers through other means.

81. AT&T argues that, to the extent the Commission seeks to justify its decision to detariff on the ground that complete detariffing would eliminate the ''filed-rate'' doctrine, a requirement that carriers make rate information available on-line or through a clearinghouse would undermine this objective. AT&T insists that the ''filed-rate'' doctrine would continue to apply if such a requirement is imposed, because the doctrine is based on the imposition of a filing requirement and not on the manner or place of filing.

82. Several interexchange carriers and BOCs contend that the Commission's proposed certification requirement and the complaint process are appropriate mechanisms to enforce the requirements of Section 254(g). Others, however, argue that the Commission should not require certifications, but should rely instead on the complaint process and its ability to examine rates upon request. These parties argue that certifications do little to advance the Commission's enforcement objectives, and that the complaint process and the Commission's ability to examine rates upon request are the only effective means to ascertain whether carriers are in compliance with their statutory obligations.

iii. Discussion

83. We adopt the tentative conclusion in the *NPRM* that nondominant providers of interstate, domestic, interexchange telecommunications services should be required to file annual certifications signed by an officer of the company under oath that they are in compliance with their statutory geographic rate averaging and rate integration obligations. We believe that annual certifications will emphasize the importance that we place on the rate averaging and rate integration requirements of the 1996 Act and put carriers on notice that they may be subject to civil and criminal penalties for violations of these requirements, especially willful violations.

84. While we believe that carrier certifications will be an important mechanism for enforcing the 1996 Act's geographic rate averaging and rate integration requirements, we are persuaded by the arguments of many parties, including numerous state regulatory commissions and consumer groups, that publicly available information is necessary to ensure that consumers can bring complaints, if necessary, to enforce those requirements. As noted above, we find that it is highly unlikely that interexchange carriers that lack market power could successfully charge rates, or impose terms and conditions, for interstate, domestic, interexchange services in ways that violate Sections 201 and 202 of the Communications Act, and that such carriers will generally provide rate and service information to consumers to preserve or improve their competitive position in the market. We recognize, however, that in competitive markets carriers would not necessarily maintain geographically averaged and integrated rates for interstate, domestic, interexchange services as required by Section 254(g). Because the public should have the ability to bring violations of the geographic rate averaging and rate integration requirements of the 1996 Act to our attention, we believe it is appropriate to require carriers to make available to the public the information that is necessary for the public to determine whether a carrier is adhering to the geographic rate averaging and rate integration requirements of Section 254(g). Accordingly, we will require nondominant interexchange carriers to make information on current rates, terms, and conditions for all of their interstate, domestic, interexchange services available to the public in an easy to understand format and in a timely manner. (A nondominant interexchange carrier must make available to any member of the public such information about all of that carrier's interstate, domestic, interexchange services.) We note that, by adopting this requirement, we do not intend to require carriers to disclose more information than is currently provided in tariffs, in particular in contract tariffs.

85. The requirement that nondominant interexchange carriers make available to the public information concerning the current rates, terms and conditions for all of their interstate, domestic, interexchange services also will promote the public interest by making it easier for consumers, including resellers, to compare carriers' service offerings. While nondominant interexchange carriers will generally provide rate and service information to consumers in order to attract and retain customers, some consumers may find it difficult to determine the particular service plans that are most appropriate, and least costly, for them, based on their calling patterns, because of the wide array of calling plans offered by the scores of carriers. Businesses and consumer organizations that analyze and compare the rates and services of interexchange carriers perform a valuable function in assisting consumers to judge the specific carriers' rates and service plans that are best suited to their individual needs. The foregoing requirement will ensure that such businesses, many of which are small businesses, continue to have access to the information they need to provide their services.

86. In order to minimize the burden on nondominant interexchange carriers of complying with this requirement, we will not require nondominant interexchange carriers to make rate and service information available to the public in any particular format, or at any particular location. We reject the suggestion that we should require nondominant interexchange carriers to provide information on their interstate, domestic, interexchange services at a central clearinghouse or on-line. We find that mandating such a requirement would be unduly burdensome at this time. Rather, we will require only that a carrier make such information available to the public in at least one location during regular business hours. We will also require carriers to inform the public that this information is available when responding to consumer inquiries or complaints, and to specify the manner in which the consumer may obtain the information. In addition, because we are simply requiring carriers to make information available to the public, we need not address AT&T's argument that requiring nondominant interexchange carriers to make price and service information available on-line or at a central clearinghouse is a filing requirement within the meaning of Section 203. (Although we do not require carriers to make such information available to the public at more than one location, we encourage carriers to consider ways to make such information more widely available, for example, posting such information on-line, mailing relevant information to consumers, or responding to inquiries over the telephone.)

87. Finally, we adopt the tentative conclusion in the *NPRM* that we should require nondominant interexchange carriers to maintain price and service information regarding all of their interstate, domestic, interexchange service offerings, that they can submit to the Commission upon request. We believe it is appropriate that this information should include the information that carriers provide to the public as required above, as well as documents supporting the rates, terms, and conditions of the carriers' interstate, domestic, interexchange offerings. We note that we will not require carriers to make such supporting documentation available to the public. We also find that it is appropriate to require nondominant

interexchange carriers to retain the foregoing records for a period of at least two years and six months following the date the carrier ceases to provide services on such rates, terms and conditions, in order to afford the Commission sufficient time to notify a carrier of the filing of a complaint, which generally must be commenced within two years from the time the cause of action accrues. We note that, in the event a complaint is filed against a carrier, we will require the carrier to retain documents relating to the complaint until the complaint is resolved. We will also require nondominant interexchange carriers to file with the Commission, and update as necessary, the name, address, and telephone number of the individual, or individuals, designated by the carrier to respond to Commission inquiries and requests for documents. We will further require that nondominant interexchange carriers maintain the foregoing records in a manner that allows carriers to produce such records within ten business days of receipt of a Commission request. We conclude that the availability of such records will enable the Commission to meet its statutory duty of ensuring that such carriers' rates, terms, and conditions for service are just, reasonable, and not unreasonably discriminatory, and that these carriers comply with the geographic rate averaging and rate integration requirements of the 1996 Act. In addition, maintenance of such records will enable the Commission to investigate and resolve complaints.

D. Transition

i. Comments

88. Several commenters suggest that if the Commission were to adopt the complete detariffing proposal, it should also implement an appropriate transition period to afford nondominant interexchange carriers time to adapt their operations to a detariffed regime. Ad Hoc Users and API suggest that we adopt a six-month transition period. Eastern Tel, AT&T, and LDDS recommend a period of at least one year, and LCI suggests a phase-in period of 18–24 months. In addition, AT&T urges the Commission to ''make clear that the terms of individual carrier/customer deals currently on file at the Commission stay on file and remain unchanged by a decision to prohibit the filing of tariffs.'' Ad Hoc Users and API, on the other hand, urge the Commission to prevent carriers from filing tariffs that supersede existing contracts during the transition period. API further recommends that during the transition period, carriers should not be permitted to require that the terms of existing pricing arrangements be extended as a condition for negotiating contracts to replace existing tariffs. Finally, Eastern Tel requests the Commission to work with industry to develop a standard contract for telecommunications services, similar to the form contracts used in the real estate industry, that address such issues as the collection procedures that can be utilized.

ii. Discussion

89. We agree that we should allow nondominant interexchange carriers an appropriate transition period to adjust to detariffing. We conclude that a nine-month period is sufficient to provide for an orderly transition. We believe that this transition period will afford carriers sufficient time to adjust to detariffing. We do not believe that a more extended period is needed for nondominant interexchange carriers to adjust their operations. Nondominant interexchange carriers are not required to negotiate a new contract with each customer. Nondominant interexchange carriers may utilize various methods to establish legal relationships with customers in the absence of tariffs, including, for example, the use of short standard agreements. We therefore order all nondominant interexchange carriers to cancel their tariffs for interstate, domestic, interexchange services on file with the Commission within nine months of the effective date of this Order and not to file any such tariffs thereafter. We note that the effective date of this Order (*i.e.*, the date the rules and requirements promulgated by this Order will become effective) will be 30 days from the date of publication of this Order in the Federal Register.

90. Nondominant interexchange carriers may cancel their tariffs for interstate, domestic, interexchange services at any time during the nine-month period. Pending such cancellation, the Commission will accept new tariffs and revisions to the carrier's tariffs for mass market interstate, domestic, interexchange services. We believe that it is appropriate to allow nondominant interexchange carriers to revise their tariffs for mass market interstate, domestic, interexchange services on file with the Commission during the nine-month transition period in order to respond to changes in the market. However, in order to preserve the legitimate business expectations of customers taking service pursuant to long-term service arrangements, and to limit the ability of carriers to unilaterally alter or abrogate such arrangements by invoking the filed rate doctrine, the Commission will not accept new tariffs, or revisions to carriers' existing tariffs, for long-term service arrangements (such as contract tariffs, AT&T's Tariff 12 options, MCI's special customer arrangements, and Sprint's custom network service arrangements) during the transition period. We recognize that many such long-term service arrangements incorporate by reference mass market tariffs. By precluding carriers during the transition period from filing tariffs or revisions to tariffs for long-term service arrangements, we do not intend to limit carriers' ability to file tariffs and tariff revisions for mass market services.

91. Carriers that have on file with the Commission ''mixed'' tariff offerings that contain services subject to detariffing pursuant to this Order, may comply with this Order either by: (1) Cancelling the entire tariff and refiling a new tariff for only those services subject to tariff filing requirements; or (2) issuing revised pages cancelling the material in the tariffs that pertain to those services subject to forbearance. A ''mixed'' tariff offering is a tariff that includes services for which the carrier is subject to different tariff filing requirements. One example of a ''mixed'' tariff offering would be a tariff that contains interstate, domestic, interexchange services for which the carrier is nondominant and therefore prior to the effectiveness of this Order was subject to a one-day tariff filing requirement, as well as international services for which the carrier is nondominant and therefore subject to a one-day tariff filing requirement. Another example would occur where a carrier is dominant for certain services and nondominant for others and includes both types of services in one tariff. As discussed below in section II.E., we determine that a carrier that has mixed tariff offerings that include interstate, domestic, interexchange services for which the carrier is nondominant, as well as international services for which the carrier is nondominant, must continue to tariff the international portions of such bundled or mixed tariff offerings. Accordingly, such a carrier must comply with this requirement. This requirement also applies to a carrier that has other types of mixed tariff offerings that are affected by this Order, such as where the carrier offers in one tariff interstate, domestic, interexchange services for which it is nondominant with other services for which the carrier is dominant.

92. We note that, while complete detariffing will change the legal

framework for long-term service arrangements, we do not intend by our actions in this Order to disturb existing contractual or other long-term arrangements. Accordingly, our detariffing policy should not be interpreted to allow parties to alter or abrogate the terms of long-term arrangements currently on file with the Commission. Because we have determined that our action here does not entitle parties to a contract-based, or other long-term, service arrangement to take a ''fresh look'' at such arrangements, we need not address API's suggestion that we prohibit nondominant interexchange carriers from demanding that the terms of existing pricing arrangements be extended beyond their currently applicable terms.

93. Finally, we decline to follow Eastern Tel's suggestion that the Commission work with industry during the transition period to establish a standard contract for telecommunications services. As noted above, we believe that nondominant interexchange carriers may use various methods to provide service to their customers. We find that it would be more consistent with the pro-competitive and deregulatory objectives of the 1996 Act to allow carriers and customers freely to determine the most efficient methods for providing interexchange services without tariffs.

E. Tariff Filing Requirements for the International Portion of Bundled Domestic and International Services

i. Background

94. A number of nondominant interexchange carriers currently file bundled tariffs that include both interstate, domestic, interexchange services and international services. In the *NPRM*, the Commission sought comment on whether it should forbear from requiring nondominant interexchange carriers to file tariffs for the international portions of bundled domestic and international service offerings if the Commission forbears from requiring such carriers to file tariffs for their domestic services. The Commission noted that it was reserving for another day, in a separate proceeding, the broader question of whether it should consider generally forbearing from requiring tariffs for international services provided by nondominant carriers.

ii. Comments

95. Several commenters support detariffing the international portions of bundled domestic and international services offered by nondominant interexchange carriers. Ad Hoc Users, API and AT&T argue that different tariff filing requirements for the domestic and international portions of bundled offerings would require the artificial partition of unified service arrangements, which would impose substantial costs on both customers and carriers. Ad Hoc Users also contends that different tariff rules would lead to separate minimum revenue requirements for domestic and international services. API and the Television Networks argue that international services offered by nondominant carriers should be detariffed whether or not the international services are bundled with domestic services.

96. Other parties argue that the Commission should not detariff international portions of bundled offerings until nondominant international carriers are relieved generally of tariff filing requirements. MCI expressed concern that, if the Commission detariffed the international portion of bundled or ''mixed'' tariff offerings, AT&T, which was regulated as dominant in international markets when comments in this proceeding were due, would be freed of tariff regulation in connection with its '''mixed' international offerings.''

97. AMSC, which provides mobile telecommunications services using satellites that cover the continental United States, Hawaii, Alaska, Puerto Rico, and the U.S. Virgin Islands, as well as adjacent international waters and northern parts of South America, urges the Commission to detariff the international portions of the offerings of nondominant CMRS providers, including its own services. The Commission detariffed AMSC's domestic services two years ago when it adopted mandatory detariffing for CMRS providers. AMSC argues that there is no rationale for maintenance of a tariff filing requirement for the international services of AMSC or other CMRS providers. In addition, AMSC argues that because it offers a mobile service via satellite, it cannot determine whether a call originates in a domestic or international area and that most of its international service is provided to users in international waters.

iii. Discussion

98. In the *NPRM*, the Commission indicated that it would consider in a separate proceeding the question of whether it should generally forbear from requiring tariffs for international services provided by nondominant carriers, but it sought comment on whether it should forbear from requiring nondominant interexchange carriers to file tariffs for the international portions of bundled domestic and international service offerings. There is not sufficient evidence in the record to make findings that each of the statutory criteria are met to forbear from requiring nondominant interexchange carriers to file tariffs for the international portions of bundled domestic and international service offerings. We therefore believe that detariffing the international portions of bundled domestic and international service offerings would be better addressed as part of a separate proceeding in which the Commission can further examine the state of competition in the international market. Accordingly, we will require nondominant interexchange carriers to continue to file tariffs for the international portions of bundled domestic and international service offerings until we find that the statutory criteria are met for international services provided by nondominant carriers. A nondominant carrier with bundled domestic and international services may comply with this Order either by cancelling its entire tariff and refiling a new tariff only for the international portions of its service offerings or by issuing revised pages that cancel the material in its tariffs which pertains to those services subject to forbearance. Because we will require nondominant interexchange carriers to continue to file tariffs for international services, we need not address MCI's concern that dominant international carriers might be freed from tariff requirements for the international portions of bundled domestic and international services.

99. Our decision here will not impose substantial administrative expenses on carriers or customers. In addition, to respond to concerns about the cost of partitioning bundled offerings, we are modifying our rules to permit nondominant interexchange carriers to cross reference detariffed interstate, domestic, interexchange service offerings in their tariffs for international services for purposes of calculating discounts and minimum revenue requirements.

100. We similarly find that there is insufficient record evidence in this proceeding to detariff the international portions of CMRS services, or to address AMSC's concerns with regard to its specific services at this time.

F. Effect of Forbearance on AT&T's Commitments

i. Background

101. In the *AT&T Reclassification* proceeding, AT&T made certain voluntary commitments that AT&T stated were intended to serve as transitional arrangements to address concerns expressed by parties about possible adverse effects of reclassifying AT&T. These commitments concerned: service to low-income and other customers; analog private line and 800 directory assistance services; service to and from the State of Alaska and other regions subject to the Commission's rate integration policy; geographic rate averaging; changes to contract tariffs that adversely affect existing customers; and dispute resolution procedures for reseller customers. In the *AT&T Reclassification Order,* the Commission accepted AT&T's commitments and ordered AT&T to comply with those commitments.

102. In the *NPRM,* the Commission sought comment on the effects of the Commission's complete detariffing proposal on certain of AT&T's commitments. Specifically, AT&T committed, for a period of three years, to limit any price increases for interstate analog private line and 800 directory assistance services to a maximum increase in any year of no more than the increase in the consumer price index. AT&T also committed, for a period of three years, to file tariff changes increasing the prices of these services on not less than five business days' notice, and to identify clearly such tariff transmittals as affecting the provisions of this commitment. In the *NPRM,* the Commission tentatively concluded that AT&T should remain subject to these commitments for the specified term of the commitments. The Commission therefore tentatively concluded that if we were to adopt detariffing, AT&T should be required to continue to file tariffs for these services for the term of its commitments.

103. In addition, AT&T voluntarily committed, for a period of three years, to offer two optional calling plans designed to mitigate the impact of future increases in basic schedule or residential rates. The first plan is targeted to low-income customers, and the second is targeted to low-volume consumers, but is generally available to all residential customers. Moreover, AT&T agreed to file on not less than five business days' notice tariffs changing the structure of these plans or significantly increasing the cost of its basic residential service.

ii. Comments

104. The Pennsylvania PUC contends that AT&T should remain subject to all of its voluntary commitments as a safeguard, because AT&T has only been classified as a nondominant interexchange carrier for a short period of time. The Florida PSC suggests that AT&T should remain subject to its three-year commitment to offer calling plans intended for low-income and low-volume consumers in order to eliminate concerns about rate increases for basic long-distance rates. In contrast, several interexchange carriers contend that AT&T should not be bound by any commitments that do not apply equally to all nondominant interstate, interexchange carriers.

105. AT&T states that it will abide by its commitments concerning unilateral changes to contract tariffs, but argues that it should not be subject to any additional burdens regarding contract tariffs that are not imposed on other nondominant carriers. AT&T did not address its other commitments in its comments in this proceeding.

iii. Discussion

106. We conclude that we should adopt the tentative conclusion in the *NPRM* that AT&T should continue to comply with its commitments relating to 800 directory assistance and analog private line services. In the *AT&T Reclassification Order,* the Commission acknowledged that there was evidence in the record that AT&T may have the ability to control prices for 800 directory assistance service and analog private line services, but also noted that these services generate *de minimis* revenues when compared to total industry revenues. The Commission stated, therefore, that the evidence regarding AT&T's ability to control prices for these specific services did not mean that AT&T has market power in the interstate, domestic, interexchange market as a whole. The Commission further stated that it believed that ''AT&T's voluntary commitments will effectively restrain AT&T's exercise of any market power it may have with respect to these narrow service segments.'' In light of the Commission's conclusions in the *AT&T Reclassification Order,* and AT&T's statements that its commitments serve as a transitional mechanism, we find that detariffing of analog private line and 800 directory assistance services at this time is not in the public interest, and would not meet the statutory forbearance criteria. We, therefore, require AT&T to continue to file tariffs for these services in accordance with, and for the specified term of, its commitments. AT&T will be required to cancel its tariffs for these services within nine months of the end of its three-year commitment, consistent with the requirements we have adopted for other nondominant interexchange carriers.

107. AT&T has not argued in this proceeding that it should be relieved of its commitment in the *AT&T Reclassification Order* to offer optional rate plans targeted at low-income and other residential customers. Accordingly, we require that AT&T continue to offer an optional calling plan targeted to low-income customers and a plan targeted to low-volume customers, but which is generally available to all residential customers, until the expiration of its original commitment in the fall of 1998. In addition, we will continue to monitor AT&T's compliance with its commitments to implement a consumer outreach program to notify its customers of the availability of such plans, and to offer for three years an interstate optional calling plan that will provide residential customers a postalized rate of no more than $0.35 per minute for peak calling and $0.21 per minute for off-peak.

108. We note that our decision to preclude nondominant interexchange carriers from filing tariffs for interstate, domestic, interexchange services would effectively eliminate AT&T's commitments to file changes to such optional plans and to file certain changes to its average residential interstate direct dial services on not less than five business days' notice. (AT&T committed to file changes to its average residential interstate direct dial services on not less than five business days' notice if those changes, (1) increase rates more than 20% for customers making more than $2.50 in calls per month, or (2) increase average monthly charges more than $.50 per month for customers making less than $2.50 in calls per month, and to clearly identify such tariff transmittals as affecting the provisions of this commitment. Additionally, AT&T committed to file tariff changes to its optional calling plans on not less than five business days' notice, and only in the event of a significant change in the structure of the interexchange industry (including a reprice or restructure of access rates). AT&T also committed to identify such tariff transmittals as affecting the provisions of this commitment.) Accordingly, consistent with AT&T's intent that its commitments serve as a transitional arrangement, we require AT&T, for the period of its

commitments, to notify consumers of changes to such plans, or of changes to its average residential interstate direct dial services, under the circumstances specified in the *AT&T Reclassification Order*, on not less than five business days' notice.

109. Finally, we conclude that actions in this proceeding do not affect AT&T's other commitments. In our *Geographic Rate Averaging Order*, we found that the rules adopted in that proceeding would require AT&T to provide interexchange service at geographically averaged and integrated rates. We therefore released AT&T from its commitments relating to rate integration and geographic rate averaging. We expressly did not release AT&T from its more specific commitment to comply with the Commission's orders associated with AT&T's purchase of Alascom. We believe that detariffing would not affect these commitments. AT&T's commitment regarding dispute resolution procedures for resellers has no expiration date, and is also unaffected by detariffing. Finally, AT&T's commitments concerning changes to contract tariffs, quarterly performance reports on reseller order processing, and providing an ombudsman to resolve reseller complaints, expire by their own terms in the fall of 1996.

G. Additional Forbearance Issues

110. The Secretary of Defense raises two concerns regarding the National Security and Emergency Preparedness (NSEP) system. Specifically, two services, Telecommunications Services Priority (TSP) and Government Emergency Telecommunications Service (GETS) are now provided by nondominant interexchange carriers pursuant to tariffs. Under tariffs filed to provide TSP service, circuits with NSEP designations receive priority restoral and provisioning. The Secretary of Defense argues that TSP tariffs not only establish a price for the service, but also serve as a clear sign that a carrier understands and accepts the responsibilities imposed by the Commission's TSP rules. The Secretary of Defense also expressly acknowledges, however, that TSP service could be provided on the basis of negotiated contracts. Consequently, we find no basis in the record for excluding TSP services from the requirements of this Order. The Secretary of Defense expresses concern, however, that carriers may not be aware of the TSP rules. While we concur with the Secretary of Defense that carriers must understand their responsibilities under our TSP rules, and that carriers should price such services, before an emergency occurs, we do not believe that tariffs are necessary to fulfill these functions. Rather, we conclude that carriers will be adequately informed of our TSP rules and regulations when contracts for TSP services are negotiated. In addition, we reaffirm our commitment to enforce the TSP rules and regulations, and expect that officials responsible for the NSEP TSP System will report any violations of these rules to us.

111. The second issue raised by the Secretary of Defense concerns GETS, which provides NSEP-authorized personnel priority call completion over the public switched network. The Secretary of Defense seeks assurance that GETS would not be deemed to constitute unreasonable discrimination in violation of Section 202(a) of the Communications Act. The Secretary of Defense states that the Office of the Manager of the National Communications System wrote to the Commission on November 29, 1993, asking for a declaratory ruling that GETS does not violate Section 202(a). The Commission later determined that the request for a declaratory ruling was moot, because ''[l]awful tariffs implementing [GETS] have gone into effect.'' The Secretary of Defense is concerned that the permissibility of GETS is dependent on filed tariffs. We conclude, however, that our decision to forbear does not affect the nondiscrimination provisions of Section 202(a). Thus, to the extent that GETS did not constitute unreasonable discrimination under tariffs, the service will not violate Section 202(a) following detariffing.

112. APCC urges the Commission not to take any action in this proceeding that may be inconsistent with or jeopardize the Commission's ongoing inquiry into operator services. In the *NPRM* in this proceeding, the Commission indicated that it would consider operator services in another proceeding and therefore expressly stated that it was not addressing the issue of forbearance from applying Section 226 of the Communications Act, which requires operator service providers (OSP) to file informational tariffs. In the *Nondominant Filing Order*, the Commission, in order to minimize tariff filing burdens on carriers, permitted carriers that provide both operator services and other services to file one single tariff under Section 203, rather than separate tariffs under Sections 203 and 226, as long as the tariff meets the requirements of both sections. As a result, the largest nondominant interexchange carriers, or their affiliates, have filed tariffs for interstate and international operator services pursuant to Section 203 rather than Section 226. Our decision to forbear from applying Section 203 tariff filing requirements to nondominant interexchange carriers for interstate, domestic, interexchange services does not relieve such carriers of the obligation to file informational tariffs pursuant to Section 226. Accordingly, any carrier that has included tariff information concerning interstate and international operator services in a Section 203 tariff must refile an informational tariff for such services, consistent with Section 226, upon cancelling such Section 203 tariff. Thus, our actions in this proceeding will not dictate the outcome of the Commission's inquiry into operator services.

III. Bundling of Customer Premises Equipment

113. In the *Computer II* proceeding, the Commission adopted a rule requiring all common carriers to sell or lease CPE separate and apart from such carriers' regulated communications services, and to offer CPE solely on a non-tariffed basis. (Section 64.702(e) of our rules provides: ''Except as otherwise ordered by the Commission, after March 1, 1982, the carrier provision of customer-premises equipment used in conjunction with the interstate telecommunications network shall be separate and distinct from provision of common carrier communications services and not offered on a tariffed basis.'') Carriers previously had provided CPE to customers as part of a bundled package of services. The Commission required carriers to separate the provision of CPE from the provision of transmission services, because it found that carriers' continued bundling of telecommunications services with CPE could force customers to purchase unwanted CPE in order to obtain necessary transmission services, thus restricting customer choice and retarding the development of a competitive CPE market. The Commission acknowledged, however, that ''[i]f the markets for components of [a] commodity bundle are workably competitive, bundling may present no major societal problems so long as the consumer is not deceived concerning the content and quality of the bundle.''

114. In the *NPRM*, the Commission tentatively concluded that, in light of the development of substantial competition in the markets for CPE and interstate long-distance services, it was unlikely that nondominant interexchange carriers could engage in the type of anticompetitive conduct that

led the Commission to prohibit the bundling of CPE with the provision, *inter alia*, of interstate, interexchange services. The Commission also tentatively concluded that allowing nondominant interexchange carriers to bundle CPE with interstate, interexchange services would promote competition by allowing such carriers to create attractive service/equipment packages. The Commission therefore proposed to amend Section 64.702(e) of the Commission's rules to allow nondominant interexchange carriers to bundle CPE with interstate, interexchange services. The Commission sought comment on this proposal, and on the effect that the proposed amendment of Section 64.702(e) would have on the Commission's other policies or rules. The Commission also sought comment on: (1) Whether interexchange carriers should be required to offer separately, unbundled interstate, interexchange services on a nondiscriminatory basis if they are permitted to bundle CPE with the provision of interstate, interexchange services and (2) whether and how the anticipated entry of local exchange carriers, in particular the BOCs, into the market for interstate, interexchange services should affect the Commission's analysis.

115. A number of commenters addressing this issue support the Commission's proposal to amend Section 64.702(e) to allow nondominant interexchange carriers to bundle CPE with the provision of interstate, interexchange services, while other parties oppose such an amendment. Many commenters further argue that if the Commission permits bundling of CPE with interstate, interexchange services, it should require nondominant interexchange carriers to continue to offer unbundled interstate, interexchange services separately.

116. In its comments, AT&T strongly supported the Commission's proposal, but suggested that it did not go far enough, and urged the Commission also to eliminate restrictions on single-priced, bundled packages of enhanced and interexchange services offered by nondominant interexchange carriers. These restrictions (which are not codified in the Commission's rules) were adopted by the Commission in the *Computer II* proceeding. AT&T maintains that such restrictions are no longer justified, in light of the Commission's findings regarding the competitiveness of the interexchange market, and because the enhanced services market is even more ''robust, competitive and diverse'' than the CPE market. AT&T concludes that ''the rationale underlying the Commission's proposal to eliminate the bundling restrictions for CPE and interexchange services applies equally to enhanced services,'' and it therefore urges the Commission to institute a supplemental notice of proposed rulemaking ''to eliminate the restrictions against the bundling of interexchange services and enhanced services by nondominant interexchange carriers.'' (In its comments, MCI assumed that the proposed amendment of Section 64.702(e) would allow bundling of transmission with enhanced services as well as CPE or ''any other product or service that the carrier chooses to include in a bundle.'')

117. ITAA opposes AT&T's request on the grounds that enhanced service providers (''ESPs'') require access to unbundled network services at competitive prices and on nondiscriminatory terms in order to succeed. ITAA claims that there are only three nationwide facilities-based carriers, which ITAA contends collectively control the bulk of the interexchange market, from which ESPs can purchase the ubiquitous transmission services they require. ITAA maintains that AT&T's proposal would chill the growth of the enhanced services market by making ESPs vulnerable to discrimination by carriers in favor of their own enhanced services.

118. We conclude that, at this time, we should defer action on our earlier proposal to eliminate the CPE unbundling rule. We find that AT&T's request presents issues similar to those raised in the *NPRM* relating to the bundling of CPE with interstate, interexchange services by nondominant interexchange carriers. AT&T's request, however, also raises issues that have not been addressed in the record before us. Because we believe it is appropriate to consider the Commission's prohibitions against bundling CPE and enhanced services with interstate, interexchange services together, in a single, consolidated proceeding, we decline to act on the Commission's proposal in the *NPRM* to amend Section 64.702(e) of the Commission's rules to allow nondominant interexchange carriers to bundle CPE with interstate, interexchange services at this time. We intend to issue a further notice of proposed rulemaking that will address the continued applicability of the prohibitions against the bundling of both CPE and enhanced services with interstate, interexchange services by nondominant interexchange carriers.

IV. Other Issues

A. Pricing Issues

i. Background

119. In the *AT&T Reclassification Order*, the Commission found the evidence in the record regarding the existence of alleged tacit price coordination among interexchange carriers for basic residential services, or residential services generally to be inconclusive and conflicting. The Commission concluded that, if there were tacit price coordination in the interexchange market, the problem was generic to the industry and would be better addressed by removing regulatory requirements that may have facilitated such conduct. In the NPRM, the Commission noted that its reclassification of AT&T removed one such regulatory requirement—the longer advance notice period applicable only to AT&T. The Commission also observed that the 1996 Act would provide the best solution to the problem of tacit price coordination, to the extent that it exists currently, by allowing for competitive entry in the interstate interexchange market by the facilities-based BOCs. Moreover, the Commission tentatively concluded that complete detariffing of the interstate, domestic, interexchange services of nondominant interexchange carriers would discourage price coordination by eliminating carriers' ability to ascertain their competitors' interstate rates and service offerings from publicly-available tariffs filed with the Commission. The Commission sought comment on these issues.

ii. Comments

120. BOCs and other commenters argue that there is substantial evidence of tacit price coordination by the largest interexchange carriers, which the BOCs claim have engaged in price signaling and increased basic rates in lock-step, despite decreasing costs. Others, including a number of interexchange carriers, contend that there is no evidence of tacit price coordination, and that interexchange carriers have raised their rates for basic services because their rates were artificially kept below cost by price caps.

121. Several commenters argue that the best remedy for price coordination, to the extent it exists, is competitive entry in the interstate, domestic, interexchange market. Other commenters argue that because the BOCs have bottleneck control over access facilities, premature BOC entry may impede competition, because the BOCs will have unfair advantages over

their competitors, forcing smaller carriers from the market.

122. Some commenters suggest that the Commission's proposal to adopt complete detariffing will impede price coordination because tariffs enable carriers to ascertain their competitors' rates, terms and conditions for service at one, central location. Others argue that complete detariffing will have little effect on price coordination because carriers will be able to keep track of their competitors' rates through other methods, such as through competitors' advertising and because the current streamlined tariff filing requirements prevent price signaling.

iii. Discussion

123. We find the evidence in the record regarding tacit price collusion to be inconclusive. While data presented by Bell South and Bell Atlantic could be consistent with the existence of tacit collusion among interexchange carriers, these data are also consistent with competition among interexchange carriers. For example, the fact that increases in AT&T's basic rates have been matched almost immediately by MCI and Sprint is consistent with a theory of evolving competition in this marketplace. Between 1991 and 1995, while interexchange carriers were increasing basic rates, they were also lowering prices to higher volume customers through increases in discounts offered via discount plans. A Commission staff study of best available rates from AT&T to callers with different calling patterns shows that between 1991 and 1995, rates for customers with long-distance bills exceeding $10.00 per month have decreased by between 15 and 28 percent. By contrast, the best prices available to customers with less than $10.00 per month of calls have risen about 16 percent since 1991. (These prices are based on the basic rates, because no discount plans were generally available for those customers making less than $10.00 per month in calls.) This pattern is consistent with the view that, over time, interexchange carriers began to compete more vigorously for high volume users than for low volume users. Such a market strategy would tend to result in lower prices for higher volume, more price sensitive customers, and higher prices for lower volume, less price sensitive customers.

124. Other data not discussed by BellSouth also are more suggestive of competition than collusion among interexchange carriers. For example, in 1994 nearly 30 million customers changed their presubscribed interexchange carriers, which is indicative of competition among interexchange carriers for customers. In addition, between 1989 and 1992, advertising expenditures by all interexchange carriers increased 85 percent, to 1.6 billion dollars, which is further evidence of increased competition among interexchange carriers and not tacit collusion.

125. Based on the record in this proceeding, we find the evidence of tacit price coordination to be inconclusive and conflicting. In addition, we conclude that the detariffing rules we adopt today, together with additional competitive entry consistent with the provisions of the 1996 Act, provides the best solution to tacit price coordination to the extent it exists. Regarding the Alabama PSC's concern that the BOCs will have unfair advantages over their competitors and thereby will force small carriers from the market, we note that the 1996 Act provides safeguards to prevent the BOCs from engaging in anticompetitive conduct to the detriment of long-distance competitors, some of which are small nondominant interexchange carriers. We will address implementation of these safeguards in upcoming orders.

B. Contract Tariff Issues

126. In the *AT&T Reclassification* proceeding, commenters raised certain issues regarding contract tariffs. The Commission deferred consideration of those issues to this proceeding because it found that those issues applied to all interexchange carriers and were unrelated to the determination of whether AT&T possessed market power. In the *NPRM*, the Commission noted that those issues would largely be mooted if, as proposed in the *NPRM*, the Commission were to adopt a complete detariffing policy. The Commission nevertheless sought comment on those and other issues, because such issues would remain relevant if we determined not to forbear from requiring nondominant interexchange carriers to file tariffs.

127. MCI and GTE agree that the tariff-related issues raised in the *NPRM* would be largely moot if the Commission adopts complete detariffing. AT&T argues, however, that one of these issues, application of the ''substantial cause'' test would not be moot following adoption of a complete detariffing policy, because the substantial cause test is an integral part of the ''just and reasonable'' standard in section 201(b). AT&T argues that because the Commission is not proposing to forbear from applying Section 201(b), the ''substantial cause'' test would still apply even if the Commission adopts a complete detariffing policy. No other party commented on whether these issues would remain relevant if we were to adopt a complete detariffing policy.

128. Because we are implementing complete detariffing, we conclude that the contract tariff-related issues raised in the *NPRM* are largely moot with respect to interstate, domestic, interexchange services offered by nondominant interexchange carriers. We reject AT&T's argument that the substantial cause test would continue to apply regardless of whether we order complete detariffing. In the *RCA Americom Decisions*, the Commission recognized that a dominant carrier's proposal ''to modify extensively a long term service tariff may present significant issues of reasonableness under Section 201(b) that are not ordinarily raised in other tariff filings.'' Accordingly, the Commission held that a carrier's unilateral tariff revisions that alter material terms and conditions of a long-term service tariff will be considered reasonable only if the carrier can show ''substantial cause'' for the revision. While we recognize that the Commission may be called upon to examine the reasonableness of a nondominant interexchange carrier's rates, terms and conditions for interstate, domestic, interexchange services, for example, in the context of a Section 208 complaint proceeding, we find that following complete detariffing, we will no longer have to assess the reasonableness of modifications by such carriers to their tariffs for interstate, domestic, interexchange services. Thus, although the substantial cause test may continue to apply in other contexts, the test will no longer apply to unilateral tariff modifications by nondominant interexchange carriers regarding their interstate, domestic, interexchange services.

V. Final Regulatory Flexibility Analysis

129. As required by Section 603 of the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM*. The Commission sought written public comments on the proposals in the *NPRM*, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996).

A. Need for and Objectives of the Proposed Rules

130. In the 1996 Act, Congress sought to establish ''a pro-competitive, de-regulatory national policy framework'' for the United States telecommunications industry. One of the principal goals of the telephony provisions of the 1996 Act is promoting increased competition in all telecommunications markets, including those that are already open to competition, particularly long-distance services markets. Integral to this effort to foster competition is the requirement that the Commission forbear from applying any regulation or any provision of the Communications Act if the Commission makes certain specified findings.

131. In this Order, the Commission proposes to exercise its forbearance authority under Section 10 of the Communications Act to detariff completely the interstate, domestic, interexchange services of nondominant interexchange carriers. In addition, the Commission promulgates rules in this Order that will require nondominant interexchange carriers to make available to the public information on the rates, terms, and conditions for all of their interstate, domestic, interexchange services in order to aid enforcement of Section 254(g) of the Communications Act. The objective of the rules adopted in this Order is to implement as quickly and effectively as possible the national telecommunications policies embodied in the 1996 Act and to promote the development of competitive, deregulated markets envisioned by Congress. In doing so, we are mindful of the balance that Congress struck between this goal of bringing the benefits of competition to all consumers and its concern for the impact of the 1996 Act on small business entities.

132. In this Order, we also consider, but decline to act at this time on, the Commission's proposal in the *NPRM* to allow nondominant interexchange carriers to bundle CPE with interstate, interexchange telecommunications services. The Commission also raised issues in the *NPRM* relating to: market definition; separation requirements for nondominant treatment of local exchange carriers in their provision of certain interstate, interexchange services; and implementation of the rate averaging and rate integration requirements in new section 254(g) of the Communications Act. On August 7, 1996, the Commission issued a Report and Order implementing the rate averaging and rate integration requirements.

B. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

133. In the *NPRM*, the Commission performed an IRFA. In the IRFA, the Commission found that the rules it proposed to adopt in this proceeding may have an impact on small business entities as defined by section 601(3) of the RFA. In addition, the IRFA solicited comment on alternatives to the proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding.

i. Comments on the IRFA

134. No comments specifically address the Commission's initial regulatory flexibility analysis. Several parties, however, assert in their comments that the proposal to adopt complete detariffing would have an impact on small business entities. Several parties argue that tariffs send accurate economic signals and disseminate rate and service information so that nondominant interexchange carriers are able to price their services to compete with larger interexchange carriers. ACTA further argues that increased transaction costs in a detariffed environment—due to the need to establish a legal relationship with customers and notify them of any modifications—would be especially burdensome on small carriers that have fewer resources. In addition, Eastern Tel requests the Commission to work with industry, in particular small interexchange carriers, to develop a standard contract for telecommunications services, similar to the form contracts used in the real estate industry, that address such issues as the collection procedures that can be utilized. APCC, however, argues that forbearance from tariff filing requirements would eliminate a regulatory requirement that is especially burdensome on small carriers.

135. Several parties contend that complete detariffing would harm small business entities that are consumers of interstate, interexchange telecommunications services, because: (1) Small business customers require access to information contained in tariffs to obtain the best rates available; and (2) increased transaction costs would discourage nondominant interexchange carriers from serving certain market segments, including certain small business markets, thereby decreasing competitive choices for these small business customers.

136. TRA argues that detariffing would allow carriers to discriminate against resellers, many of which are small and mid-sized businesses. TRA claims that, as a result, the resale market will not survive. TRA claims that a vibrant resale market provides residential and small business customers with access to lower rates.

137. In addition, several small businesses that analyze tariff information for business and residential customers argue that they need such information to conduct their businesses.

ii. Discussion

138. We disagree with those commenters that argue that complete detariffing will harm small nondominant interexchange carriers. As discussed in section II, we find that not permitting nondominant interexchange carriers to file tariffs with respect to interstate, domestic, interexchange services will enhance competition among all providers of such services (regardless of size), promote competitive market conditions, and establish market conditions that more closely resemble an unregulated environment. We further find, as APCC notes, that filing tariffs imposes costs on carriers that attempt to make new service offerings. Our decision to adopt complete detariffing, therefore, should minimize regulatory burdens on all nondominant interexchange carriers, including small entities.

139. We recognize that complete detariffing may change significant aspects of the way in which nondominant interexchange carriers conduct their business. As discussed above, however, tariffs are not the only feasible way for carriers to establish legal relationships with their customers, nor will carriers necessarily need to negotiate contracts for service with each, individual customer. *See* para. 57. Carriers could, for example, issue short, standard contracts that contain their basic rates, terms and conditions for service. As discussed above, nondominant interexchange carriers that provide casual calling services have options other than tariffs by which they can establish legal relationships with casual callers, and pursuant to which such callers would be obligated to pay for the telecommunications services they use. *See* para. 58. We believe that the nine-month transition period established by this Order, will afford nondominant interexchange carriers sufficient time to develop efficient mechanisms to provide interstate, domestic, interexchange services in a detariffed environment. Moreover, parties that oppose complete detariffing have not shown that the business of providing interstate, domestic, interexchange services should be subject

to a regulatory regime that is not available to firms that compete in any other market in this country. We thus conclude that requiring nondominant interexchange carriers to withdraw their tariffs and conduct their business as other enterprises do will not impose undue burdens on these carriers. Moreover, we disagree with ACTA's argument that detariffing will disproportionately burden small interexchange carriers. While some of the increased administrative costs that carriers may initially incur as a result of detariffing are likely to be fixed (such as the cost of developing short, standard contracts), many such costs will vary based on the area or number of customers served by such carriers (*e.g.*, advertising expenditures, the cost of promotional mailings or billing inserts). Nonetheless, we find that, on balance, the pro-competitive effects of relieving nondominant interexchange carriers of the obligation to file tariffs for their interstate, domestic, interexchange services outweigh any potential increase in transactional or administrative costs resulting from the shift to a detariffed environment.

140. We are also unpersuaded by the argument that complete detariffing will harm small business entities that utilize telecommunications services. Requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services impedes competition by removing incentives for competitive price discounting, imposing costs on carriers that attempt to make new offerings, and preventing consumers from seeking out or obtaining service arrangements specifically tailored to their needs. As discussed above, complete detariffing will better protect consumers, many of which are small businesses, and will promote vigorous competition. *See* section II.B.2.b. As a result, we believe that complete detariffing will lead to lower prices for interstate, domestic, interexchange services, thereby benefitting all consumers, including small business ones. Moreover, because we do not agree that complete detariffing will substantially increase nondominant interexchange carriers' costs, we are unpersuaded that carriers will abandon segments of the market to the detriment of small business customers, as LDDS suggests.

141. We reject the suggestion that eliminating tariff filing requirements would impede competition by reducing information available to consumers and small nondominant interexchange carriers. As discussed above, we believe that nondominant interexchange carriers will make rate and service information, currently contained in tariffs, available to the public in a more user-friendly form in order to preserve their competitive position in the market, and as part of their contractual relationship with customers. *See* para. 25. Nevertheless, we acknowledge that, even in a competitive market, nondominant interexchange carriers might not provide complete information concerning all of their service offerings to all consumers, and that some consumers may not be able to determine which rate plan is most appropriate for them, based on their individual calling patterns. Accordingly, and in light of considerations regarding the enforcement of the 1996 Act's geographic rate averaging and rate integration requirements, we will require carriers to provide rate and service information to the public. *See* paras. 84–86. This obligation will ensure that all customers, many of which are small businesses, have access to such information.

142. Finally, as discussed above, we are not persuaded that the resale market will disappear in the absence of tariffs. *See* para. 27. Our decision to forbear from requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services does not affect such carriers' obligations under Sections 201 and 202 to charge rates, and to impose practices, classifications and regulations, that are just and reasonable and not unjustly or unreasonably discriminatory. In addition, as discussed above, we are requiring nondominant interexchange carriers to provide current rate and service information on their interstate, domestic, interexchange services to consumers, including resellers. *See* paras. 84–86. Thus, resellers will be able to determine whether nondominant interexchange carriers have imposed rates, practices, classifications or regulations that unreasonably discriminate against resellers, and to bring complaints, if necessary.

C. Description and Estimates of the Number of Small Entities to Which the Rule Will Apply

143. For the purposes of this Order, the RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees. We first discuss generally the total number of telephone companies falling within this SIC category. Then, we refine further those estimates and discuss the number of carriers falling within subcategories.

144. *Total Number of Telephone Companies Affected.* Many of the decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by SBA. The United States Bureau of the Census (''the Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1–123 (1995) (*1992 Census*). This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, operator service providers, pay telephone operators, personal communications service providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities, small interexchange carriers, or resellers of interexchange services, because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms that may be affected by this Order.

145. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. *1992 Census* at Firm Size 1–123. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons. 13 CFR § 121.201, Standard Industrial Classification (SIC) Code 4812. All but 26 of the 2,321 non-

radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in this Order.

146. *Interexchange Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of interexchange carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with Telecommunications Relay Services (TRS). According to our most recent data, 97 companies reported that they were engaged in the provision of interexchange services. Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data,* Table 21 (Average Total Telecommunications Revenue Reported by Class of Carrier) (February 1996). Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of interexchange carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 97 small entity interexchange carriers that may be affected by the decisions and rules adopted in this Order.

147. *Resellers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 206 companies reported that they were engaged in the resale of telephone services. Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data,* Table 21 (Average Total Telecommunications Revenue Reported by Class of Carrier) (February 1996). Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 206 small entity resellers that may be affected by the decisions and rules adopted in this Order.

148. In addition, the rules adopted in this Order may affect companies that analyze information contained in tariffs. The SBA has not developed a definition of small entities specifically applicable to companies that analyze tariff information. The closest applicable definition under SBA rules is for Information Retrieval Services (SIC Category 7375). The Census Bureau reports that, at the end of 1992, there were approximately 618 such firms classified as small entities. U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 2D, SIC Code 7375 (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration). This number contains a variety of different types of companies, only some of which analyze tariff information. We are unable at this time to estimate with greater precision the number of such companies and those that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 618 such small entity companies that may be affected by the decisions and rules adopted in this Order.

149. Finally, as discussed above, some commenters contend that the rules proposed in the *NPRM* would increase the cost of interstate, domestic, interexchange telecommunications services to small businesses. *See* para. 46. We assume that most, if not all, small businesses purchase interstate, domestic, interexchange telecommunications services. As a result, our rules in this Order would affect virtually all small business entities. SBA guidelines to the SBREFA state that about 99.7 percent of all firms are small and have fewer than 500 employees and less than $25 million in sales or assets. There are approximately 6.3 million establishments in the SBA database. A Guide to the Regulatory Flexibility Act, U.S. Small Business Administration, Washington D.C., at 14 (May 1996). The SBA data base does include nonprofit establishments, but it does not include governmental entities. SBREFA requires us to estimate the number of such entities with populations of less than 50,000 that would be affected by our new rules. There are 85,006 governmental entities in the nation. 1992 Census of Governments, Bureau of the Census, U.S. Department of Commerce. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000. 1992 Census of Governments, Bureau of the Census, U.S. Department of Commerce. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 96 percent, or 81,600, are small entities that would be affected by our rules.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

150. In this section of the FRFA, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities as a result of this Order. As a part of this discussion, we mention some of the types of skills that will be needed to meet the new requirements.

151. Nondominant interexchange carriers, including small nondominant interexchange carriers, will be required to cancel all of their tariffs for interstate, domestic, interexchange services on file with the Commission within nine months. As a result, nondominant interexchange carriers will need to establish legal relationships with their customers in an alternative way, for example, by issuing short, standard contracts that contain their basic rates, terms and conditions for service. This change in the manner of conducting their business may require the use of technical, operational, accounting, billing, and legal skills.

152. As discussed in section II.C, we are requiring nondominant interexchange carriers to make information on current rates, terms, and

conditions for all of their interstate, domestic, interexchange services available to the public in at least one location during regular business hours. We will also require carriers to inform the public that this information is available when responding to consumer inquiries or complaints and to specify the manner in which the consumer may obtain the information. We further require nondominant interexchange carriers to maintain, for a period of two years and six months, the information provided to the public, as well as documents supporting the rates, terms, and conditions for all of their interstate, domestic, interexchange offerings, that they can submit to the Commission upon request. Nondominant interexchange carriers will need to maintain the foregoing records in a manner that allows carriers to produce such records within ten business days of receipt of a Commission request. In addition, nondominant interexchange carriers will be required to file with the Commission, and update as necessary, the name, address, and telephone number of the individual, or individuals, designated by the carrier to respond to Commission inquiries and requests for documents. Compliance with these requests may require the use of accounting, billing, and legal skills.

153. We further require nondominant providers of interstate, domestic, interexchange telecommunications services to file annual certifications signed by an officer of the company under oath that the company is in compliance with its statutory geographic rate averaging and rate integration obligations. Compliance with these requests may require the use of accounting and legal skills.

E. Significant Alternatives and Steps Taken To Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent With Stated Objectives

154. In this section, we describe the steps taken to minimize the economic impact of our decisions on small entities and small incumbent LECs, including the significant alternatives considered and rejected. To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in preceding sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

155. We believe that our actions to adopt complete detariffing will facilitate the development of increased competition in the interstate, domestic, interexchange market, thereby benefitting all consumers, some of which are small business entities. Absent filed tariffs, the legal relationship between carriers and customers will much more closely resemble the legal relationship between service providers and customers in an unregulated environment. As set forth in section II.B above, we reject suggestions that we should permit carriers to voluntarily file tariffs. We believe that detariffing on a permissive basis would not definitively eliminate the possible invocation of the ''filed-rate'' doctrine and would create the risk of price signalling. We believe that only with complete detariffing can we definitively eliminate these possible anticompetitive practices and protect consumers, some of which are small business entities.

156. As discussed above, we also reject suggestions that we should limit our decision to forbear by differentiating among interstate, domestic, interexchange services, among nondominant interexchange carriers, or among types of information contained in tariffs for such services. *See* paras. 41, 42, 63. We do not believe that there is a sound basis for limiting forbearance to certain interstate, domestic, interexchange services, such as individually negotiated service arrangements. We find that the competitive benefits of not permitting nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services, discussed above, apply equally to all segments of the interstate, domestic, interexchange services market. *See* paras. 53, 54. Moreover, as discussed above, we reject the argument that detariffing mass market services offered to residential and small business customers will lead to substantially higher transactions costs. *See* para. 57. Similarly, we are not persuaded that the public interest benefits differ depending on the type of tariffed information that is at issue. The public interest benefit of removing carriers' ability to invoke the ''filed-rate'' doctrine applies equally with respect to terms and conditions as to rates. *See* para. 55. In addition, permitting or requiring large nondominant interexchange carriers to file tariffs would not eliminate the risk of tacit price coordination among such carriers, and would raise the possibility that such carriers' tariffed rates would become a price umbrella. Finally, we agree with AT&T that there is no basis to differentiate among nondominant interexchange carriers, because all such carriers are unable to exercise market power in the interstate, domestic, interexchange market.

157. In order to minimize the burden on nondominant interexchange carriers, and in particular small, nondominant interexchange carriers that may have fewer resources, we do not require nondominant interexchange carriers to make rate and service information available to the public in any particular format, or at any particular location. We reject the suggestion that we should require nondominant interexchange carriers to provide information on their interstate, domestic, interexchange services at a central clearinghouse or on-line, because we found that mandating such a requirement would be unduly burdensome at this time. Rather, we will require only that a carrier make such information available to the public in at least one location during regular business hours. Although we do not require carriers to make such information available to the public at more than one location, we encourage carriers to consider ways to make such information more widely available, for example, posting such information on-line, mailing relevant information to consumers, or responding to inquiries over the telephone.

158. The decision to impose disclosure requirements will also allow businesses, including small business entities, that audit and analyze information contained in tariffs to continue. Our decision not to require nondominant interexchange carriers to provide information on their interstate, domestic, interexchange services at a central clearinghouse or on-line may impose an additional collection cost on these businesses. We find, however, that mandating such a requirement would be unduly burdensome on nondominant interexchange carriers, including small nondominant interexchange carriers.

F. Report to Congress

159. The Commission shall send a copy of this FRFA, along with this Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

VI. Final Paperwork Reduction Analysis

160. As required by the Paperwork Reduction Act of 1995, Public Law No. 104–13, the *NPRM* invited the general public and the Office of Management and Budget (OMB) to comment on proposed changes to the Commission's information collection requirements contained in the *NPRM*. The changes to our information collection requirements proposed in the *NPRM* included: (1) The elimination of tariff filings by

nondominant interexchange carriers for interstate, domestic, interexchange telecommunications services; (2) the requirement that nondominant interexchange carriers maintain at their premises price and service information regarding their interstate, interexchange offerings that they can submit to the Commission upon request; (3) the requirement that providers of interexchange services file certifications with the Commission stating that they are in compliance with their statutory rate integration and geographic rate averaging obligations under Section 254(g) of the Communications Act; and (4) the requirement that interexchange carriers advertise the availability of discount rate plans throughout the entirety of their service areas.

161. On June 12, 1996, OMB approved all of the proposed changes to our information collection requirements in accordance with the Paperwork Reduction Act. *Notice of Office of Management and Budget Action,* OMB No. 3060–0704 (June 12, 1996). In approving the proposed changes, OMB ''strongly recommend[ed] that the [Commission] investigate potential mechanisms to provide consumers, State regulators, and other interested parties with some standardized pricing information,'' which ''could be provided as part of the certification process or could be made available to the public in other ways.''

162. In this Order, we adopt several of the changes to our information collection requirements proposed in the *NPRM.* Specifically, we have decided to: (1) Eliminate tariff filings by nondominant interexchange carriers for interstate, domestic, interexchange telecommunications services; (2) require that nondominant interexchange carriers maintain at their premises price and service information regarding their interstate, interexchange offerings that they can submit to the Commission upon request; and (3) require that providers of interexchange services file certifications with the Commission stating that they are in compliance with their statutory rate integration and geographic rate averaging obligations under Section 254(g) of the Communications Act. *See* paras. 77, 83, 87. In the *Geographic Rate Averaging Order,* we found it unnecessary to adopt a requirement that interexchange carriers advertise the availability of discount rate plans and promotions throughout the entirety of their service areas. We have also decided to require nondominant interexchange carriers to file with the Commission, and update as necessary, the name, address, and telephone number of the individual, or individuals, designated by the carrier to respond to Commission inquiries and requests for documents. *See* para. 83. In the *Geographic Rate Averaging Order,* we found it unnecessary to adopt a requirement that interexchange carriers advertise the availability of discount rate plans and promotions throughout the entirety of their service areas. In order to implement detariffing, we order all nondominant interexchange carriers to cancel their tariffs for interstate, domestic, interexchange services on file with the Commission within nine months of the effective date of this Order and not to file any such tariffs thereafter. *See* para. 89. We also order carriers that have on file with the Commission ''mixed'' tariff offerings that contain services subject to detariffing pursuant to this Order, to comply with this Order either by: (1) Cancelling the entire tariff and refiling a new tariff for only those services subject to the tariff filing requirements; or (2) issuing revised pages cancelling the material in the tariffs that pertain to those services subject to forbearance. *See* para. 91. In addition, we have decided to require nondominant interexchange carriers to file with the Commission, and update as necessary, the name, address, and telephone number of the individual, or individuals, designated by the carrier to respond to Commission inquiries and requests for documents. *See* para. 87. Finally, consistent with OMB's recommendation that we consider mechanisms to make pricing information available to interested parties, we have decided, for purposes of enforcing Section 254(g), to require nondominant interexchange carriers to disclose to the public rate and service information concerning all of their interstate, domestic, interexchange offerings. *See* paras. 84–86. Implementation of these requirements will be subject to approval by OMB as prescribed by the Paperwork Reduction Act.

VII. Ordering Clauses

163. Accordingly, *it is ordered* that, pursuant to Sections 1–4, 10, 201, 202, 204, 205, 215, 218, 220, 226 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 160, 201, 202, 204, 205, 215, 218, 220, 226 and 254, the *Second Report and Order* is hereby *adopted.* The requirements adopted in this Second Report and Order shall be effective December 23, 1996. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

164. *It is further ordered* that Parts 42, 61 and 64 of the Commission's Rules, 47 CFR 42, 61, and 64 are *amended* as set forth below.

165. *It is further ordered* that, AT&T *shall detariff* 800 Directory Assistance and Analog Private Line Services within nine months of the end of its three-year commitment period established in *Motion of AT&T Corp. to be Reclassified as a Nondominant Carrier,* Order, 11 FCC Rcd 3271, 3305–07 (1995). During this commitment period, any tariff revisions that propose to increase the price of these services *shall be filed* on not less than five business days' notice, shall be within the limits established in the commitment and shall clearly identify such tariff transmittals as affecting the provisions of this commitment.

166. *It is further ordered* that, for the period of its commitment, AT&T *shall notify* its customers of changes to its low volume and low income calling plans not less than five business days' prior to such a change. AT&T *shall provide* five business days' notice of changes to its average residential interstate direct dial services under the circumstances specified in *Motion of AT&T Corp. to be Reclassified as a Nondominant Carrier,* Order, 11 FCC Rcd 3271, 3305–07 (1995).

List of Subjects

47 CFR Part 42

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 61

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 42, 61 and 64 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 42—PRESERVATION OF RECORDS OF COMMUNICATION COMMON CARRIERS

1. The authority citation for part 42 continues to read as follows:

Authority: Sec. 4(i), 48 Stat. 1066, as amended, 47 U.S.C. 154(i). Interprets or applies secs. 219 and 220, 48 Stat. 1077–78, 47 U.S.C. 219, 220.

2. An undesignated centered heading and §§ 42.10 and 42.11 are added to read as follows:

Specific Instructions for Carriers Offering Detariffed Interexchange Services

§ 42.10 Public availability of information concerning detariffed interexchange services.

A nondominant interexchange carrier shall make available to any member of the public, in at least one location, during regular business hours, information concerning its current rates, terms and conditions for all of its detariffed interstate, domestic, interexchange services. Such information shall be made available in an easy to understand format and in a timely manner. When responding to an inquiry or complaint from the public concerning rates, terms and conditions for such services, a carrier shall specify that such information is available and the manner in which the public may obtain the information.

§ 42.11 Retention of information concerning detariffed interexchange services.

(a) A nondominant interexchange carrier shall maintain, for submission to the Commission upon request, price and service information regarding all of the carrier's detariffed interstate, domestic, interexchange service offerings. The price and service information maintained for purposes of this paragraph (a) shall include, but not be limited to, the information that such carrier makes available to the public pursuant to § 42.10, as well as documents supporting the rates, terms, and conditions of the carrier's detariffed interstate, domestic, interexchange offerings. The information maintained pursuant to this section shall be maintained in a manner that allows the carrier to produce such records within ten business days.

(b) The price and service information maintained pursuant to this section shall be retained for a period of at least two years and six months following the date the carrier ceases to provide services pursuant to such rates, terms and conditions.

(c) A nondominant interexchange carrier shall file with the Commission, and update as necessary, the name, address, and telephone number of the individual(s) designated by the carrier to respond to Commission inquiries and requests for documents about the carrier's detariffed interstate, domestic, interexchange services.

PART 61—TARIFFS

3–4. The authority citation for part 61 continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201–205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205, and 403, unless otherwise noted.

5. Section 61.3 is amended by revising paragraph (jj) to read as follows:

§ 61.3 Definitions.

* * * * *

(jj) *Tariff publication, or publication.* A tariff, supplement, revised page, additional page, concurrence, notice of revocation, adoption notice, or any other schedule of rates or regulations filed by common carriers.

* * * * *

6. Sections 61.20 through 61.23 are redesignated as §§ 61.21 through 61.24, and new section 61.20 is added immediately preceding newly designated § 61.21 to read as follows:

§ 61.20 Detariffing of interstate, domestic, interexchange services.

Except as otherwise provided by Commission order, carriers that are nondominant in the provision of interstate, domestic, interexchange services shall not file tariffs for such services.

7. Section 61.72 is amended by revising introductory text of paragraph (a) and paragraph (b) to read as follows:

§ 61.72 Posting.

(a) Offering carriers must post (i.e., keep accessible to the public) during the carrier's regular business hours, a schedule of rates and regulations for those services subject to tariff filing requirements. This schedule must include all effective and proposed rates and regulations pertaining to the services offered to and from the community or communities served, and must be the same as that on file with the Commission. This posting requirement must be satisfied by the following methods:

* * * * *

(b) The posting of rates and regulations for those services pursuant to paragraph (a) of this section shall be considered timely if they are available for public inspection at the posting locations within 15 days of their filing with the Commission.

8. Section 61.74 is amended by adding new paragraph (d) to read as follows:

§ 61.74 References to other instruments.

* * * * *

(d) A tariff for international services offered by a carrier that is subject to detariffing for domestic, interstate, interexchange services, may reference other documents or instruments concerning the carrier's detariffed domestic, interstate, interexchange service offerings. A tariff for international services may contain such a reference if, and only if, it is necessary to incorporate information regarding the carrier's detariffed domestic, interstate, interexchange services in order to calculate discounts and minimum revenue requirements for international services provided in combination with detariffed domestic, interstate, interexchange services. Notwithstanding any such reference to documents or instruments concerning the carrier's detariffed domestic, interstate, interexchange service offerings, a tariff for international services shall specify rates, terms and conditions for the international service.

PART 64 —MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

9. The authority citation for part 64 is revised to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 254, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228, 254, unless otherwise noted.

10. New subpart S consisting of § 64.1900 is added to part 64 to read as follows:

Subpart S—Nondominant Interexchange Carrier Certifications Regarding Geographic Rate Averaging and Rate Integration Requirements

Sec.

64.1900 Nondominant interexchange carrier certifications regarding geographic rate averaging and rate integration requirements.

Subpart S—Nondominant Interexchange Carrier Certifications Regarding Geographic Rate Averaging and Rate Integration Requirements

§ 64.1900 Nondominant interexchange carrier certifications regarding geographic rate averaging and rate integration requirements.

(a) A nondominant provider of interexchange telecommunications services, which provides detariffed interstate, domestic, interexchange services, shall file with the Commission, on an annual basis, a certification that it is providing such services in compliance with its geographic rate averaging and rate integration obligations pursuant to section 254(g) of the Communications Act of 1934, as amended.

(b) The certification filed pursuant to paragraph (a) of this section shall be signed by an officer of the company, under oath.

Note: This Attachment will not appear in the Code of Federal Regulations.

Attachment—List of Parties

[CC Docket No. 96–61]

List of Commenters in CC Docket No. 96–61, Sections III, VII, VIII, IX (Tariff Forbearance, CPE Bundling, Contract Tariff, Other Issues)

Ad Hoc Coalition of Corporate Telecommunications Managers (Corporate Managers)
Ad Hoc Telecommunications Users Committee, The California Bankers Clearing House Association, The New York Clearing House Association, ABB Business Services, Inc., and The Prudential Insurance Company of America (Ad Hoc Users)
America's Carriers Telecommunication Association (ACTA)
American Petroleum Institute (API)
American Public Communications Council (APCC)
American Telegram Corporation (American Telegram)
Ameritech
AMSC Subsidiary Corporation (AMSC)
AT&T Corp. (AT&T)
Association for The Study of Afro-American Life and History, Inc
Audits Unlimited, Inc. (Audits Unlimited)
BT North America Inc. (BT North America)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corp. (BellSouth)
Business Telecom, Inc. (Business Telecom)
Cable & Wireless, Inc. (Cable & Wireless)
Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Company, Inc., and Turner Broadcasting System, Inc. (Television Networks)
Casual Calling Coalition
Cato Institute
Citizens for a Sound Economy Foundation (CSE)
Chrysler Minority Dealers Association
Compaq Computer Corporation (Compaq)
Competitive Telecommunications Association (CompTel)
Consumer Electronics Retailers Coalition
Consumer Federation of America and Consumers Union (CFA/CU)
Eastern Tel Long Distance Service, Inc. (Eastern Tel)
Excel Telecommunications, Inc. (Excel)
Frontier Corporation (Frontier)
Fone Saver, LLC (Fone Saver)
General Communication, Inc. (GCI)
General Services Administration (GSA)
GTE Service Corp. (GTE)
Gerald Hunter (Hunter)
Independent Data Communications Manufacturers Association (IDCMA)
Information Technology Association of America (ITAA)
LCI International Telecom Corp. (LCI)
LDDS World Com (LDDS)
Louisiana Public Service Commission (Louisiana PSC)
MCI
MFS
Dr. Robert Self dba Market Dynamics (Market Dynamics)
MOSCOM Corporation (MOSCOM)
National Association of Attorneys General, Consumer Protection Committee, Telecommunications Subcommittee (National Association of Attorneys General Telecommunications Subcommittee)
National Association of Development Organizations—Paraquad —United Homeowners Association—National Hispanic Council on the Aging—Consumers First—National Association of Commissions for Women (National Association of Development Organizations)
National Black Data Processors Association
National Bar Association
Network Analysis Center, Inc.
NYNEX Telephone Companies (NYNEX)
Office of the Ohio Consumers' Counsel (Ohio Consumers' Counsel)
Pacific Telesis (PacTel)
Pennsylvania Public Utility Commission (Pennsylvania PUC)
SBC Communications Inc. (SBC)
Scheraga and Sheldon Associates (Scheraga and Sheldon)
Secretary of Defense
Sprint Corporation (Sprint)
State of Alaska (Alaska)
Telecommunications Information Services (TIS)
Telecommunications Management Information Systems Coalition
Telecommunications Research and Action Center (TRAC)
Telecommunications Resellers Association (TRA)
Tennessee Attorney General
URSUS Telecom Corp. (Ursus)
United States Telephone Association (USTA)
US West, Inc. (U.S. West)
UTC
WinStar Communications, Inc. (WinStar)
XIOX Corporation (XIOX)

List of Reply Commenters in CC Docket No. 96–61, Sections III, VII, VIII, IX (Tariff Forbearance, CPE Bundling, Contract Tariff, Other Issues)

Ad Hoc Telecommunications Users Committee, The California Bankers Clearing House Association, The New York Clearing House Association, ABB Business Services, Inc., and The Prudential Insurance Company of America (Ad Hoc Users)
American Petroleum Institute (API)
AT&T Corp. (AT&T)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corp. (BellSouth)
Casual Calling Coalition
Citizens Utilities Company (Citizens Utilities)
Consumer Electronics Retailers Coalition
Eastern Tel Long Distance Service, Inc. (Eastern Tel)
Frontier Corporation (Frontier)
General Services Administration (GSA)
GTE Service Corp. (GTE)
Independent Data Communications Manufacturers Association (IDCMA)
Information Technology Association of America (ITAA)
LCI International Telecom Corp. (LCI)
LDDS World Com (LDDS)
Louisiana Public Service Commission (Louisiana PSC)
MCI
MFS
New York State Department of Public Service
NYNEX Telephone Companies (NYNEX)
Office of the Ohio Consumers' Counsel (Ohio Consumers' Counsel)
Pacific Telesis (PacTel)
Pennsylvania Public Utility Commission (Pennsylvania PUC)
Sprint Corporation (Sprint)
Telecommunications Management Information Systems Coalition
Telecommunications Research and Action Center (TRAC)
Telecommunications Resellers Association (TRA)
US West, Inc. (U.S. West)
WinStar Communications, Inc. (WinStar)
XIOX Corporation (XIOX)

List of Commenters in CC Docket No. 96–61, Sections IV, V, VI (Market Definition, Separation Requirements, Rate Averaging and Rate Integration)

Alabama Public Service Commission (Alabama PSC)
America's Carriers Telecommunication Association (ACTA)
American Petroleum Institute (API)
American Public Communications Council (APCC)
Ameritech
AMSC Subsidiary Corporation (AMSC)
AT&T Corp. (AT&T)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corp. (BellSouth)
Cable & Wireless, Inc. (Cable & Wireless)
Columbia Long Distance Service, Inc. (CLDS)
Competitive Telecommunications Association (CompTel)
Commonwealth of the Northern Mariana Islands
Florida Public Service Commission (Florida PSC)
Frank Collins
Frontier Corporation (Frontier)
General Communication, Inc. (GCI)
General Services Administration (GSA)
GTE Service Corp. (GTE)
Governor of Guam & the Guam Telephone Authority
Guam Public Utility Commission (Guam PUC)
Harvey William Ward (Ward)
Iowa Utilities Board
IT&E Overseas, Inc.
JAMA Corporation
John Stauralakis, Inc.
Kevin Loflin (Loflin)
Kristine Stark (Stark)
LDDS WorldCom (LDDS)
Louisiana Public Service Commission (Louisiana PSC)
MCI
MFS
Michael Sussman (Sussman)
Missouri Public Service Commission (Missouri PSC)
National Association of Regulatory Utilities Commissioners (NARUC)
NYNEX Telephone Companies (NYNEX)

Office of the Ohio Consumers' Counsel (Ohio Consumers' Counsel)
Pacific Telesis Group (PacTel)
Paul Lee (Lee)
Peggy Orlic (Orlic)
Pennsylvania Office of Consumer Advocate
Pennsylvania Public Utility Commission (Pennsylvania PUC)
Public Utilities Commission of Ohio
Rural Telephone Coalition
Scherer Communications Group
SBC Communications, Inc. (SBC)
Southern New England Telephone Company (SNET)
Sprint Corporation (Sprint)
State of Alaska (Alaska)
State of Hawaii (Hawaii)
TCA, Inc.
TDS Telecommunications Corp.
Telecommunications Resellers Association (TRA)
United States Telephone Association (USTA)
U.S. West, Inc. (U.S. West)
Vanguard Cellular Systems, Inc.
Washington Utilities & Transportation Commission
Zankle Worldwide Telecom (ZWT)

List of Reply Commenters in CC Docket No. 96–61, Sections IV, V, VI (Market Definition, Separation Requirements, Rate Averaging and Rate Integration)

ALLTEL Corporate Services, Inc.
Ameritech
AT&T Corp. (AT&T)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corp. (BellSouth)
Citizens Utilities Company (Citizens Utilities)
Commonwealth of the Northern Mariana Islands
Competitive Telecommunications Association (CompTel)
General Communication, Inc. (GCI)
General Services Administration (GSA)
GTE Service Corp. (GTE)
Governor of Guam & the Guam Telephone Authority
Guam Public Utility Commission (Guam PUC)
LDDS WorldCom (LDDS)
MCI
MFS
Missouri Office of the Public Counsel
New York State Department of Public Service
NYNEX Telephone Companies (NYNEX)
Office of the Ohio Consumers Counsel (Ohio Consumers' Counsel)
PCI Communications, Inc.
Rural Telephone Coalition
SBC Communications Inc. (SBC)
Sprint Corporation (Sprint)
State of Alaska (Alaska)
State of Hawaii (Hawaii)
Telecommunications Resellers Association (TRA)
United States Telephone Association (USTA)
U.S. West, Inc. (U.S. West)
Vanguard Cellular Systems, Inc.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA Docket No. RAR–4, Notice No. 14]

RIN 2130–AA58

Railroad Accident Reporting

AGENCY: Federal Railroad Administration (FRA, DOI).

ACTION: Final rule; Correcting amendments and partial response to petitions for reconsideration.

SUMMARY: On June 18, 1996, FRA published a final rule amending the railroad accident reporting regulations. FRA now makes technical corrections to the final rule and responds to certain concerns raised in petitions for reconsideration of the final rule, which concerns were also raised in requests to stay the effective date of the final rule. In this document FRA issues amendments to the final rule addressing those concerns. FRA's response to the other concerns raised in petitions for reconsideration of the final rule will appear in the near future in a separate document published in the Federal Register.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Robert L. Finkelstein, Staff Director, Office of Safety Analysis, Office of Safety, FRA, 400 Seventh Street, SW., Washington, D.C. 20590 (telephone 202–632–3386); or Nancy L. Goldman, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, D.C. 20590 (telephone 202–632–3167).

SUPPLEMENTARY INFORMATION: On June 18, 1996, FRA published a final rule amending the railroad accident reporting regulations at 49 CFR part 225 (61 FR 30940). The final rule aims to minimize underreporting and inaccurate reporting of those injuries, illnesses, and accidents meeting reportability requirements. On August 19, 1996, and August 29, 1996, respectively, the Association of American Railroads (AAR) and the Union Pacific Railroad Company (UP) filed petitions for reconsideration of the final rule raising various concerns and requested in their petitions for reconsideration, and by purported petitions for stay not recognized by FRA regulations at 49 CFR part 211, that FRA postpone the effective date of the final rule (collectively, Petitions). The Petitions specifically allege:

- That AAR member railroads will be exposed to substantial risk should the rule not be stayed pending FRA's decision on AAR's Petition for Reconsideration; and
- That the text of the final rule may allow employees access to records and files which the railroads may deem to be privileged, confidential, and litigation-sensitive, thus giving employee litigants advantages that could expose railroads to irreparable injury.

1. Requests To Stay the Effective Date

As stated above, AAR and UP request in their Petitions that FRA stay the effective date of the final rule, asserting that such a stay is in the public interest and that other interested parties would not be substantially harmed by such a stay since the rule does not address ''any significant safety risk.'' AAR claims that its member railroads will be exposed to substantial risk should the rule not be stayed pending FRA's decision on AAR's Petition for Reconsideration. Section 211.31 of FRA's rules of practice states that FRA must decide to grant or deny, in whole or in part, each petition for reconsideration not later than four months after receipt by FRA's Docket Clerk (49 CFR 211.31). In this case, FRA's decision on the petitions for reconsideration is due no later than December 19, 1996. AAR and UP therefore request an immediate stay of the effective date for a reasonable period of time after issuance of FRA's decision on the Petitions for Reconsideration in order to assess FRA's decision and evaluate how FRA's decision impacts the final rule. In the alternative, AAR and UP request postponement of the effective date of the final rule from January 1, 1997, to January 1, 1998.

Discussion

After careful consideration and for the reasons set forth in this document, FRA has decided not to stay the effective date of its final rule. FRA so informed AAR and UP by letter dated October 10, 1996. Initially, FRA wishes to emphasize that its rules of practice applying to rulemakings do not authorize petitions for stay of a final rule. *See* 49 CFR part 211. Since procedures do not exist with respect to a stay petition, there exists no regulatory deadline by which to answer such a petition, and FRA's response to AAR's and UP's purported petitions for stay (''Petitions for Stay'') did not constitute a final agency action subject to review. It should also be noted that the filing of a petition for reconsideration does not stay the effectiveness of a rule under 49 CFR 211.29. Nevertheless, FRA chose to reply to the substantive issues in AAR's and UP's ''Petitions for Stay'' in order to