List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 28, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.3550 to subpart E to read as follows:

§ 721.3550 Dipropylene glycol dimethyl ether.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as dipropylene glycol dimethyl ether (PMN P–93–507; CAS No. 11109–77–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. This class 2 substance is exempt from the notification requirements of this rule if it contains less than 5 percent by weight of the specific isomer, propane, 2,2′-oxybis[1-methoxy- (CAS No. 189354–80–1), which is one of the possible products of the manufacturing process for PMN P–93–507.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), and (a)(3).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* The following recordkeeping requirements specified in § 721.125 (a), (b), (c), (d), and (e) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 97–29153 Filed 11–3–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 42 and 61

[CC Docket No. 96–61; FCC 97–293]

Policy and Rules Concerning the Interstate, Interexchange Marketplace

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Order on Reconsideration (Order) released August 20, 1997 reconsiders the Second Report and Order in this docket (61 FR 59340 (November 22, 1996)). The Order modifies the Second Report and Order by: adopting permissive detariffing for interstate, domestic, interexchange direct-dial services; adopting permissive detariffing for the first 45 days of service to new customers that contact the local exchange carrier to choose their primary interexchange carrier; and eliminating the requirement that nondominant interexchange carriers make publicly available information concerning current rates, terms, and conditions for all of their interstate, domestic, interexchange services, except in the case of dial-around 0+ services from aggregator locations.

EFFECTIVE DATE: December 4, 1997.

FOR FURTHER INFORMATION CONTACT: Lisa Choi, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this Order contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted August 15, 1997, and released August 20, 1997. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW, Room 239, Washington, DC The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc97–293.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., NW, Washington, DC 20036.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, the Order contains a Final Regulatory Flexibility Analysis on Reconsideration which is set forth in the Order on Reconsideration. A brief description of the analysis follows. Pursuant to section 604 of the Regulatory Flexibility Act, the Commission performed a comprehensive analysis of the Order on Reconsideration 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 Order on Reconsideration; (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 Order on Reconsideration as a result of the comments; (3) a description of and an estimate of the number of small entities to which the Order on Reconsideration will apply; (4) a description of the projected reporting, recordkeeping and other compliance requirements of the Order on Reconsideration, 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 Order on Reconsideration 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 Order on Reconsideration are necessary to implement the provisions of the Telecommunications Act of 1996.

Paperwork Reduction Act

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L.104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

OMB Control Number: 3060–0704.

Expiration Date: February 28, 1998.

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	No. 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**	0	0	0.
Recordkeeping requirement	519	2 hours	1,038.

*The Commission affirmed its decision in the Second Report and Order to eliminate the requirement that nondominant interexchange carriers file tariffs for interstate, domestic, interexchange services. In the Order, the Commission has decided to (1) permit nondominant interexchange carriers to file tariffs for the provision of dial-around 1+ services using a nondominant interexchange carrier's carrier access code; (2) permit nondominant interexchange carriers to file tariffs for the initial 45 days of domestic, interstate, interexchange service, or until there is a written contract between the carrier and the customer, whichever is earlier; and (3) eliminate the public disclosure requirement.

**The Commission has eliminated the information disclosure requirement.

Total Annual Burden: 75,895.5 hours, of which 74,598 will be one-time.

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

Estimated Annual Reporting and Recordkeeping Costs: $435,000.

Needs and Uses: The attached item affirms the Commission's previous decision in the Second Report and Order to eliminate the requirement that nondominant interexchange carriers file tariffs for interstate, domestic, interexchange telecommunications services. In this Order, the Commission has eliminated this information disclosure requirement. In addition, the Commission has reconsidered its decision to require 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.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Synopsis of Order on Reconsideration

I. Introduction

1. On October 29, 1996, the Commission adopted the *Second Report and Order* (61 FR 59340 (November 22, 1996)) in its proceeding reviewing the regulation of interstate, domestic, interexchange telecommunications services in light of the passage of the Telecommunications Act of 1996 (1996 Act) and the increasing competition in the interexchange market over the last decade. Consistent with the intent of the 1996 Act to provide a ''pro-competitive, deregulatory'' national policy framework for telecommunications and information technologies and services, Congress directed the Commission to forbear from applying any provision of the Communications Act or the Commission's regulations if certain conditions are met.

2. We determined in the *Second Report and Order* that the statutory forbearance criteria in section 10 of the Communications Act were met for complete detariffing (''Complete detariffing'' refers to a policy of neither requiring nor permitting nondominant interexchange carriers to file tariffs pursuant to section 203 of the Communications Act for their interstate, domestic, interexchange services. ''Permissive detariffing'' refers to a policy of allowing, but not requiring, nondominant interexchange carriers to file tariffs for such services.) of the interstate, domestic, interexchange services offered by nondominant interexchange carriers, and, therefore, that we would no longer allow such carriers to file tariffs pursuant to section 203 of the Communications Act for their interstate, domestic, interexchange services, with the limited exception of AT&T's provision of 800 directory assistance and analog private line services. At the same time, we recognized that a transition period was necessary to allow nondominant interexchange carriers time to adapt to complete detariffing. We therefore ordered all nondominant interexchange carriers to cancel their tariffs for such services within nine months from the effective date of the *Second Report and Order.* We maintained the tariffing requirement for the international portion of bundled domestic and international service offerings. We further required nondominant interexchange carriers to: (1) File an annual certification stating that they are in compliance with the geographic rate averaging and rate integration requirements of section 254(g) of the Communications Act; (2) maintain supporting documentation on the rates, terms, and conditions of their interstate, domestic, interexchange services that they could submit to the Commission within ten business days upon request; and (3) make publicly available information concerning current rates, terms, and conditions for all of their interstate, domestic, interexchange services. The basis for the information disclosure requirement was to ensure that the public was provided with the information necessary to determine whether a nondominant interexchange carrier was adhering to the rate averaging and rate integration requirements of section 254(g) of the Communications Act. In addition, we determined that a public disclosure requirement would promote the public interest by making it easier for consumers, including resellers, to compare service offerings.

3. Our actions in the *Second Report and Order* were intended to advance Congress' pro-competitive and deregulatory objectives by eliminating regulatory requirements that the Commission determined were no longer necessary to protect consumers or serve the public interest. We concluded that our actions would foster increased competition in the market for interstate, domestic, interexchange services by deterring tacit price coordination, eliminating the possible invocation of the ''filed-rate'' doctrine, and establishing market conditions that more closely resemble an unregulated environment. We found that elimination of the possible invocation of the ''filed-rate'' doctrine is in the public interest

because, pursuant to the ''filed-rate'' doctrine articulated by the courts, where a filed tariff rate, term, or condition differs from a rate, term, or condition 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); *see also Aero Trucking, Inc.* v. *Regal Tube Co.*, 594 F.2d 619 (7th Cir. 1979); *Farley Terminal Co., Inc.* v. *Atchison, T. & S.F. Ry.*, 522 F.2d 1095 (9th Cir.), *cert. denied*, 423 U.S. 996 (1975). Consequently, if a carrier unilaterally changes a rate by filing a tariff revision, the newly filed rate becomes the applicable rate for all customers of that service unless the revised rate is found to be unjust, unreasonable, or unlawful under the Communications Act. *See* 47 U.S.C. 201(b); *see also Maislin Industries, U.S., Inc.* v. *Primary Steel, Inc.*, 497 U.S. 116 (1990).

4. Several parties appealed the *Second Report and Order* to the United States Court of Appeals for the District of Columbia Circuit and filed motions requesting that the court stay the Second Report and Order pending judicial review. On February 13, 1997, the court granted these motions. The Commission's rules adopted in this proceeding, therefore, are stayed until the court issues its determination on the merits of the appeal. Accordingly, nondominant interexchange carriers are currently required to file tariffs for their interstate, domestic, interexchange services.

5. In addition, eleven parties filed petitions requesting that we reconsider or clarify the rules we adopted in the Second Report and Order. The United States Court of Appeals for the District of Columbia Circuit deferred the briefing schedule in the appeal of the rules adopted in the *Second Report and Order* to allow the Commission to act on these petitions for reconsideration. *MCI Telecommunications Corp.* v. *FCC*, No. 96–1459 (D.C. Cir. April 4, 1997). The court directed the parties to file motions to govern further proceedings 60 days after April 4, 1997. *Id.* The Commission issued a public notice to establish a pleading cycle for the issues raised in the petitions for reconsideration and clarification. The public notice sought comments on or oppositions to the petitions and replies. *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96–61, Public Notice, Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings (released January 7, 1997). For convenience, we will cite the parties' filings in these three phases as petitions, comments, and replies, respectively. For the reasons set forth below, we grant requests for reconsideration on three issues. Specifically, we modify the *Second Report and Order* by: (1) Adopting permissive detariffing for interstate, domestic, interexchange direct-dial services to which end-users obtain access by dialing a carrier's access code (CAC); (2) adopting permissive detariffing for the first 45 days of service to new customers that contact the local exchange carrier (LEC) to choose their primary interexchange carrier (PIC); and (3) eliminating the requirement that nondominant interexchange carriers make publicly available information concerning current rates, terms, and conditions for all of their interstate, domestic, interexchange services, except in the case of dial-around 0+ services from aggregator locations, pursuant to section 226 of the Communications Act. In another proceeding, we are considering the issue of forbearing from applying section 226, which requires operator service providers to file informational tariffs. *See Billed Party Preference for InterLATA 0+ Calls*, CC Docket No. 92–77, Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 7274 (1996); Public Notice, DA 96–1695 (released October 10, 1996) (seeking further comment). We deny all of the other petitions for reconsideration. We also make a number of clarifications in this Order on Reconsideration.

II. Detariffing Issues

A. Forbearance From Tariff Filing Requirements for the Interstate, Domestic, Interexchange Services of Nondominant Interexchange Carriers

i. Background

6. In the *Second Report and Order*, we concluded that the statutory forbearance criteria in section 10 were satisfied, based on our findings that: (1) 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; (2) tariffs for interstate, domestic, interexchange services of nondominant interexchange carriers are not necessary to protect consumers; and (3) complete detariffing of interstate, domestic, interexchange services provided by nondominant interexchange carriers, and not permissive detariffing of such services, is in the public interest. We concluded that permissive detariffing of interstate, domestic, interexchange services provided by nondominant interexchange carriers is not in the public interest because it: (1) Would not necessarily eliminate possible invocation of the ''filed-rate'' doctrine; (2) would create a risk that nondominant interexchange carriers would file tariffs to send price signals and to manipulate prices; and (3) would impose administrative costs on the Commission, which must maintain and organize tariff filings for public inspection. We further concluded that the Commission has the authority under section 10 to prohibit carriers from filing tariffs. Accordingly, pursuant to section 10, we determined 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, with the limited exception of AT&T's provision of 800 directory assistance and analog private line services.

ii. Positions of the Parties

7. Frontier, Telecommunications Resellers Association (TRA), and Telco petition the Commission to reconsider its decision to adopt complete detariffing, and urge the Commission to adopt permissive detariffing for the interstate, domestic, interexchange services offered by nondominant interexchange carriers. TRA further argues that the increased costs and burdens of a complete detariffing regime will adversely affect small and mid-sized nondominant interexchange carriers, which have fewer resources. TRA proposes specifically that the Commission adopt permissive detariffing in conjunction with a carrier-administered electronic tariff filing system, thereby relieving the Commission of the burden of administering and maintaining tariff filings. AT&T, CompTel, SBC, U S WEST, and WorldCom also support permissive detariffing.

8. AT&T, CompTel, and WorldCom argue that section 10 only authorizes the Commission to refrain from requiring tariffs, and does not empower the agency to prohibit carriers from voluntarily complying with section 203. These parties, and others, also challenge the Commission's determination that permissive detariffing is not in the public interest. Specifically, these parties argue that: (1) 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 permissible rate; (2) even if the ''filed-rate'' doctrine would continue to apply, that doctrine and carriers' ability to limit their liability through tariff provisions, benefit consumers because the terms of the carrier-customer relationship are certain; (3) price coordination would be difficult, if not impossible, with permissive detariffing, because carriers would at best have fragmentary information about their competitors' rates, terms, and conditions; (4) requiring nondominant interexchange carriers to make price and service information publicly available allows carriers to coordinate prices as easily as with filed tariffs; (5) even under a system of permissive detariffing, a carrier could not 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; (6) complete detariffing significantly increases transactional and administrative costs, especially for small carriers, by forcing nondominant interexchange carriers to conclude written agreements with every customer and notify them of modifications to the carriers' rates, terms, and conditions; and (7) permissive detariffing, or even mandatory tariffing, promotes vigorous competition to an even greater extent than complete detariffing, because carriers can react to market conditions quickly and without appreciable costs by filing a new tariff.

9. Ad Hoc Users Committee, American Petroleum Institute (API), and the Television Networks oppose the petitions of TRA and Frontier, at least to the extent that they request reconsideration of complete detariffing of individually-negotiated service arrangements. Ad Hoc Users Committee and API contend that the petitions for reconsideration should be denied because they merely repeat arguments previously made and rejected by the Commission in the *Second Report and Order*. In addition, these parties argue that complete detariffing, and not permissive detariffing, of interstate, domestic, interexchange services offered by nondominant interexchange carriers is in the public interest, because: (1) The ''filed-rate'' doctrine would continue to apply under a system of permissive detariffing; (2) the ''filed-rate'' doctrine harms consumers because it allows carriers unilaterally to alter or abrogate agreements; (3) complete detariffing ensures that carriers would no longer be able to refuse to accommodate a customer's request for services tailored to its specific needs on the grounds that the request conflicts with the carriers' tariffs; and (4) tariffs delay rapid responses to customer demands. API further argues that the 1996 Act gives the Commission authority to prohibit tariff filings.

iii. Discussion

10. We deny the petitions of Frontier, Telco, and TRA urging us to adopt permissive detariffing for all interstate, domestic, interexchange services. As discussed *infra*, arguments presented by these petitioners, and others, have persuaded us that permissive detariffing is warranted in certain limited circumstances. Specifically, we find that permissive detariffing is warranted for: (1) Interstate, domestic, interexchange direct-dial services to which end-users obtain access by dialing a carrier's CAC (dial-around 1+ services); (A CAC enables callers to reach any carrier (presubscribed or otherwise) from any telephone. During the current transition from five to seven digit CACs, both five digit CACs (10XXX) and seven digit CACs (101XXXX) are in use. On April 11, 1997, the Commission determined that the transition will end on January 1, 1998. *See Administration of the North American Numbering Plan, Carrier Identification Codes (CICs)*, CC Docket 92–237, Second Report and Order, 62 FR 19056 (April 18, 1997), *stay and recon. pending.* Thus, after January 1, 1998, only seven digit CACs may be used.) and (2) interstate, domestic, interexchange services provided by a nondominant interexchange carrier for the initial 45 days of service or until there is a written contract between the carrier and the customer, in those limited circumstances in which a prospective customer contacts the LEC to select an interexchange carrier or to initiate a PIC change (LEC-implemented new customer services). Aside from these two limited categories of service, the petitions and comments do not present any arguments that were not considered and addressed in the *Second Report and Order*. Thus, we find no basis upon which to reconsider our determination that the statutory criteria are met for completely detariffing all other interstate, domestic, interexchange services of nondominant interexchange carriers, except for dial-around 0+ services from aggregator locations, pursuant to section 226 of the Communications Act.

11. In the *Second Report and Order*, we extensively considered and rejected the argument that the Commission does not have statutory authority under section 10 to adopt complete detariffing. No new arguments have been presented that persuade us to reconsider our decision. Therefore, we reaffirm our earlier conclusion that Congress, in section 10, provided the Commission with broad forbearance authority that enables the agency to eliminate tariff filings under section 203.

12. In the *Second Report and Order*, we also considered all of the arguments advanced by those parties now urging us to reconsider our determination that permissive detariffing is in the public interest and complete detariffing is not. With the exception of dial-around 1+ services and LEC-implemented new customer services, we affirm our conclusion in the *Second Report and Order* that permissive detariffing of interstate, domestic, interexchange services offered by nondominant interexchange carriers is not in the public interest, for the reasons set forth in our prior order. We are not persuaded that a permissive detariffing regime would eliminate possible invocation of the ''filed-rate'' doctrine. In a permissive detariffing regime, a nondominant interexchange carrier may choose to file a tariff for an interstate, domestic, interexchange service, even if the carrier has signed an underlying contract with the customer. If a carrier files a tariff for an interstate, domestic, interexchange service with the Commission, whether on a permissive or mandatory basis, section 203(c) requires the carrier to provide service at the rates, and on the terms and conditions, set forth in the tariff until the carrier files a superseding tariff cancelling, or changing the rates, terms, and conditions of the tariffed offering. Thus, if the tariffed rates, terms, and conditions differ from those in the contract, section 203(c), in all likelihood, requires the carrier to provide service at the rates, and on the terms and conditions, set forth in the tariff. Because the ''filed-rate'' doctrine is a judicially-created doctrine, the determination of how to apply the doctrine in a permissive detariffing regime when the tariffed rates, terms, or conditions differ from those contained in a contract must necessarily be left to the courts. *See supra* paragraph 3. 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, competitive environment, can we definitively avoid the negative consequences for consumers of the ''filed-rate'' doctrine. The Common Carrier Bureau, on numerous occasions, has issued Orders Designating Issues for Investigation to examine whether a carrier's proposed unilateral changes in a tariff meet the ''substantial cause''

standard applied by the Commission. *See AT&T Contract Tariff No. 374*, Transmittal Nos. CT 2952 and CT 3441, Order Designating Issues for Investigation, DA 95–1784 (Common Carrier Bureau released August 11, 1995); *AT&T Communications Contract Tariff No. 360*, Transmittal No. CT 3076, CC Docket No. 95–146, Order Designating Issues for Investigation (Common Carrier Bureau released September 8, 1995).

13. Moreover, we reject carriers' arguments that the ''filed-rate'' doctrine benefits customers by creating certainty in the carrier-customer relationship. In fact, the ''filed-rate'' doctrine creates uncertainty in the carrier-customer relationship. Invocation of the ''filed-rate'' doctrine can be especially harmful to consumers who have signed long-term service contracts with interexchange carriers. As Ad Hoc Users Committee, API and the Television Networks point out, the doctrine permits interexchange carriers subsequently to file a tariff that differs from the long-term contract, and if justified by substantial cause, unilaterally to alter or abrogate their contractual obligations in a manner that is not available in most commercial relationships and that undermines consumers' legitimate business expectations. The ''filed-rate'' doctrine also harms residential and small business consumers who utilize mass market services and do not enter into long-term service arrangements. Such customers may purchase these mass market services in response to representations made by sales agents of the interexchange carrier or advertisements. In addition, such customers may assume the interexchange carrier will not modify its rates without actual notice to the customer. In the event of a dispute about the representations made by a sales agent, or a subsequent modification to an interexchange carrier's rates, terms, or conditions without actual notice to customers, a customer would be bound by the tariffed rates, terms, and conditions.

14. Moreover, we reaffirm our finding that permissive detariffing would facilitate tacit price coordination, because nondominant interexchange carriers could file tariffs to send price signals. On further reflection, however, we are persuaded by the comments of AT&T, TRA, and Telco, which maintain that complete detariffing, in conjunction with a public disclosure requirement, may not effectively impede tacit price coordination, because a nondominant interexchange carrier's rates, terms, and conditions for its interstate, domestic, interexchange services would still be available to its competitors in one location. We adopted the public disclosure requirement primarily to aid enforcement of the geographic rate averaging and rate integration requirements of section 254(g). In response to petitions asking us to reconsider the information disclosure requirements, we determine, as discussed below, that we can effectively meet our obligations to enforce section 254(g) without the public disclosure requirement. We conclude that complete detariffing, without a public disclosure requirement, will more effectively deter tacit price coordination.

15. We recognized in the *Second Report and Order* that complete detariffing would change in significant respects the manner in which nondominant interexchange carriers conduct their business. We considered the arguments raised by the parties in their petitions for reconsideration and comments regarding costs and administrative burdens associated with complete detariffing that would be avoided if carriers were allowed to file tariffs. With the exception of casual calling services and LEC-implemented new customer services, these arguments either essentially restate claims that were advanced in the initial phase of this proceeding in response to the NPRM and were rejected in the *Second Report and Order*, or are new, but unsupported by credible evidence. For example, Frontier, CompTel and SBC contend, as numerous parties did in earlier comments in this proceeding, that complete detariffing will increase the costs and administrative burdens on nondominant interexchange carriers because they will have to enter into individually negotiated contracts with every end user in order to establish a binding contractual relationship. Commenters assert that the costs associated with establishing an enforceable contractual relationship in the absence of tariffs will be ''enormous,'' ''significant,'' and ''substantial;'' however, they do not provide any evidence in support of these claims. In short, these parties did not raise any new arguments or provide any credible new evidence concerning the costs of providing interstate, domestic, interexchange service in a detariffed environment, as required by section 405 of the Communications Act. We, therefore, affirm our conclusion, for the reasons set forth in the *Second Report and Order*, that requiring nondominant interexchange carriers to conduct their businesses as do other businesses in unregulated markets will not substantially increase their costs.

16. In contrast, parties offered additional credible evidence on reconsideration concerning the costs and burdens to carriers of providing dial-around 1+ services and LEC-implemented new customer services in the absence of tariffs. As discussed below, we reconsider our decision in light of this evidence, and determine that permissive detariffing in these specific, limited instances is in the public interest. With respect to other interstate, domestic, interexchange services, we affirm our finding that the benefits and pro-competitive effects of complete detariffing outweigh any increased transactional or administrative costs resulting from the shift to complete detariffing.

17. Finally, we reject the argument that permissive detariffing or mandatory tariffing would promote competition more effectively than complete detariffing. As discussed above, allowing nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services creates the risk that such carriers will use these tariffs to send price signals in an effort to manipulate prices. Moreover, for the reasons discussed above and in the *Second Report and Order*, requiring nondominant interexchange carriers to conduct their businesses as do other businesses in unregulated markets will not substantially increase their costs. We, therefore, conclude that complete detariffing of the interstate, domestic, interexchange services of nondominant interexchange carriers is in the public interest, with the exception of dial-around 1+ services, LEC-implemented new customer services and section 226 tariffs associated with dial-around 0+ calls.

B. Casual Calling Services

i. Background

18. In contrast to other interstate, domestic, interexchange services, casual calling services are those services that do not require the calling party to establish an account with an interexchange carrier or otherwise presubscribe to a service. ''Casual calling'' refers to services such as collect calling, the use of a third-party credit card, or dial-around through the use of an access code. Casual calling does not include services for which customers presubscribe to an interexchange carrier or otherwise establish an account with an interexchange carrier prior to using the service, such as by obtaining a calling card, in advance, from an interexchange carrier. References to

casual calling in this reconsideration do not pertain to section 226 informational tariffs. We concluded in the *Second Report and Order* that the record did not support a finding that complete detariffing would cause nondominant interexchange carriers to cease offering such services. Rather, we found that nondominant interexchange carriers have options other than tariffs by which they can ensure the establishment of a contractual relationship with casual callers that would legally obligate such callers to pay for the telecommunications service they use and bind them to the carriers' terms and conditions. *Second Report and Order* at 59350, paragraph 58. We stated that a casual caller providing billing or payment information, such as a credit card or billing number, and completing use of the telecommunications service, may be deemed to have accepted a legal obligation to pay for any such services rendered. We also noted that a carrier could alternatively seek recovery under an implied-in-fact contract theory. An implied-in-fact contract ''refers to that class of obligations which arises from mutual agreement and intent to promise, when the agreement and promise have simply not been expressed in words. Despite the fact that no words of promise or agreement have been used, such transactions are nevertheless true contracts, and may properly be called inferred contracts or contracts implied in fact.'' 1 Williston on Contracts, § 1.5, at 20–21 (4th ed. 1990); *see also* 1 Arthur L. Corbin, et al., Corbin on Contracts, § 1.19, at 55–57 (rev. ed. 1993) (stating that an implied-in-fact contract requires the same terms as an express contract and those terms are determined through a process of implication and inference). We further concluded on the basis of the record before us at that time that the competitive benefits of complete detariffing of nondominant interexchange carriers' interstate, domestic, interexchange service outweighed any potential increased costs resulting from detariffing such services.

ii. Positions of the Parties

19. AT&T, Frontier, Telco, and TRA petition the Commission to reconsider its decision to adopt complete detariffing for casual calling services and argue that the Commission, instead, should allow nondominant interexchange carriers to file tariffs for these services. CompTel, Television Networks, SBC, Sprint and WorldCom support this request. TRA and Sprint contend that unlike most other businesses, common carriers are required by statute to provide service upon demand prior to payment for their services. AT&T argues that allowing nondominant interexchange carriers to file tariffs for casual calling services is the simplest and most efficient means of ensuring a contractual relationship between carriers and casual callers. These parties, and others, contend that, in the absence of tariffs, carriers would need to develop costly and burdensome mechanisms to ensure the establishment of a legal relationship with casual callers to obligate them to pay for the services they receive and to bind casual callers to the terms and conditions of the service, including limitations on liability.

20. Several of these parties also maintain that the alternatives to tariffs that the Commission suggested in the *Second Report and Order* are insufficient to ensure that carriers have a contractual basis for enforcing their rates, terms, and conditions for casual calling services. Specifically, these parties assert that neither the implied-in-fact contract theory nor requiring customers to provide credit card information or a billing number guarantees that a carrier will be able to recover its charges for calls made by casual callers, because the carrier will have to demonstrate that the parties agreed upon definite terms. AT&T, Sprint, CompTel, and SBC assert that without tariffs, interexchange carriers would have to resort to costly, repetitive, state-by-state litigation to secure payment for services rendered. They assert that the outcome of such litigation is uncertain, and that the associated costs would inevitably be passed on to consumers.

21. AT&T argues that nondominant interexchange carriers, to ensure the establishment of a contractual relationship with a casual caller, would likely need to provide casual callers with the rates, terms, and conditions, or at a minimum, the option of obtaining the rates, terms, and conditions, prior to completion of the call. AT&T contends that using a recorded announcement that provides the rates, terms, and conditions of the call would greatly inconvenience callers by adding a delay in call set-up time of between 1.5 and 2 minutes. AT&T further maintains that even providing casual callers with the option of hearing such information would add between 7 and 9 seconds to the call set-up time. AT&T argues that this time delay is especially burdensome to the casual caller because in most instances, the caller is placing the call from a telephone away from the home in circumstances that necessitate simplicity, convenience and speed. Moreover, AT&T contends that these mechanisms would increase by approximately $0.33 to $0.77 the cost of each call. AT&T asserts that the costs would be higher if the nondominant interexchange carrier announces the rates, terms, and conditions and lower if the carrier provides the option of hearing the information. AT&T further argues that it may have underestimated this incremental cost per call, because it was unable to calculate the cost of playing an announcement to dial-around callers. AT&T also argues that computers and fax machines are unable to recognize the announcement, and, therefore, that any announcement would interfere with a caller's ability to use casual calling services for computer access or sending faxes. AT&T states, further, that an announcement of the rates, terms, and conditions transmitted to a computer or fax machine may be insufficient to create an enforceable contractual relationship with the caller.

22. AT&T and Sprint also claim that a recorded announcement may not even be an option for callers who use dial-around 1+ services, because interexchange carriers may be unable to distinguish these calls from direct dial 1+ calls placed from telephones presubscribed to that carrier. Letter from Marybeth M. Banks, Director, Federal Regulatory Affairs, Sprint, to William F. Caton, Acting Secretary, Federal Communications Commission, April 30, 1997 (Sprint April 30 *Ex Parte*); Letter from Marybeth M. Banks, Director, Federal Regulatory Affairs, Sprint, to William F. Caton, Acting Secretary, Federal Communications Commission, March 21, 1997 (Sprint March 21 *Ex Parte*). Direct-dial 1+ calls are those interstate, interexchange calls that an end-user makes using his or her presubscribed interexchange carrier. A caller completes this call by simply dialing 1 before the number being called. In contrast, dial-around 1+ calls are generally those made by end-users to access the interstate, domestic, interexchange services of an interexchange carrier other than the carrier presubscribed to that line. Once an end-user dials a carrier's CAC, the caller is connected to that interexchange carrier, and may place a 1+ (dial-around 1+) or a 0+ (dial-around 0+) call using the services of that interexchange carrier. End-users may use a dial-around service to take advantage of a lower rate offered by a competing interexchange carrier for that specific call, or during outages of its presubscribed interexchange carrier's network. Sprint contends that the technology to distinguish between these two types of

calls exists, but that this feature is not universally offered by all LECs. Sprint contends that only those LECs with switches capable of providing signalling using Signalling System 7 (SS7) protocol are able to provide this feature. Moreover, Sprint asserts that several LECs that have switches capable of providing SS7 do not offer this feature. Sprint and AT&T further argue that the cost of implementing this technology, where available, is significant and inevitably will be passed on to consumers.

23. Several parties state that the increase in costs related to ensuring that a legally enforceable relationship is established with casual callers in the absence of tariffs may make it difficult for carriers effectively to provide casual calling services, and may ultimately result in carriers ceasing to offer these services altogether.

24. Telco and SBC also argue that possible invocation of the ''filed-rate'' doctrine—a primary reason the Commission adopted complete detariffing in the *Second Report and Order*—is not an issue with respect to casual calling services, for which carriers do not negotiate individual contracts. Frontier and SBC claim, moreover, that contrary to the Commission's conclusions in the *Second Report and Order*, the ''filed-rate'' doctrine is actually beneficial to consumers because the ability to tariff a service ''promotes certainty'' in the carrier-customer relationship. Frontier contends that this certainty is particularly beneficial in situations such as casual calling, where the carrier provides the service prior to establishing an enforceable contractual relationship with the customer.

25. Finally, Western Union urges the Commission to allow nondominant interexchange carriers to file tariffs for consumer messaging services (*e.g.*, telegram services). Western Union advances essentially the same arguments in support of this claim that other parties make in urging the Commission to adopt permissive detariffing for casual calling services. Western Union asserts that customers often convey to Western Union by telephone the message that they want transmitted by telegram. As a result, Western Union contends that it does not have an opportunity to formalize a written contract with the customer that would bind the customer to its terms and conditions. Western Union states that although the carrier could provide such information orally at the time the customer telephones Western Union to place an order, such a method of conveying the information would confuse customers, and may not create a legally enforceable contract that effectively limits the carrier's liability. Western Union further contends that if carriers are unable to limit their liability effectively, they may be forced to increase their rates or cease offering consumer messaging services altogether, which would not be in the public interest.

iii. Discussion

26. A number of parties urge us to reconsider our decision to adopt complete detariffing for casual calling services in general. Sprint has focused its comments on dial-around 1+ services. After examining additional evidence presented by the parties on reconsideration, we partially grant the petitions and adopt permissive detariffing, on an interim basis, for a subset of casual calling services, specifically, the provision of dial-around 1+ services. For all other types of casual calling services that are the subject of this proceeding, we affirm our determination that complete detariffing is warranted, and, therefore, deny the petitions for reconsideration to this extent.

27. We note at the outset that the problems that nondominant interexchange carriers maintain will arise with respect to ensuring the establishment of a contractual relationship with casual callers in a detariffed environment do not arise with calling cards. Because customers obtain calling cards in advance of using the service, the carrier can formalize a contractual relationship at the time the customer obtains the card, rather than at the time the call is placed. Consumers always have the option of obtaining a carrier's calling card to make calls and carriers may choose to advertise calling cards as a preferable alternative to casual calling in a detariffed environment.

28. With the exception of dial-around 1+ calls, discussed *infra*, we affirm our prior finding that nondominant interexchange carriers have reasonable options other than tariffs by which they can ensure the establishment of a contractual relationship with casual callers that would legally obligate such callers to pay for the services they use and bind them to the carrier's terms and conditions. We recognize that the implied-in-fact contract theory and the provision of credit card information or a billing number, alone, do not guarantee that nondominant interexchange carriers will have an enforceable contract with the casual caller, if the caller does not have knowledge of the carrier's rates, terms, and conditions prior to completion of the call. Interexchange carriers, however, do not dispute that alternatives can be created by which they can establish an enforceable contract with casual callers. One alternative, as discussed by AT&T, is that nondominant interexchange carriers could establish an enforceable contract with casual callers by providing them with the rates, terms, and conditions of the interstate, domestic, interexchange service by operator or recorded announcements prior to completion of the call. The parties acknowledge that an enforceable contract would exist if the rates, terms, and conditions were provided prior to completion of the call. Rather, these carriers argue only that providing such an announcement of rates, terms, and conditions prior to completion of the call would be burdensome to their casual calling customers. Many casual calling services, including collect calling, and calls billed to third-party numbers, however, already require intervention by the interexchange carrier before the call is completed, and nondominant interexchange carriers could provide this announcement at that time. Furthermore, less burdensome alternatives may also be sufficient to ensure the establishment of a contractual relationship. Another alternative discussed by AT&T would be to provide casual callers with the option of obtaining the rates, terms, and conditions prior to completion of the call either through an operator or a recorded announcement. We need not address whether this alternative is sufficient to ensure the establishment of an enforceable contract, because we conclude that providing the rates, terms, and conditions prior to completion of the call would establish an enforceable contract and, as discussed below, is a feasible alternative. Moreover, at a minimum, we agree with Frontier and reaffirm our conclusion in the *Second Report and Order* that if the customer has used the carrier's service with knowledge of the rates, terms, and conditions, nondominant interexchange carriers could seek recovery under an implied-in-fact contract theory. Thus, we conclude that the fact that a casual caller has not signed a written contract does not preclude a finding that a legally enforceable obligation exists between the nondominant interexchange carrier and the casual caller, especially when the customer has knowledge of the carrier's charges.

29. We recognize that complete detariffing of casual calling services may require nondominant interexchange

carriers to modify in significant respects the manner in which these carriers bill and collect charges for their affected services. We further recognize the concerns raised by AT&T and Sprint that the cost of casual calls may increase and that casual callers may experience a delay in call set-up time. Nevertheless, we affirm our prior conclusion that the benefits of complete detariffing of casual calling services except dial-around 1+ services are substantial. These benefits include elimination of the possible invocation of the ''filed-rate'' doctrine, decreased risk of tacit price coordination, and increased rate and service information provided directly to casual callers to ensure that a legal relationship is established between carriers and customers at the time the caller uses the casual calling service. In our view, these benefits outweigh the increased costs and delays in call set-up time that AT&T and Sprint claim will result from complete detariffing. In addition, we reiterate that casual callers always have the option of obtaining and using an interexchange carrier's calling card, thereby avoiding any increased cost or delay.

30. We also recognize AT&T's concern that complete detariffing of casual calling services would impede the use of certain casual calling arrangements for calls originated by computers and fax machines, because the computer or fax machine would not recognize the announcement, thereby interfering with the call, and because an announcement transmitted to a computer or fax machine may be insufficient to establish an enforceable contract. AT&T, however, overstates the problem. Casual calling services such as collect calling and calls billed to third-party numbers presently require intervention by the interexchange carrier before the call is completed. Likewise, use of a third-party credit card often requires interaction with the carrier to provide the credit card information. Thus, the use of a recorded announcement in a detariffed environment will not significantly alter the current requirement of intervention by the interexchange carrier. One casual calling service that does not require intervention with the interexchange carrier prior to completion of the call is dial-around 1+ service. As discussed *infra*, we are permitting carriers to file tariffs for dial-around 1+ service through use of a carrier's CAC. Concededly, there may be situations where callers using third-party credit cards may be able to enter their credit card information electronically by swiping the card prior to beginning a call, and that in the absence of tariffs, these customers may face an additional announcement of rates, terms, and conditions. We nevertheless find that the negative consequences to the limited number of those casual callers who may use third-party credit cards for computer access and fax machines do not warrant reconsideration of our decision to detariff completely casual calling except dial-around 1+ services in light of the benefits of complete detariffing of such casual calling services and the fact that most casual calling services already require intervention by an interexchange carrier. Moreover, casual callers who now use third-party credit cards for computer access and fax machines can avoid the announcement of rates, terms, and conditions by obtaining in advance and using an interexchange carrier's calling card. As discussed above, an interexchange carrier can establish an enforceable contract with customers at the time they obtain the calling card, rather than when the call is placed.

31. We also reject Telco's and SBC's argument that, because carriers do not negotiate individual contracts with casual callers, possible invocation of the ''filed-rate'' doctrine is not a concern for casual callers. Although we agree with Telco and SBC that generally the ''filed-rate'' doctrine is an issue when a tariffed rate, term, or condition differs from a rate, term, or condition in a contract, invocation of the ''filed-rate'' doctrine may also harm casual callers. Customers may use a casual calling service in response to an advertisement or direct solicitation, which may provide rates, terms, and conditions for the interstate, domestic, interexchange casual calling service. If the interexchange carrier modifies these rates, terms, or conditions in the future, the consumer would be bound by the tariffed rates, terms, and conditions, even if the consumer did not receive actual notice of the modification. In the absence of tariffs, consumers will likely receive, or have the option of receiving, current information on the rates, terms, and conditions for the specific service they are about to use, because nondominant interexchange carriers will likely disclose such information to the casual caller in order to ensure the establishment of a contractual relationship.

32. While we continue to require complete detariffing for casual calling services in general, we adopt permissive detariffing for dial-around 1+ services using a nondominant interexchange carrier's access code. We are persuaded that the means of ensuring the establishment of an enforceable contract with customers of other casual calling services cannot be implemented currently for dial-around 1+ services, because, as explained below, the interexchange carrier does not have the ability reasonably to distinguish a caller using dial-around 1+ services from direct dial 1+ services, as required to provide the dial-around 1+ caller with the rates, terms, and conditions prior to completion of the call. We note that this issue is not a concern for dial-around 0+ calls from aggregator locations, because those calls require intervention between the carrier and customer, at which time the carrier can establish a contractual relationship with the customer. We further note that not all dial-around 1+ calls are from casual callers. Presently, some customers may need to dial their presubscribed interexchange carrier's access code to use that carrier's interstate, domestic, interexchange services, rather than the caller's LEC, for interstate, intraLATA calls. After February 8, 1999, however, customers will no longer need to dial their presubscribed interexchange carrier's access code to use that carrier's interstate, domestic, interexchange services because LECs are required to institute dialing parity and allow customers to select a PIC for intraLATA toll calling by then. *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio; Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas; Administration of the North American Numbering Plan; Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois*, CC Docket Nos. 96–98, 95–185, NSD File No. 96–8, CC Docket No. 92–237, IAD File No. 94–102, Second Report and Order and Memorandum Opinion and Order, 61 FR 47284 (September 6, 1996).

33. Sprint and AT&T have presented evidence that the technology to distinguish dial-around 1+ calls from direct dial 1+ calls placed from telephones presubscribed to an interexchange carrier is not universally offered by all LECs either because some LEC switches are not capable of providing signalling using SS7, which is necessary to provide this feature, or because some LECs have chosen not to offer the technology needed to distinguish dial-around 1+ calls from direct dial 1+ calls. Sprint's and AT&T's unchallenged representations, which were not in the record when we considered casual calling services in the *Second Report and Order*, lead us to

find that adoption of complete detariffing at this time for dial-around 1+ services would not be in the public interest. Such a regime would impose substantial costs and burdens on nondominant interexchange carriers that offer dial-around 1+ services and their customers. The rates, terms, and conditions of services provided to presubscribed direct dial callers often differ from those provided to casual callers using a dial-around 1+ service. Because nondominant interexchange carriers would not always be able to distinguish between these two types of calls, they would not always be able to determine the rates, terms, and conditions for a particular call at the time the call is placed. Moreover, the inability of nondominant interexchange carriers to distinguish between these two types of calls would require these carriers to implement for dial-around 1+ callers and direct dial 1+ callers the recorded announcement of the rates, terms, and conditions or other means adopted by such carriers to ensure a contractual relationship with dial-around 1+ callers. Such a recorded announcement may confuse direct dial 1+ customers. Further, the increased costs and the delay in call set-up time that AT&T and Sprint contend are attendant with ensuring the establishment of a contractual relationship would likely be imposed on both dial-around 1+ calls and direct dial 1+ calls from a presubscribed telephone line. We find that imposing these increased costs and delays in call set-up time on both dial-around 1+ callers and customers using a direct dial 1+ service from a telephone line presubscribed to that carrier—in all likelihood, the majority of calls over that line—would impose an unreasonable burden on consumers using direct dial 1+ services from their PIC. We note that these concerns do not arise with respect to dial-around 0+ calls from aggregator locations, because such calls always require intervention by the interexchange carrier and, therefore, implementation of a recorded announcement or some other means of providing customers with the rates, terms, and conditions of the call would not affect consumers making calls other than dial-around 0+ calls. We reach this conclusion because the volume of direct dial 1+ calls from a PIC is vastly larger than the volume of dial-around 1+ calls, and therefore, the costs and burdens associated with providing an announcement of rates, terms, and conditions for dial-around 1+ callers would be imposed on this much larger group. In contrast, the increased costs and delays in call set-up time for other casual calling services would be imposed only on those customers using that particular casual calling service, and the benefits of completely detariffing those casual calling services outweigh the costs, as discussed above.

34. We recognize that nondominant interexchange carriers, to avoid burdening their presubscribed customers, could decide not to provide an announcement of rates, terms, and conditions prior to completion of dial-around 1+ calls. In this circumstance, as in any circumstance where there is no contract, the carrier, at a minimum, could seek to recover under a theory of quantum meruit (Quantum meruit is an ''equitable doctrine, based on the concept that no one who benefits by the labor and materials of another should be unjustly enriched thereby; under those circumstances, the law implies a promise to pay a reasonable amount for the labor and materials furnished, even absent a specific contract therefor.'' Black's Law Dictionary 1243 (6th ed. 1990).) for the value of its services. Because we appreciate the somewhat greater burden of pursuing a collection action when only a quantum meruit theory of recovery is available, however, we find that allowing nondominant interexchange carriers to file tariffs for dial-around 1+ services at this time is in the public interest. We are also concerned that nondominant interexchange carriers, to avoid imposing these costs and delays on their presubscribed customers, may decide not to offer a dial-around 1+ service option. Such a result would limit consumers' choices, and, therefore, would also not be in the public interest.

35. We realize that the unique problems created by dial-around 1+ services as they are presently handled could be eliminated if we were to require LECs to deploy universally switches capable of providing SS7. We are not requiring LECs to take such measures in this Order on Reconsideration. A significant number of LEC switches do not presently have SS7 capability, and we do not have an adequate record in this proceeding to evaluate the costs that such a decision would impose on LECs. We note, however, that LECs have been rapidly deploying switches capable of providing SS7, and therefore, the unique technological concerns about the ability to distinguish between dial-around 1+ calls and direct dial 1+ calls from presubscribed customers will not be an issue in the near future. Once LECs universally deploy switches that are capable of providing SS7, we will reexamine this issue to determine whether we will completely detariff dial-around 1+ services for the same reasons that we determine that complete detariffing of other casual calling services is in the public interest. In the meantime, we conclude that permissive detariffing of dial-around 1+ services offered by nondominant interexchange carriers is in the public interest as an interim measure. In addition, we strongly encourage nondominant interexchange carriers to provide dial-around 1+ services on a detariffed basis as soon as they have the capability to do so. Because we are adopting permissive detariffing for dial-around 1+ services, we need not address concerns raised by Sprint that the ''bad debt ratio'' is higher for dial-around 1+ calls than for calls from presubscribed customers.

36. We recognize that adopting permissive detariffing for dial-around 1+ services may raise concerns about invocation of the ''filed-rate'' doctrine for customers of these services. Due to the unique technological concerns with dial-around 1+ services that prevent the interexchange carrier from reasonably being able to provide the dial-around 1+ caller with the rates, terms, and conditions prior to completion of the call, discussed above, we conclude, on balance, that the costs to consumers of adopting complete detariffing for dial-around 1+ services outweigh the benefits of complete detariffing with respect to this particular type of service.

C. Initial Period of Service to Presubscribed Customers

i. Background

37. The *Second Report and Order* did not specifically address whether complete detariffing is in the public interest with respect to the provision of interstate, domestic, interexchange service to new customers that select and use an interexchange service before receiving information about the rates, terms, and conditions of that service. None of the comments filed in response to the NPRM raised this issue.

ii. Positions of the Parties

38. AT&T contends that we should permit carriers to file tariffs that are effective for the initial 45 days of service to residential and small business customers, or until a contract with the new customer is consummated, whichever is earlier. AT&T claims that many of the concerns carriers raise with respect to casual calling services in a detariffed environment are also relevant with respect to presubscribed customers during the initial period of service. AT&T states that, absent tariffs, nondominant interexchange carriers

will be required to provide service to new customers prior to the formalization of a contractual relationship during the period: (1) After the customer contacts the LEC to designate an interexchange carrier or initiate a PIC change, but before the nondominant interexchange carrier is able to ensure the establishment of an enforceable contractual relationship; and (2) when the customer contacts the interexchange carrier or its marketing agents directly, but before the contract can be prepared and mailed to the customer. AT&T contends that in both situations, tariffs are the only means by which the interexchange carrier can enforce its rates, terms, and conditions and limit its liability before a contract is finalized, without resort to costly, repetitive litigation. AT&T concludes that permitting nondominant interexchange carriers to file tariffs before they have an opportunity to finalize a written contract with a new customer will not adversely affect consumers because market forces will ensure that the filed rates, terms, and conditions will be just, reasonable, and nondiscriminatory, and the Commission's complaint process is available as an additional safeguard. Several commenters support AT&T's request.

iii. Discussion

39. We grant, in part, AT&T's petition for reconsideration urging us to adopt permissive detariffing for the initial 45 days of nondominant interexchange carriers' provision of interstate, domestic, interexchange mass market services to new residential and business customers, or until a written contract is consummated, whichever is earlier. We find, based on the evidence presented by the parties, that permitting interexchange carriers to file tariffs to cover the provision of service during this period is in the public interest in the limited circumstance when a new customer contacts the LEC to select an interexchange carrier or to initiate a PIC change. We expect each LEC to process service requests promptly. Interexchange carriers are reminded that during the effective period of their tariffs, they must make their services generally available to all similarly-situated customers, pursuant to section 202(a). During the effective period of a tariff, interexchange carriers are required, pursuant to section 201(a), to make all efforts to provide service quickly, even under protest. *See In the Matter of Hawaiian Telephone Company,* 78 F.C.C. 2d 1062, 1065 (1980). Carriers are also bound by section 201 when providing service pursuant to individually-negotiated contracts. We conclude, however, that the interexchange carriers have not demonstrated that this exception to our detariffing policy should be extended to the initial period of service to a new customer when the customer directly contacts the interexchange carrier or its marketing agents.

40. We find persuasive AT&T's argument that when a residential or small business customer contacts the LEC in order to presubscribe to an interexchange carrier or initiate a PIC change, (We note that residential and small business customers that contact the LEC to presubscribe to an interexchange carrier or initiate a PIC change are generally those customers that utilize mass market services.) the selected interexchange carrier, because it does not have direct contact with the customer, may be unable immediately to ensure that a legal relationship is established with that customer. AT&T presented evidence establishing that: (1) It takes some LECs up to 60 days to notify AT&T of the PIC designation; (The 45-day period during which we are allowing permissive detariffing was requested by the parties. Although AT&T asserts that it takes LECs up to 60 days to notify it of a PIC change, AT&T's petition for reconsideration requests only that we adopt permissive detariffing for at most 45 days to enable it to formalize a contract. *See* AT&T Petition at 9, 11–12 & n.12. Other parties supported AT&T's request. *See supra* note . AT&T subsequently clarified that allowing interexchange carriers to file tariffs that are applicable for a maximum of 45 days after the customer begins taking service would provide the interexchange carrier a sufficient amount of time to establish a contractual relationship with the customer in almost all cases. Letter from E. E. Estey, Government Affairs Vice President, AT&T, to William F. Caton, Acting Secretary, Federal Communications Commission, July 16, 1997.) (2) AT&T, because of the enormous churn rate in the industry, processes in excess of 30 million PIC changes or requests annually (an average of more than 600,000 requests per week); and (3) an additional two weeks may elapse after AT&T receives notice that it has been designated as a customer's PIC before contract information is mailed to that customer. Thus, during some initial period after interexchange service is established, carriers may be providing interstate, domestic, interexchange service to new customers without adequate assurance that the carriers' rates, terms, and conditions will be legally enforceable, and as a result, may be required to seek recovery of unremitted charges under alternative equitable theories, as discussed above.

41. We have considered various means by which LECs could convey to new customers of a nondominant interexchange carrier the information necessary to ensure the establishment of an enforceable contract during the initial period after the customer contacts the LEC and before the nondominant interexchange carrier can formalize the contractual relationship. We conclude, however, that none of these means adequately ensures an enforceable contractual relationship between the nondominant interexchange carrier and the customer during this initial period. Nondominant interexchange carriers conceivably could contract with LECs to act as agents of the interexchange carrier to establish a contractual relationship with the prospective customer by orally providing the rates, terms, and conditions of the interexchange service. We are reluctant, however, to adopt a policy that may have the effect of mandating such agency arrangements, especially since the LEC may have an affiliate that offers competing interstate interexchange services. Alternatively, if prospective customers are required to contact nondominant interexchange carriers directly prior to the commencement of service in order to establish the necessary contractual relationship, such a requirement would preclude residential and business customers from changing or selecting a PIC by contacting the LECs as they do today. That, in turn, could diminish competition among interexchange carriers by making it more difficult for customers to switch interexchange carriers. Finally, the nondominant interexchange carrier may decide to delay provisioning of the service until a contractual relationship is formalized, which also may discourage residential and business customers from making PIC changes, thereby deterring competition in the interexchange market. We, therefore, conclude that the benefits of allowing nondominant interexchange carriers to file tariffs, at their discretion, for the limited period before the customer executes a written contract outweigh any potential benefits resulting from complete detariffing in this particular situation. Consistent with the deregulatory framework of the 1996 Act, we are allowing nondominant interexchange carriers to file tariffs under the circumstances described herein, as opposed to requiring tariffs, to allow nondominant interexchange

carriers and LECs to agree upon alternatives to tariffs for the purpose of adequately ensuring a contractual relationship between the nondominant interexchange carrier and the customer before the customer formally executes the written contract.

42. We reject AT&T's arguments that we should also allow nondominant interexchange carriers to provide an initial period of service under tariff when a customer contacts the interexchange carrier or its marketing agent directly. AT&T claims that even when the customer contacts the carrier or its marketing agents directly to begin interexchange service or initiate a PIC change, it is unable to consummate a written contract prior to the commencement of service, given the large number of requests it receives and the period of time it takes to process customers' requests. When a customer contacts the interexchange carrier or its marketing agent directly, however, there is an opportunity for the interexchange carrier to establish, at a minimum, an oral contract by relating to the customer the rates, terms, and conditions that will be in effect from the commencement of service until such time as the customer formalizes a written contract with the interexchange carrier. This situation is distinguishable from both the situation in which the prospective customer contacts the LEC to select an interexchange carrier or to initiate a PIC change, and when a customer places a casual call using a carrier's CAC. The interexchange carrier does not have an opportunity in either of those cases to interact with the customer. In contrast, a customer who contacts the nondominant interexchange carrier directly is in essentially the same position as customers of other businesses in unregulated, competitive markets, *i.e.*, they have an opportunity to interact with the service provider before the service is initiated. We are not persuaded, therefore, that we should reconsider our decision to require complete detariffing when a customer contacts the interexchange carrier or its marketing agent directly to begin interexchange service or to initiate a PIC change. We reaffirm our finding that complete detariffing when a customer contacts the interexchange carrier or its marketing agent directly to begin interexchange service or to initiate a PIC change is in the public interest.

43. Moreover, we find that permitting nondominant interexchange carriers to file tariffs effective for the initial 45 days of service or until there is a written contract between the carrier and the customer, whichever is earlier, in those limited instances where prospective customers contact the LEC to select an interexchange carrier or to initiate a PIC change, is not inconsistent with a primary reason we adopted complete detariffing in the *Second Report and Order, i.e.*, eliminating the ability of carriers to invoke the ''filed-rate'' doctrine. We believe that the ability of carriers to invoke the ''filed-rate'' doctrine does not create significant problems when a customer contacts the LEC to select an interexchange carrier or to initiate a PIC change because the proposed tariff is in place only for a limited time, *i.e.*, the initial 45 days of service or until a written contract between the carrier and the customer is consummated, whichever is earlier. The limited term of the tariff would prevent carriers from unilaterally changing the terms of negotiated agreements or unilaterally limiting their liability for damages after the initial period of service. Upon expiration of the tariff, the legal relationship between carriers and customers will much more closely resemble the legal relationship between service providers and customers in an unregulated environment, a goal of detariffing delineated in the *Second Report and Order.*

44. We recognize that permitting nondominant interexchange carriers to file tariffs for service to new customers that contact the LEC raises the risk that carriers could use these tariffs to send price signals for their mass market services. We believe, however, that we cannot address the unique problems raised by the commenters about establishing a contractual relationship with these new customers in a detariffed environment without allowing nondominant interexchange carriers to file tariffs for a short period needed to formalize the contract. We note that should we become aware of evidence indicating that nondominant interexchange carriers are using these tariffs to send price signals for their mass market services, we can reexamine our decision to adopt permissive detariffing for LEC-implemented new customer services.

D. Tariff Filing Requirements for Bundled Domestic and International Service Offerings

i. Background

45. In the NPRM in this rulemaking docket, the Commission sought comment on whether it should forbear from requiring nondominant interexchange carriers to file tariffs for the international portions of service offerings that include both interstate, domestic, interexchange services and international services. The Commission noted that it was reserving for a separate proceeding the issue of whether it should consider generally forbearing from requiring tariffs for international services provided by nondominant carriers.

46. We determined in the *Second Report and Order* that there was insufficient record evidence to find that each of the statutory criteria necessary to forbear from requiring nondominant interexchange carriers to file tariffs for the international portions of bundled domestic and international service offerings had been satisfied. We concluded that we should address detariffing of the international portions of bundled domestic and international service offerings in a separate proceeding in which we could examine the state of competition in the international market. We therefore required nondominant interexchange carriers with bundled domestic and international services to bifurcate their bundled domestic and international service offerings and file a tariff that includes only the international portions of their service offerings.

47. We also adopted a nine-month transition period in the *Second Report and Order* to allow nondominant interexchange carriers time to adjust to detariffing. We determined that the Commission would not accept new tariffs for interstate, domestic, interexchange services, or revisions to existing tariffs, for long-term service arrangements during the nine-month transition.

ii. Positions of the Parties

48. API and SDN Users request that the Commission detariff the international portions of bundled domestic and international services offered by nondominant interexchange carriers. Ad Hoc Users Committee and the Television Networks support API's and SDN Users' petitions for reconsideration. AT&T and CompTel argue that the international services portion of bundled service offerings should be treated on the same basis as the interstate, domestic, interexchange services portion, without specifying whether both portions should be tariffed or detariffed. SDN Users, AT&T, Ad Hoc Users Committee, and CompTel contend that requiring tariffs only for the international portions of bundled domestic and international service offerings confuses customers and complicates negotiations. API further argues that the statutory forbearance criteria are satisfied with respect to the international portion of bundled international and domestic services, because the policy considerations that

support the Commission's decision to detariff the interstate, domestic, interexchange market are equally relevant to the international portion of bundled international and domestic offerings. In particular, API states that the public interest objectives of eliminating the possible invocation of the ''filed-rate'' doctrine and establishing market conditions that more closely resemble an unregulated environment are also served by detariffing the international portions of bundled international and domestic offerings. API further argues that there is no evidence in the record that would support a need to retain tariffs for the international portions of bundled offerings.

49. Sprint opposes the request to allow domestic nondominant carriers to detariff the international portions of bundled domestic and international services offered by nondominant interexchange carriers. Sprint argues that requiring carriers to detariff such international services will confuse customers, because some carriers are dominant in certain international markets and nondominant in others. Sprint therefore urges the Commission to maintain tariff filing requirements for all international services until the Commission is able to examine the unique issues involved in applying its detariffing policies to international services.

50. AT&T and CompTel further request that the Commission allow permissive detariffing for mixed international and domestic services offered by nondominant interexchange carriers during the nine-month transition to allow carriers and customers to adjust to the new policy. Ad Hoc Users Committee and API oppose this request on the ground that such a policy would allow carriers to alter or abrogate long-term arrangements by invoking the ''filed-rate'' doctrine. API disputes AT&T's contention that customers are ''significantly confused'' by the requirement that nondominant interexchange carriers bifurcate mixed international and domestic service offerings and states that customers have worked through issues with carriers that are far more daunting and potentially confusing.

iii. Discussion

51. In order to determine whether the statutory criteria are satisfied for us to forbear from requiring tariffs for the international portion of bundled domestic and international service offerings, we need to examine the state of competition for these international services. We find nothing in the record on reconsideration that enables us to make findings on the state of competition for such services. API claims only that detariffing the international portion of bundled domestic and international service offerings would lead to the same public interest benefits as detariffing interstate, domestic, interexchange services. Other parties argue that requiring tariffs only for the international portions of bundled domestic and international service offerings confuses customers and complicates negotiations. The parties, however, have not provided new evidence in the record that would enable us to determine that the statutory forbearance criteria are met for detariffing the international portion of bundled domestic and international service offerings. The state of competition in the international market may not be the same as in the domestic market, and, we do not have sufficient evidence in this proceeding to make such a determination. We therefore affirm our conclusion that the determination of whether to detariff the international portions of bundled domestic and international service offerings should be addressed as part of a separate proceeding in which the Commission can further examine the state of competition in the international market.

52. We need not address at this time AT&T's request that we adopt permissive detariffing for bundled international and domestic service offerings during the nine-month transition. The United States Court of Appeals for the D.C. Circuit has stayed the *Second Report and Order*, pending judicial review. Nondominant interexchange carriers, therefore, are currently required to file tariffs for all of their interstate, domestic, interexchange services, including those that are bundled with international services. We delegate authority to the Common Carrier Bureau to determine the appropriate transition period and address other transition issues when the detariffing rules become effective.

E. Local Access Portion of Interstate, Domestic, Interexchange Services

i. Positions of the Parties

53. Ad Hoc Users Committee requests that the Commission clarify that the *Second Report and Order* detariffed the exchange access components of the interstate, domestic, interexchange services offered by nondominant interexchange carriers, and not only the interoffice component of such services. It argues that a requirement that nondominant interexchange carriers separate their integrated end-to-end service offerings into interexchange and exchange access services would radically depart from the Commission's historical approach to regulation of the interstate, domestic, interexchange marketplace and would create a ''practical nightmare'' for nondominant interexchange carriers to implement. API and Sprint support Ad Hoc Users Committee's request for clarification.

54. Bell Atlantic contends that Ad Hoc's request, which deals with the regulation of exchange access services and not the regulation of interexchange services, is beyond the scope of this proceeding. Moreover, Bell Atlantic argues that the Commission should not detariff the exchange access services of nondominant providers without detariffing such services for all providers.

ii. Discussion

55. We agree with Ad Hoc Users Committee that we detariffed integrated end-to-end interstate, domestic, interexchange services in the *Second Report and Order*, including both the interexchange portion and the interstate exchange access components of such services when offered on an integrated basis. We note that our conclusion that the forbearance criteria are satisfied applies only to interstate exchange access that is offered to customers as part of an integrated, end-to-end interstate, domestic, interexchange service that the customer is purchasing. We are not detariffing in this proceeding the sale of interstate exchange access that is offered on a stand-alone basis. The Commission, in another proceeding, recently granted, in part, two petitions seeking forbearance from tariff filing requirements for competitive access providers (CAPs) and non-dominant providers of interestate exchange access services. In that proceeding, the Commission adopted permissive detariffing for non-ILEC providers of interstate exchange access services, and proposed the adoption of complete detariffing for all non-ILEC providers of these services. *See In the Matters of Hyperion Telecommunications, Inc. Petition Requesting Forbearance, Time Warner Communications Petition for Forbearance, Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers,* Memorandum Opinion and Order and Notice of Proposed Rulemaking, CC Docket No. 97–146, 62 FR 38244 (July 17, 1997); *see also Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User*

Common Line Charges, CC Docket Nos. 96–262, 94–1, 91–213, 95–72, First Report and Order, 62 FR 31868 (June 11, 1997) (*Access Charge Reform Order*).

56. Nondominant interexchange carriers purchase or self provide interstate exchange access as an input to providing integrated, end-to-end interstate, domestic, interexchange service. Thus, access is merely a component of a service offered to end users. We have found that market forces generally will ensure that nondominant interexchange carriers do not charge rates, or impose terms and conditions, for their interstate, domestic, interexchange services that violate sections 201 and 202 of the Communications Act. Because market forces will generally constrain nondominant interexchange carriers' charges for interstate, domestic, interexchange services, there is no need to require the nondominant interexchange carrier to break out and tariff a separate charge for interstate exchange access.

F. Effect of Detariffing on AT&T/ Alascom's Common Carrier Services

i. Background

57. AT&T/Alascom offers certain ''common carrier'' services that the Commission has defined as ''all interstate interexchange transport and switching services that are necessary for other interexchange carriers to provide services in Alaska up to the point of interconnection with each Alaska local exchange carrier.'' In the *AT&T Reclassification* proceeding, AT&T made certain commitments, including, *inter alia,* that it ''will comply with all of the obligations and conditions contained in the Commission orders associated with AT&T's purchase of Alascom, Inc., including the *Alascom Authorization Order,* the *Market Structure Order* (59 FR 27496 (May 27, 1994)), and the *Final Recommended Decision* (58 FR 63345 (December 1, 1993)).'' In the *Second Report and Order,* we stated that our decision to forbear from requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services would not affect AT&T's commitment to comply with the Commission's orders associated with AT&T's purchase of Alascom, and that AT&T would continue to be bound by this commitment.

ii. Discussion

58. We have been asked to clarify in this proceeding that the *Second Report and Order* did not detariff AT&T/ Alascom's common carrier services. A similar issue has been raised in the *AT&T Reclassification Order.* We believe this issue is better addressed in that proceeding in light of AT&T's commitment in that proceeding to comply with the Commission's orders associated with AT&T's purchase of Alascom. We therefore incorporate the record filed in this proceeding on the issue of detariffing AT&T/Alascom's common carriers services to the *AT&T Reclassification* proceeding.

III. Information Disclosure Issues

A. Background

59. The Commission tentatively concluded in the NPRM that it would require nondominant providers of interstate, domestic, interexchange telecommunications services to file certifications that they are in compliance with the geographic rate averaging and rate integration requirements of section 254(g) of the Communications Act to ensure compliance with those requirements. The Commission also tentatively concluded in the NPRM 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.

60. In the *Second Report and Order,* we adopted the tentative conclusion in the NPRM and required nondominant interexchange carriers to file an annual certification stating that they are in compliance with the statutory rate averaging and rate integration requirements. We further adopted the tentative conclusion in the NPRM and ordered nondominant interexchange carriers to maintain supporting documentation on the rates, terms, and conditions of their interstate, domestic, interexchange services that they could submit to the Commission within ten business days upon request. In addition, in the *Second Report and Order,* we required nondominant interexchange carriers to make information concerning 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, although we expressly stated that we did not intend to require nondominant interexchange carriers to disclose more information than is currently provided in tariffs.

B. Positions of the Parties

61. Several parties filed petitions asking the Commission to reconsider or clarify various aspects of the public disclosure requirement in the *Second Report and Order.* Ad Hoc Users Committee requests that the Commission eliminate the public disclosure requirement with respect to information on individually-negotiated service arrangements. It argues that a public disclosure requirement makes it easier for interexchange carriers to ascertain their competitors' price and service information, and, therefore, the requirement is inconsistent with the Commission's interest in deterring price coordination. Ad Hoc Users Committee further argues that, because the Commission decided to forbear from applying section 254(g) to contract tariffs and similar customer-specific agreements, disclosure of the rates and terms of individually-negotiated service arrangements cannot be justified on the basis of enforcing section 254(g). Rather than requiring public disclosure, Ad Hoc Users Committee contends that the Commission could meet the objectives supporting a public disclosure requirement in the *Second Report and Order* through: (1) The workings of the competitive market; (2) the Commission's complaint process; and (3) disclosure of rate and term information to Commission and state regulatory staff, to Congress in connection with agency oversight, and to complainants in discovery proceedings before the Commission or courts.

62. API, Bell Atlantic, and Sprint support Ad Hoc Users Committee's petition, arguing that a public disclosure requirement for customer-specific arrangements will inhibit competition and that businesses in other competitive markets are not required to disclose the terms of customer-specific deals. Bell Atlantic further argues that, if the Commission eliminates the public disclosure requirement, it should also not require dominant interexchange carriers to disclose their prices to the public through tariffs. Bell Atlantic maintains that requiring dominant interexchange carriers to file tariffs or otherwise disclose their prices would be anticompetitive, because nondominant interexchange carriers would set their prices based on the dominant carrier's disclosed prices.

63. TRA argues that the public disclosure requirement is necessary to address, at least in part, its concerns that carriers will discriminate against resellers in the absence of tariffs. Several other parties request that the Commission strengthen the information disclosure requirements in the *Second Report and Order,* which they deem insufficient. Specifically, Rural

Telephone Coalition (RTC) asks the Commission to require carriers to make information more widely available to consumers to ensure that they have easy access to the information necessary to determine whether nondominant interexchange carriers are complying with the rate integration and rate averaging requirements of section 254(g). RTC argues that the *Second Report and Order's* requirement that nondominant interexchange carriers make information available in only one location will prevent customers, especially those in rural areas, from obtaining the information. Instead, RTC urges the Commission to require carriers to make the information available on-line and at one public place in each state in which the carrier operates. RTC contends that these requirements would not be unduly burdensome on carriers. Alaska and Hawaii support RTC's petition.

64. Telecommunications Management Information Systems Coalition (TMISC) requests that we clarify the disclosure rules by specifying the type and amount of information that must be made publicly available, as well as the time limit within which nondominant interexchange carriers must make the information publicly available. TMISC argues that, without more specific information requirements, the Commission and other interested parties may not be able effectively to enforce the geographic rate averaging and rate integration requirements of section 254(g). TMISC further points out that a significant number of consumer organizations, public interest organizations, and state governments filed comments in this proceeding, arguing that effective public disclosure requirements are not only necessary to enforce section 254(g), but also to enable consumers to make fully informed service decisions. Hawaii argues that the Commission should require nondominant interexchange carriers to disclose the same amount of information that is currently provided in tariffs and also agrees with TMISC that the current information disclosure provisions are inadequate.

65. AT&T responds to RTC and TMISC by arguing that complete detariffing will impose substantial burdens on nondominant interexchange carriers, particularly the costs associated with establishing and maintaining a legal relationship with their customers. AT&T contends that there is no reason to add to these costs by imposing more burdensome information disclosure requirements.

C. Discussion

66. The basis for our decision in the *Second Report and Order* to adopt a public disclosure requirement for all interstate, domestic, interexchange services offered by nondominant interexchange carriers was to provide the public with the information necessary to determine whether a carrier was adhering to the rate integration and rate averaging requirements of section 254(g). We recognized 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). We also determined that a public disclosure requirement would promote the public interest by making it easier for consumers, including resellers, to compare service offerings and to bring complaints. We noted, however, that nondominant interexchange carriers will generally provide such information to consumers to improve or maintain their competitive position in the market.

67. We sought to tailor this public disclosure requirement to meet our objective of ensuring that nondominant interexchange carriers comply with section 254(g) in their provision of interstate, domestic, interexchange services, while minimizing any potential adverse effects on our general policy of allowing market forces, rather than regulation, to discipline the practices of these carriers. Although a public disclosure requirement does not affect certain benefits of complete detariffing, such as elimination of possible invocation of the ''filed-rate'' doctrine, it may detract from our objective of reducing regulatory burdens and deterring tacit price coordination. Thus, we minimized the burdens on nondominant interexchange carriers of complying with this requirement by, for example, only requiring nondominant interexchange carriers to make information available in one location and not specifying a format for the disclosure.

68. Upon further examination, we agree with Ad Hoc Users Committee that we can more narrowly tailor our information disclosure requirement. We therefore grant Ad Hoc Users Committee's petition and eliminate the public disclosure requirement for individually-negotiated service arrangements. Individually-negotiated service arrangements, as opposed to mass market services, are customer-specific arrangements, such as contract tariffs, AT&T's Tariff 12 options, MCI's special customer arrangements, and Sprint's custom network service arrangements. We find that the disclosure of the rates, terms, and conditions of individually-negotiated service arrangements cannot be justified on the basis of the need to enforce the rate averaging requirements of section 254(g). This is because the Commission decided to ''forbear from applying section 254(g) to such arrangements, consistent with the intent of Congress, to the extent necessary.'' The Commission continues to require carriers to ensure that individually-negotiated service offerings are available to all similarly-situated customers, regardless of their geographic location. The Commission did not forbear from applying the rate integration requirements to individually-negotiated service arrangements. There are several means to ensure that nondominant interexchange carriers make individually-negotiated service arrangements available to all similarly-situated customers without a public disclosure requirement. Market forces generally will ensure that nondominant interexchange carriers that lack market power do not charge rates, or impose terms and conditions, for interstate, domestic, interexchange services that are unjustly or unreasonably discriminatory. Specifically, if a nondominant interexchange carrier could profit from selling an interstate, domestic, interexchange service at one price to one customer and attempted to sell the same service at an unjustly or unreasonably discriminatory price to a similarly-situated customer, that customer would purchase services from other facilities-based nondominant interexchange carriers that could profit from selling the same services to that customer at the lower market price. Moreover, we can remedy any carrier conduct that violates the requirement that carriers make individually-negotiated service arrangements available to all similarly-situated customers through the section 208 complaint process. A customer can file a section 208 complaint and allege that a carrier has unreasonably discriminated against it in the provision of either contract or mass market services. The customer complainant, as always, under section 208, bears the initial burden of establishing that: (1) The complainant sought substantially the same service arrangement under the same terms and conditions that were made available to another customer; and (2) the carrier refused to make that service available to the complainant on terms similar to those of another customer's service arrangement. If a complainant establishes this, the burden

shifts to the carrier which must demonstrate why the discrimination is reasonable. In addition, we will be able to investigate carriers' compliance with our rules through the requirement adopted in the *Second Report and Order* that interexchange carriers maintain price and service information on all of their interstate, domestic, interexchange services and make this information available to the Commission upon request. Thus, eliminating public disclosure for individually-negotiated service arrangements will not hinder enforcement of the requirement that carriers make such services available to all similarly-situated customers, and will also decrease the regulatory burden on nondominant interexchange carriers and deter tacit price coordination.

69. Although Ad Hoc Users Committee requests that the Commission eliminate the public disclosure requirement only for individually-negotiated service arrangements, the arguments it raises about the effect of public disclosure on tacit price coordination and the need to tailor more narrowly the information requirements apply to mass market services as well. Although no party specifically requested that the Commission eliminate the public disclosure requirement for mass market services, the Commission, in light of pending petitions for reconsideration, retains jurisdiction to reconsider its rules on its own motion. *See Central Florida Enters., Inc.* v. *FCC*, 598 F.2d 37, 48 n.51 (D.C. Cir. 1978), *cert. dismissed*, 441 U.S. 957 (1979). We therefore conclude on reconsideration that we should also eliminate the public disclosure requirement for mass market interstate, domestic, interexchange services offered by nondominant interexchange carriers. Mass market interstate, domestic, interexchange services are those services that are not individually-negotiated service arrangements, and, therefore, we are eliminating the public disclosure requirement for all interstate, domestic, interexchange services offered by nondominant interexchange carriers. Bell Atlantic's argument that we should also not require dominant interexchange carriers to disclose their rates, terms, and conditions is now largely moot in light of our determination that LECs providing interstate, domestic, interexchange services will generally be classified as nondominant in their provision of such services, pursuant to *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area; and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket Nos. 96–149, 96–61, Second Report and Order and Third Report and Order, (62 FR 35974 (July 3, 1997)). Because this proceeding concerns detariffing only nondominant interexchange carriers' interstate, domestic, interexchange services and the record on dominant interexchange carrier regulation is extremely limited, we will address the issue of the regulatory treatment of dominant interexchange carriers if and when we determine that an interexchange carrier should be classified as dominant in its provision of interstate, domestic, interexchange services. We emphasize, however, that this decision does not suggest any diminution in our commitment to enforce the geographic rate averaging and rate integration requirements. To that end, we require nondominant interexchange carriers to file annually certifications stating that they are in compliance with their obligations under section 254(g) and to maintain price and service information on all of their interstate, domestic, interexchange services that they must make available to the Commission and to state regulatory commissions upon request. In addition, we will further our goal of deterring tacit price coordination, because a nondominant interexchange carrier's rate, terms, and conditions for interstate, domestic, interexchange services will not be collected and available in one location, although we recognize that nondominant interexchange carriers may still be able to obtain information about their competitors' rates and service offerings in the absence of a public disclosure requirement.

70. We believe that our decision to eliminate the public disclosure requirement for mass market services will not deprive residential and other low volume customers of information about nondominant interexchange carriers' interstate, domestic, interexchange service offerings that they need to ensure that they have been correctly billed and to bring to the Commission's attention possible violations of the Communications Act, particularly section 254(g). To the contrary, we find nothing in the record of this reconsideration proceeding that would cause us to modify our conclusion in the *Second Report and Order* that consumers will have access to information concerning the rates, terms, and conditions for interstate, domestic, interexchange services offered by nondominant interexchange carriers to consumers through, *inter alia*, the billing process, information provided by nondominant interexchange carriers to establish a contractual relationship with their customers, notifications required by service contracts or state consumer protection laws, and advertisements and marketing materials. We note that the majority of consumer complaints about the lawfulness of carriers' rates, terms, or conditions for interstate, domestic, interexchange services are based on information obtained through the billing process. Moreover, as set forth in the *Second Report and Order*, we find that it is highly unlikely that interexchange carriers that lack market power could successfully charge rates, or impose terms and conditions that violate sections 201 and 202 of the Communications Act. Consumers will also have the information they need to select the service best suited to their calling patterns through the mechanisms discussed above and the workings of the competitive market. Because consumers will have access to rate and service information about nondominant interexchange carriers' interstate, domestic, interexchange services in a detariffed environment without a public disclosure requirement, we conclude that the public disclosure requirement in the *Second Report and Order*, let alone an expanded public disclosure requirement as RTC and TMISC request, is unnecessary to protect consumers.

71. We recognize that elimination of the public disclosure requirement will make the collection of information more difficult for businesses, including consumer groups, that analyze and compare the rates and services of interexchange carriers and offer their analysis to the public for a fee. These businesses, however, will have access to the information that nondominant interexchange carriers provide to the public in order to market their services and improve their competitive position in the market. On balance, we conclude that the benefits of eliminating the public disclosure requirement for consumers, *e.g.*, decreased risk of tacit price coordination and increased competition in the interstate, domestic, interexchange market, outweigh any potential adverse effects on these businesses. Moreover, as stated above, consumers will not be deprived of the information they need and will receive additional information directly from nondominant interexchange carriers that will provide rate and service information to consumers in order to ensure the establishment of a contractual relationship with them in a detariffed environment. Although we find on the basis of the record in this

proceeding that a public disclosure requirement is not necessary to ensure that interexchange carriers comply with their obligation under section 254(g), we are prepared to revisit this issue in the event that evidence shows that the safeguards we have implemented are inadequate. One tool at our disposal is to conduct audits of interexchange carrier compliance with the rate averaging obligations of section 254(g).

72. We also recognize the concerns of resellers, as expressed by TRA, that, without rate and service information through either tariffs or a public disclosure requirement, resellers will not have adequate information to prevent nondominant interexchange carriers from discriminating against resellers, which are not only customers, but also competitors of the carriers. We conclude, however, that the resellers' concern that the resale market will not survive in a detariffed environment without a public disclosure requirement is overstated. As noted in the *Second Report and Order*, 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. Thus, as discussed below, our long-standing policies barring prohibitions on resale and restrictive eligibility requirements will continue in full force to the same extent as prior to detariffing. Moreover, we agree with Ad Hoc Users Committee that it is unreasonable to assume that in a substantially competitive market, facilities-based carriers will not provide resellers with service options at reasonable rates. As TRA noted, in another proceeding, AT&T has just begun to ''reform its conduct with respect to resellers'' when its market share declined to fifty percent. If a carrier does not provide resellers with service options at reasonable rates, resellers are not only likely to find another facilities-based carrier that will do so, but resellers also have the right to file a section 208 complaint with the Commission. We therefore find that the increased benefits to interexchange carriers and consumers of complete detariffing without a public disclosure requirement, *e.g.*, decreased risk of tacit price coordination and increased competition in the interstate, domestic, interexchange market, and a reduced regulatory burden justify any negative effect upon resellers of eliminating the public disclosure requirement.

73. Finally, we make clear that the annual certification requirement and the requirement that nondominant interexchange carriers maintain price and service information on all of their interstate, domestic, interexchange services that they must submit to the Commission upon request, discussed herein, are the same as those contained in the *Second Report and Order.*

IV. Miscellaneous Issues

A. Nondiscriminatory Access to Interstate, Domestic, Interexchange Services

i. Positions of the Parties

74. TRA asks the Commission to clarify that nondominant interexchange carriers are required to make available, upon request, all interstate, domestic, interexchange services, including contract-based services, on a nondiscriminatory basis, to all qualified entities, including resellers. TRA argues that the Commission has required nondominant interexchange carriers to make such service offerings generally available, and has declared unlawful restrictive eligibility requirements that unreasonably discriminate against similarly-situated customers. TRA notes that the Commission addressed its concerns in the *Second Report and Order*, in part, by requiring nondominant interexchange carriers to make publicly available price and service information on all of their interstate, domestic, interexchange services. TRA contends, however, that the *Second Report and Order* does not expressly declare that the ''general availability'' requirement will continue to apply.

ii. Discussion

75. The Commission has long-standing policies of prohibiting restrictions on resale and barring restrictive eligibility requirements for interstate, domestic, interexchange services that have the effect of unreasonably discriminating against similarly-situated customers. The Commission has further concluded that individually-negotiated service arrangements do not violate section 202(a)'s prohibition against ''unjust or unreasonable discrimination,'' if the terms of the service arrangement are made available to similarly-situated customers. In the *Second Report and Order*, we made clear that our decision to forbear from requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services does not affect carriers' obligations under sections 201 and 202. Thus, nondominant interexchange carriers are prohibited from imposing restrictions on resale and restrictive eligibility requirements that unreasonably discriminate against similarly-situated customers to the same extent that they were prohibited from doing so prior to adoption of the *Second Report and Order.* TRA also stated in its petition that the Commission partially addressed its concerns by requiring nondominant interexchange carriers to disclose publicly certain information regarding their interstate, domestic, interexchange services. As stated above, we have eliminated the public disclosure requirement in this Order on Reconsideration. For a discussion of this issue and TRA's concerns, see *supra* paras. 59–73.

B. Law Governing the Lawfulness of Rates, Terms, and Conditions for Interstate Services

i. Positions of the Parties

76. AT&T requests that the Commission clarify that federal, and not state, law governs the determination as to whether a nondominant interexchange carrier's rates, terms, and conditions for interstate, domestic, interexchange services are lawful. AT&T contends that parties may interpret the statement in the *Second Report and Order* that, with complete detariffing, ''consumers will also be able to pursue remedies under state consumer protection and contract laws'' as allowing challenges under state law to the lawfulness of rates, terms, and conditions for these interstate services. AT&T argues that any interpretation that authorizes such challenges under state law is foreclosed by numerous judicial decisions recognizing that sections 201 and 202 of the Communications Act preempt state law with respect to the reasonableness of rates, terms, and conditions for interstate telecommunications services. Sprint, and WorldCom support AT&T's petition, arguing that the Communications Act, and not state law, governs rates, terms, and conditions for interstate telecommunications services. U S WEST argues that the Commission should adopt permissive detariffing until it conducts a new proceeding to determine the law that governs the relationship between carriers and customers in a detariffed environment. API opposes U S WEST's request that the Commission conduct a new proceeding to determine the applicability of state and federal law in a detariffed environment.

ii. Discussion

77. In the *Second Report and Order*, we stated that our decision to forbear from requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange

services will not affect our enforcement of carriers' obligations under sections 201 and 202 to charge rates, and impose practices, classifications, and regulations that are just and reasonable, and not unjustly or unreasonably discriminatory. We therefore agree with AT&T, Sprint, and WorldCom that the Communications Act continues to govern determinations as to whether rates, terms, and conditions for interstate, domestic, interexchange services are just and reasonable, and are not unjustly or unreasonably discriminatory. While the parties only sought clarification that the Communications Act governs the determination as to the lawfulness of rates, terms, and conditions, we note that the Communications Act does not govern other issues, such as contract formation and breach of contract, that arise in a detariffed environment. As stated in the *Second Report and Order,* consumers may have remedies under state consumer protection and contract laws as to issues regarding the legal relationship between the carrier and customer in a detariffed regime.

78. We reject U S WEST's argument that we should adopt permissive detariffing until there is greater certainty about the law that would govern the relationship between carriers and customers in the absence of tariffs. We adopted a nine-month transition in the *Second Report and Order,* during which nondominant interexchange carriers are permitted to file new tariffs and revise existing tariffs for mass market services. This transition provides for a period of permissive detariffing to allow nondominant interexchange carriers time to adjust to detariffing. We believe that a lengthier period of time is unnecessary to address U S WEST's concern.

C. Private Contract Clauses Preserving the ''Filed-Rate'' Doctrine

i. Positions of the Parties

79. Ad Hoc requests that the Commission clarify that the intent of the *Second Report and Order* is not to permit carriers to preserve the ''unfair advantages'' they would enjoy under ''filed-rate'' doctrine, but to eliminate the ability of nondominant interexchange carriers to invoke the ''filed-rate'' doctrine. Ad Hoc contends that some interexchange carriers are attempting to preserve their right to make unilateral changes to contracts by including a contract clause pursuant to which the carrier is permitted to alter the terms of the contract at any time, and for any reason.

ii. Discussion

80. In the *Second Report and Order,* we stated that not permitting nondominant interexchange carriers to file tariffs for the provision of interstate, domestic, interexchange services will achieve the public interest objective of eliminating the ability of nondominant interexchange carriers to invoke the ''filed-rate'' doctrine. We also observed that eliminating the ability of carriers to invoke the ''filed-rate'' doctrine benefits consumers by creating a legal relationship that more closely resembles the legal relationship between service providers and customers in an unregulated environment, and is in the public interest. While we do not support attempts by carriers to preserve their ability to alter unilaterally the terms of a contract, pursuant to a contract clause, we will rely on private negotiations between the parties in the first instance to resolve such issues. The issue of whether a particular contract clause is ''just and reasonable,'' as required by section 201(b) of the Communications Act, is not before us in this proceeding, however, such an issue would be an appropriate matter for a section 208 complaint.

D. Relationship of Detariffing to Access Charge Reform and Universal Service

i. Positions of the Parties

81. RTC urges the Commission in this proceeding to ensure adequate universal support for access charges in high-cost areas to minimize the incentive of interexchange carriers to deaverage their rates. RTC contends that, notwithstanding the statutory requirement that interexchange carriers charge ''reasonably comparable'' rural and urban interexchange rates, interexchange carriers have an incentive to deaverage their rates, especially as they face increased competition from BOCs and others. RTC further argues that eliminating tariffs and curtailing public information availability will decrease interexchange carriers' incentive to average interexchange rates. Although RTC recognizes that the Commission is considering universal service support and access charge reform in other dockets, it nevertheless contends that there is an overlap between this proceeding and those other dockets. Thus, RTC urges the Commission in this proceeding to reduce the incentive to deaverage rates by ensuring adequate support mechanisms for high-cost areas.

82. AT&T counters that the *Second Report and Order* does not compel a particular result in the Commission's universal service and access charge reform proceedings. AT&T further argues that any relationship between detariffing and access charge reform or universal service should be considered in those particular dockets.

ii. Discussion

83. We have recently addressed universal service support and access charge reform in separate proceedings. We agree with AT&T that these issues are beyond the scope of this proceeding and better addressed in those particular proceedings in which numerous parties commented specifically on universal service and access charge reform issues. Therefore, we decline to address these issues in this proceeding.

E. Fees for the Withdrawal of Tariffs

i. Positions of the Parties

84. TRA requests that the Commission refrain from collecting filing fees from nondominant interexchange carriers that are required to withdraw tariffs pursuant to the *Second Report and Order.* TRA argues that § 1.1113(a)(4) of the Commission's rules supports its argument that it is inequitable to retain filing fees when carriers are compelled to withdraw tariffs as a result of Commission action.

ii. Discussion

85. Pursuant to § 1.1105 of the Commission's rules, tariff filings must be accompanied by a filing fee, which is currently six hundred dollars per tariff filing. After we adopted the *Second Report and Order,* the Common Carrier Bureau received inquiries concerning whether nondominant interexchange carriers must pay the tariff filing fee to withdraw or revise tariffs pursuant to the *Second Report and Order,* and whether nondominant interexchange carriers that pay such fees would be entitled to a refund or return of the fee. On December 19, 1996, the Common Carrier Bureau issued the *Public Notice Concerning Implementation,* in which it responded to these inquiries and addressed the precise issue TRA raises here. The Common Carrier Bureau, consistent with Commission precedent and practice, concluded in the *Public Notice Concerning Implementation* that nondominant interexchange carriers would need to pay tariff filing fees to withdraw or revise existing tariffs pursuant to the *Second Report and Order,* and that such carriers would not be entitled to a return or refund of the fee. We now affirm this conclusion.

86. The purpose of the fee program is to assess and collect fees for regulatory services provided to the public, and the

fees charged are based primarily on the costs to the Commission of providing those services. In the *Fee Program Order* (52 FR 5285 (February 20, 1987)), the Commission concluded that § 1.1113(a)(4) was ''intended to apply in those rare instances where the Commission creates a new regulation or policy, or the Congress and the President approve a new law or treaty, that would make the grant of a *pending* application a legal nullity.'' The Commission specifically concluded that Congress, when it established the regulatory fee program, did not envision an exemption from the payment of fees for additional tariff filings required by changes to the Commission's rules. Based on its analysis in the *Fee Program Order,* the Commission required Commercial Mobile Radio Service providers to pay the tariff filing fee for cancelling tariffs for domestic interstate services pursuant to a Commission order. We are not aware of any distinction that justifies a different determination in this case. We therefore conclude that nondominant interexchange carriers cancelling their tariffs for interstate, domestic, interexchange services, or revising their tariffs for bundled international and domestic service offerings to exclude interstate, domestic, interexchange services, will be required to pay the tariff filing fee and will not be eligible for a return or refund of that fee.

87. To minimize the cost to nondominant interexchange carriers of cancelling or revising tariffs pursuant to the *Second Report and Order,* we reiterate that such carriers may cancel or revise several tariffs under one cover letter with the payment of one filing fee, as stated in the *Public Notice Concerning Implementation.* In addition, organizations that file tariffs on behalf of several carriers may request a waiver of applicable filing rules so that they may cancel the tariffs of several carriers or file revisions to tariffs of several carriers under one cover letter with the payment of one filing fee.

V. Procedural Issues

A. Final Regulatory Flexibility Analysis on Reconsideration

88. As required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM. The Commission sought written public comments on the proposals in the NPRM. In addition, pursuant to section 603, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *Second Report and Order.* That FRFA conformed to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The Supplemental Final Regulatory Flexibility Analysis in this initial Order on Reconsideration (Supplemental FRFA) also conforms to the RFA.

i. Need for and Objectives of This Order on Reconsideration and the Rules Adopted Herein

89. With the exception of dial-around 1+ services and LEC-implemented new customer services, our decisions and rules in this Order on Reconsideration detariff completely the interstate, domestic, interexchange services of nondominant interexchange carriers. In this Order on Reconsideration, we grant in part and deny in part several of the petitions filed for reconsideration and/or clarification of the *Second Report and Order,* in order to further the same needs and objectives as those discussed in the FRFA in the *Second Report and Order,* including reducing the costs and burdens of providing interstate, domestic, interexchange services, in the absence of tariffs, on nondominant interexchange carriers and customers, some of which are small entities. First, we adopt permissive detariffing for dial-around 1+ services using a nondominant interexchange carrier's access code. Second, we adopt permissive detariffing for the initial 45 days of LEC-implemented interstate, domestic interexchange service to new residential or small business customers, or until a written contract is consummated, whichever is earlier. Third, we eliminate the public disclosure requirement for all interstate, domestic, interexchange service offered by nondominant interexchange carriers. In addition, we require nondominant interexchange carriers to file annual certifications stating that they are in compliance with their obligations under section 254(g) and to maintain price and service information on all of their interstate, domestic, interexchange services that they must make available to the Commission upon request. Finally, with the exception of dial-around 1+ services and LEC-implemented new customer services, we affirm our conclusion that permissive detariffing of all other interstate, domestic, interexchange service of nondominant interexchange carriers is not in the public interest.

ii. Analysis of Significant Issues Raised in Response to the FRFA

90. *Summary of the FRFA.* In the FRFA, we recognized that many of the decisions and rules adopted in the *Second Report and Order* may have a significant effect on a substantial number of the small telephone companies identified by the Small Business Administration (SBA). Based upon data contained in the most recent census and a report by the Commission's Common Carrier Bureau, we estimated that fewer than 3,497 telephone service firms are small entity telephone service firms that could be affected. We also discussed the reporting requirements imposed by the *Second Report and Order.*

91. In addition, we discussed the steps we had taken to minimize the impact on small entities, consistent with our stated objectives. We concluded that our actions in the *Second Report and Order* would benefit small entities by facilitating the development of increased competition in the interstate, domestic, interexchange market, thereby benefitting all consumers, some of which are small business entities. We found that the record in that proceeding indicated 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 concluded that only with complete detariffing could we definitively eliminate these possible anticompetitive practices and protect consumers, some of which are small business entities. We noted that we attempted to keep burdens on nondominant interexchange carriers to a minimum. For example, we did not require nondominant interexchange carriers to make rate and service information available to the public in any particular format, or at any particular location.

a. Impact of Complete Detariffing on Small, Nondominant Interexchange Carriers

92. *Comments.* Although not in response to the FRFA, TRA claims that the *Second Report and Order* does not adequately address the impact of complete detariffing on small, nondominant interexchange carriers. TRA requests that the Commission permit nondominant interexchange carriers to tariff their domestic, interstate, interexchange service offerings.

93. *Discussion.* As discussed in the Order on Reconsideration, we permit carriers to file tariffs for dial-around 1+ services and LEC-implemented new customer services. We base this decision on the credible evidence offered by parties on reconsideration concerning the costs and burdens to carriers and customers of providing these services in the absence of tariffs. Permitting carriers

to file tariffs in these limited circumstances will ease the burdens on nondominant interexchange carriers and customers, some of which are small entities. We discuss these issues above in the Order on Reconsideration.

iii. Description and Estimates of the Number of Small Entities Affected by This Order on Reconsideration

94. For the purposes of this Order on Reconsideration, 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 SBA. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities with fewer than 1,500 employees. We first discuss generally the total number of small telephone companies falling within both of those SIC categories. Then, we discuss the number of small businesses within the two subcategories that may be affected by our rules, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

95. *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 the 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. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs 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 on Reconsideration.

96. *Wireline Carriers and Service Providers.* The 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. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons. 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 or small incumbent LECs. 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 the 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 on Reconsideration.

97. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under the 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. 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 the 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 on Reconsideration.

98. *Resellers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under the SBA's 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. 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 the 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 on Reconsideration.

99. In addition, the rules adopted in this Order on Reconsideration 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 the 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. 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 the 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 on Reconsideration.

100. We assume that most, if not all, small businesses purchase interstate, domestic, interexchange telecommunications services. As a result, our rules in this Order on Reconsideration would affect virtually all small business entities. The 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's database. The SBA database 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. 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. This number, however, includes 38,978 counties, cities and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000. 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 the decisions and rules adopted in this Order on Reconsideration.

iv. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements and Steps Taken to Minimize the Significant Economic Impact of This Order on Reconsideration on Small Entities, Including the Significant Alternatives Considered and Rejected

101. *Structure of the Analysis.* In this section of the Supplemental FRFA, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities as a result of this Order on Reconsideration. As a part of this discussion, we mention some of the types of skills that will be needed to meet the new requirements. We also describe the steps taken to minimize the economic impact of our decisions on small entities, including the significant alternatives considered and rejected.

102. We provide this summary analysis to provide context for our analysis in this Supplemental FRFA. To the extent that any statement contained in this Supplemental FRFA is perceived as creating ambiguity with respect to our rules or statements made in the *Second Report and Order* or preceding sections of this Order on Reconsideration, the rules and statements set forth in the *Second Report and Order* and in the preceding sections of this Order on Reconsideration shall be controlling.

a. Permissive Detariffing for Dial-around 1+ Services

103. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.* In the *Second Report and Order*, we concluded that the record did not support a finding that complete detariffing would cause nondominant interexchange carriers to cease offering casual calling services. Rather, we found that nondominant interexchange carriers have options other than tariffs by which they can ensure the establishment of a contractual relationship with casual callers that would legally obligate such callers to pay for the telecommunications service they use and bind them to the carriers' terms and conditions. In this Order on Reconsideration, we adopt permissive detariffing, on an interim basis, for a subset of casual calling services, specifically, the provision of dial-around 1+ services. This change in the manner of conducting their business may require nondominant interexchange carriers to use technical, operation, accounting, billing, and legal skills.

104. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered.* By permitting nondominant interexchange carriers to file tariffs for dial-around 1+ services, we enable these carriers and their customers, some of which are small business entities, to avoid the substantial costs and burdens associated with ensuring the establishment of an enforceable contract in the absence of tariffs. The means of ensuring the establishment of an enforceable contract with customers of other casual calling services cannot be reasonably implemented currently for dial-around 1+ services because the interexchange carriers do not have the ability reasonably to distinguish dial-around 1+ calls from direct dial 1+ calls placed from telephones presubscribed to an interexchange carrier, as required to provide the dial-around 1+ caller with the rates, terms, and conditions prior to completion of the call. The inability of nondominant interexchange carriers to distinguish between dial-around 1+ and direct dial 1+ calls would require these carriers to implement the recorded announcement of the rates, terms, and conditions or other means adopted by such carriers to ensure a contractual relationship with dial-around 1+ callers for both dial-around 1+ callers and direct dial 1+ callers. The increased costs and the delay in call set-up time that are attendant with ensuring the establishment of a contractual relationship with dial-around 1+ callers would impose an unreasonable burden on consumers using direct dial 1+ service from their PIC. We find in this Order on Reconsideration that the technology to distinguish dial-around 1+ calls from direct dial 1+ calls placed from telephones presubscribed to an interexchange carrier is not universally offered by all LECs, either because some LEC switches are not capable of providing signalling using SS7, which is necessary to provide this feature, or because a LEC has chosen not to offer this feature.

105. In this Order on Reconsideration, we reject the option of requiring LECs to deploy universally switches capable of providing SS7. We reject this option, which might impose greater burdens on small LECs, because a significant number of LEC switches do not presently have SS7 capability and we do not have an adequate record in this proceeding to evaluate the costs that such a decision would impose on LECs.

b. Permissive Detariffing for LEC-Implemented New Customer Services

106. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.* In the *Second Report and Order*, we did not specifically address whether complete detariffing is in the public interest with respect to the provision of interstate, domestic, interexchange service to new customers that select and use an interexchange service before receiving information about the rates, terms, and conditions of that service. In this Order on Reconsideration, we permit interexchange carriers to file tariffs to cover the provision of service during the initial 45 days of nondominant interexchange carriers' provision of interstate, domestic, interexchange services to new residential and small business customers, or until a written contract is consummated, whichever is earlier, in the limited circumstance when a new customer contacts the LEC to select an interexchange carrier or to initiate a PIC change. This change in the manner of conducting their business may require nondominant interexchange carriers to use technical, operation, accounting, billing, and legal skills.

107. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Alternatives Considered.* Adoption of permissive detariffing for the initial period of LEC-implemented interstate, domestic, interexchange service to new residential and small business customer enables the nondominant interexchange carriers and their customers, some of which are

small business entities, to avoid the substantial costs and burdens associated with ensuring the establishment of an enforceable contract in the absence of tariffs.

108. In this Order on Reconsideration, we considered several means by which LECs could convey to customers of nondominant interexchange carriers the information necessary to ensure the establishment of an enforceable contract during the initial period after the customer contacts the LEC and before the nondominant interexchange carrier can formalize the contractual relationship. We conclude, however, that none of these means adequately ensures an enforceable contractual relationship between the nondominant interexchange carrier and the customer during this initial period of service. We reject the alternative of requiring nondominant interexchange carriers to contract with LECs to act as agents of the interexchange carrier to establish a contractual relationship with the prospective customer by orally providing the rates, terms, and conditions of the interexchange service. We are reluctant to adopt a policy that may have the effect of mandating such agency arrangements, especially since the LEC may have an affiliate that offers competing interstate interexchange services. In addition, requiring prospective customers to contact nondominant interexchange carriers directly prior to the commencement of service in order to establish the necessary contractual relationship would preclude residential and small business customers from changing or selecting a PIC by contacting the LECs as they do today. Finally, nondominant interexchange carrier could decide to delay provisioning of the service until a contractual relationship is formalized, but such a delay may also discourage residential and small business customers from making PIC changes, thereby deterring competition in the interexchange market.

c. Information Disclosure Requirements

109. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.* In the *Second Report and Order*, we required 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 also required 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 required 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. In addition, we required 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 further required 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.

110. In this Order on Reconsideration, we eliminate the requirement that nondominant interexchange carriers make publicly available information concerning rates, terms, and conditions for all of their interstate, domestic, interexchange services. To enforce the geographic rate averaging and rate integration requirements applicable to mass market services, we require nondominant interexchange carriers to file annual certifications stating that they are in compliance with their obligations under section 254(g) and to maintain price and service information on all of their interstate, domestic, interexchange services that they must make available to the Commission upon request. Compliance with this obligation may require the use of accounting, billing, and legal skills.

111. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered.* We recognize that elimination of the public disclosure requirement will make the collection of information more difficult for businesses, including consumer groups, that analyze and compare the rates and services of interexchange carriers and offer their analysis to the public for a fee. These businesses, however, will have access to the information that nondominant interexchange carriers provide to the public in order to market their services and improve their competitive position in the market. Moreover, we conclude that consumers will not be deprived of the information they need and will receive additional information directly from nondominant interexchange carriers that will provide rate and service information to consumers in order to ensure the establishment of a contractual relationship with them in a detariffed environment.

112. We also recognize the concerns of resellers that, without rate and service information made available through either tariffs or a public disclosure requirement, resellers will not have adequate information to prevent nondominant interexchange carriers from discriminating against resellers, which are not only customers, but also competitors of the carriers. We find, however, that the increased benefits to interexchange carriers and consumers of complete detariffing without a public disclosure requirement, *e.g.*, decreased risk of tacit price coordination and increased competition in the interstate, domestic, interexchange market, and a reduced regulatory burden justify any negative effect upon resellers of eliminating the public disclosure requirement.

v. Report to Congress

113. The Commission shall send a copy of this Supplemental FRFA, along with this Order on Reconsideration, 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 Supplemental FRFA will also be published in the **Federal Register**.

B. Supplemental Final Paperwork Reduction Analysis

114. As required by the Paperwork Reduction Act of 1995, Pub. L. 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.

115. On June 12, 1996, OMB approved all of the proposed changes to our information collection requirements in accordance with the Paperwork Reduction Act. 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.''

116. In this Order on Reconsideration, we adopt several changes to our information collection requirements proposed in the NPRM. Specifically, we have decided to: (1) Permit nondominant interexchange carriers to file tariffs for the provision of dial-around 1+services using a nondominant interexchange carrier's carrier access code; (2) permit nondominant interexchange carriers to file tariffs for the initial 45 days of domestic, interstate, interexchange service, or until there is a written contract between the carrier and the customer, whichever is earlier; (3) eliminate the public disclosure requirement. We reaffirm our decision in the *Second Report and Order* to require nondominant interexchange carriers to: (1) File annual 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 (2) maintain price and service information on all their interstate, domestic, interexchange services that they can make available to the Commission upon request. Implementation of these requirements will be subject to approval by OMB as prescribed by the Paperwork Reduction Act.

VI. Ordering Clauses

117. Accordingly, *it is ordered* that, pursuant to sections 1–4, 10, 201, 202, 203, 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, 203, 204, 205, 215, 218, 220, 226, and 254, *the Order on Reconsideration* is hereby *adopted*. The requirements adopted in this Order on Reconsideration shall be effective December 4, 1997, or on the date when the requirements adopted in the Second Report and Order in this proceeding become effective, whichever is later. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

118. *It is further ordered* that parts 42 and 61 of the Commission's rules, 47 CFR parts 42 and 61 *are amended* as set forth herein.

119. *It is further ordered* that the Petitions for Reconsideration filed by Ad Hoc Users Committee, AT&T, Frontier, Telco, and TRA are granted in part and denied in part, as described herein. All other Petitions for Reconsideration filed in this proceeding are denied.

120. *It is further ordered* that the Petitions for Clarification filed in this proceeding are granted in part, and denied in part, as described herein.

121. *It is further ordered that whereas the Second Report and Order* in this proceeding was stayed by the United States Court of Appeals for the District of Columbia Circuit, we direct the General Counsel expeditiously to file the necessary papers with the court to request clarification of that stay on the decision herein.

Accordingly, this Order on Reconsideration is stayed pending the court's ruling.

List of Subjects in 47 CFR Parts 42 and 61

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 42 and 61 of title 47 of the Code of Federal Regulations are amended as follows:

PART 42—PRESERVATION OF RECORDS OF COMMUNICATIONS 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.

§42.10 [Removed]

2. Section 42.10 is removed.

3. Section 42.11 is amended by revising paragraph (a) and removing paragraph (c).

§ 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 subparagraph shall include documents supporting the rates, terms, and conditions of the carrier's detariffed interstate, domestic, interexchange offerings. The information maintained pursuant to this subsection shall be maintained in a manner that allows the carrier to produce such records within ten business days.

* * * * *

PART 61— TARIFFS

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 4–3, unless otherwise noted.

5. Section 61.20 is revised to read as follows:

§ 61.20 Detariffing of interstate, domestic, interexchange services.

(a) Except as otherwise provided in paragraphs (b) and (c), or by Commission order, carriers that are nondominant in the provision of interstate, domestic, interexchange services shall not file tariffs for such services.

(b) Carriers that are nondominant in the provision of interstate, domestic, interexchange services shall be allowed to file tariffs for dial-around 1+services. For the purposes of this paragraph, dial-around 1+calls are those calls made by accessing the interexchange carrier through the use of that carrier's carrier access code. A carrier access code is a five or seven digit access code that enables callers to reach any carrier, presubscribed or otherwise, from any telephone.

(c) Carriers that are nondominant in the provision of interstate, domestic, interexchange services shall be allowed to file tariffs for such service to those customers who contact the local exchange carrier to designate an interexchange carrier or to initiate a change with respect to their primary interexchange carrier. These tariffs shall remain in effect until the interexchange carrier and the customer consummate a written contract, but in no event for more than 45 days.

6. Section 61.72 is amended by revising the introductory text of paragraph (a) to read:

§ 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 for which tariff filings are

required and those services for which carriers exercise the option to file tariffs. 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:

* * * * *

[FR Doc. 97–29117 Filed 11–3–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–250; RM–8952]

Radio Broadcasting Services; Parris Island and Hampton, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Simmons Broadcasting Company, substitutes Channel 276C3 for Channel 221A at Parris Island, South Carolina, and modifies Station WGZO(FM)'s license accordingly. To accommodate the upgrade, we also substitute Channel 221A for Channel 276A at Hampton, South Carolina, and modify Station WBHC–FM's license accordingly. *See* 61 FR 66248, December 17, 1996. Channel 276C3 can be allotted to Parris Island in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site. The coordinates for Channel 276C3 at Parris Island are North Latitude 32–27–00 and West Longitude 80–47–30. Additionally, Channel 221A can be allotted to Hampton in compliance with the Commission's minimum distance separation requirements at Station WBHC–FM's presently licensed site. The coordinates for Channel 221A at Hampton are North Latitude 32–50–39 and West Longitude 81–07–28. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 8, 1997.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–250, adopted October 15, 1997, and released October 24, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Channel 221A and adding Channel 276C3 at Parris Island; and by removing Channel 276A and adding Channel 221A at Hampton.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–29116 Filed 11–3–97; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD05

Endangered and Threatened Wildlife and Plants; Final Rule to List the Northern Population of the Bog Turtle as Threatened and the Southern Population as Threatened Due to Similarity of Appearance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines threatened status pursuant to the Endangered Species Act of 1973, as amended (Act) for the northern population of the bog turtle (*Clemmys muhlenbergii*), which ranges from New York and Massachusetts south to Maryland. The Service also determines the southern population of the bog turtle, which occurs in the Appalachian Mountains from southern Virginia to northern Georgia, to be threatened due to similarity of appearance to the northern population, with a special rule.

The bog turtle is threatened by a variety of factors including habitat degradation and fragmentation from agriculture and development, habitat succession due to invasive exotic and native plants, and illegal trade and collecting. This rule implements Federal protection and recovery provisions afforded by the Act.

DATES: Effective November 4, 1997.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Pennsylvania Field Office, U.S. Fish and Wildlife Service, 315 South Allen Street, Suite 322, State College, Pennsylvania 16801.

FOR FURTHER INFORMATION CONTACT: Carole Copeyon, Endangered Species Biologist, at the above address (telephone 814/234–4090; facsimile 814/234–0748).

SUPPLEMENTARY INFORMATION:

Background

The bog turtle was first described and named as Muhlenberg's tortoise (*Testudo muhlenbergii*) by Johann David Schoepff in 1801 based on specimens received in 1778 from Reverend Heinreich Muhlenberg of Lancaster County, Pennsylvania. In 1835, L.J. Fitzinger transferred the species to the genus *Clemmys*, where it remains today (Barton and Price 1955). In 1917, Dunn considered bog turtles within the southern range to be distinct, and classified the southern population as *Clemmys nuchalis* (Amato, Behler, Tryon, and Herman 1993). This taxon was subsequently synonymized with *Clemmys muhlenbergii*; however, researchers still question the taxonomic status of the northern and southern populations (Amato *et al.* 1993, Klemens *in press*). Initial data from recent preliminary genetic studies, based on examination of variability at the 16S ribosomal gene, suggest that there may not be significant genetic differences between the northern and southern populations. However, due to the conservative nature of this gene in other species, any definitive conclusions concerning genetic differences between the northern and southern populations is premature (Amato *et al.* 1993).

The bog turtle is sparsely distributed over a discontinuous geographic range extending from New England south to northern Georgia. A 250-mile gap within the range separates the species into distinct northern and southern populations (Klemens *in press*, Tryon 1990, Tryon and Herman 1990). The