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TELECOMMUNICATIONS LAW UPDATES

FCC TAKES FURTHER STEPS IN DETARIFFING INTEREXCHANGE SERVICES

This past May, the FCC's four-year effort to detariff domestic interstate interexchange (long distance) service finally bore fruit, following a lengthy judicial stay. At that time, the FCC afforded carriers a nine-month transition period in which they were required to eliminate most tariffs for such services. That period is scheduled to expire on January 31, 2001. The upcoming deadline has generated some concern about how consumers will be able to obtain price and other information about competing long distance services in a post-tariff world, and also some confusion about the status of tariffs for long distance service that is offered both domestically and internationally. In two recent orders, the FCC has sought to address these issues.

In October 2000, the FCC issued its long expected proposal to apply essentially the same mandatory detariffing regime to *international* long distance service (including international service by CMRS providers) that it earlier adopted for domestic interstate long distance service. This latest forbearance proposal relies on the FCC's view that there has been a substantial increase in the level of competition in the international interexchange marketplace, which it attributes to "increased privatization and liberalization of foreign markets, rapidly declining international settlement rates, and larger numbers of providers." From 1996 to 1998, it notes, the average rate for international calls charged by AT&T, Worldcom, and Sprint decreased from 74 to 59 cents per minute. As with domestic long distance service, the FCC contends that in this competitive environment tariffs remove incentives for price discounting, reduce carriers' ability to respond

promptly to market conditions, and preclude consumers from obtaining traditional contract and consumer protection remedies because of the "filed rate doctrine" — which permits tariffs to trump rates offered by contract. To ensure that customers will still have accurate (and, the FCC hopes, more accessible and understandable) information about international rates, terms, and conditions after detariffing, the FCC has proposed to extend to the international context its domestic requirement that long distance carriers make such information available in at least one location during working hours, and post it on their Internet web sites (if they have such sites).

There appears to be widespread support for extending the FCC's detariffing policy to international long distance service. AT&T, Worldcom, Sprint, and Qwest have endorsed the change, as has CompTel, the principal trade association representing competitive carriers. However, carriers have expressed concern about the difficulties and expense of implementing domestic and international detariffing requirements on different timetables, particularly since many tariffs are written to cover both services. In November 2000, the FCC issued a further order designed in part to address this concern.

To permit further consideration of a single effective date for detariffing domestic and international long distance services, the FCC has extended the deadline for detariffing domestic service until April 30, 2001, but only with respect to users of mass-market consumer services. The impending January 31 deadline will still apply to contract tariffs

(such as AT&T's Tariff 12 options, Worldcom's special customer arrangements, and Sprint's custom network service arrangements). The FCC concluded that the likelihood of confusion with respect to business customers using those services is much less of a concern, and outweighed by the benefits of prompt detariffing.

The FCC has also clarified its transition policy for domestic detariffing. Carriers will be allowed the full transition period in order to comply with the public disclosure requirements. They may not cancel tariffs prior to complying with these requirements, and any cancellation must indicate on the title or first page how to locate these disclosures. By December 16, carriers must provide such disclosures for all new and revised contract service arrangements that have become effective since detariffing in May. Public information sites must be updated within five days of a tariff cancellation or new offering; websites, within 24 hours.

The FCC has declined to mandate a specific format for these public disclosures of rates, terms, and conditions. However, it has emphasized that information on *all* services — including those offered through individually negotiated contracts — must be publicly disclosed. It has also cautioned that disclosure must be adequate to allow consumers to make comparisons among the services provided by various carriers; however, disclosure need not

include more information than is currently included in a carrier's tariff. The FCC's Consumer Information Bureau will attempt to work with carriers to develop appropriate disclosure formats.

The FCC's order last week also refused to permit long distance carriers to file "bundled" tariffs to include both domestic (detariffed) and international (not yet detariffed) services. However, it endorsed AT&T's current practice of simply putting a disclaimer on such tariffs that they are solely for informational purposes with respect to domestic offerings. Such a disclaimer must state that there is not a tariff for the domestic service, must include a warning with any revision that the tariff for that service has been effectively cancelled, and must make clear that contracts supersede any information contained in the tariff with respect to domestic service.

In these two orders, the FCC has continued its effort to rely on the forbearance authority granted by Congress in the 1996 Act to end almost all tariffs for interstate long distance service. How and when the transition to complete detariffing occurs will not be finally resolved until the FCC actually implements its detariffing proposal for international service. How the new long distance marketplace will function thereafter may provide a valuable insight into the debate about detariffing other services in the future.

This letter is for general informational purposes only and does not represent our legal advice as to any particular set of facts, nor does this letter represent any undertaking to keep recipients advised as to all relevant legal developments. For further information on these or other telecommunications matters, please contact one of the lawyers listed below:

Lynn Charytan

202-663-6455

LCharytan@wilmer.com

John Harwood

202-663-6333

JHarwood@wilmer.com

William Lake

202-663-6725

WLake@wilmer.com

Daniel Phythyon

202-663-6545

DPhythyon@wilmer.com

William Richardson

202-663-6038

WRichardson@wilmer.com