International Tariffing Requirements in the Cross Hairs

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Washington, DC - November 2, 2000 - The FCC has just recently -- on October 18, 2000 -- issued a Notice of Proposed Rulemaking ("NPRM") initiating a an inquiry by the International Bureau to examine whether competitive conditions in the international interexchange marketplace are now sufficiently competitive so as to obviate the need for tariffs to protect competition and consumers. In this connection, the FCC seeks comment on whether detariffing requirements for the provision of international services should mirror those for domestic services. FCC action to implement some type of "international detariffing" has long been expected in the wake of the FCC's prolonged efforts which recently culminated in the "detariffing" of domestic services.

This inquiry, aimed at reducing the regulatory burdens imposed on non-dominant carriers providing international interexchange services, is being conducted in the context of the Biennial Regulatory Review mandated under Section 11 of the Communications Act. Under that section the FCC is directed to conduct a periodically periodic regulatory review, and to repeal or modify any regulation that it finds is no longer necessary to protect the public interest as a result of the existence of meaningful competition among carriers in providing a given service. Further, under Section 10 of the Communications Act, the FCC is empowered and, in fact, required to forbear from applying provisions of the Act, or of the Commission's regulations, to a telecommunications carrier or telecommunications service, or class thereof, if the Commission finds that forbearance would be in the public interest, and that the provision or regulation is no longer necessary: (1) to ensure that carriers offer their services at just and reasonable rates, terms, and conditions; and (2) to protect consumers.

Pursuant to this mandate, the FCC has conducted an initial review as to the continued need and viability of the statutory and regulatory regime establishing the "international tariffing" requirements currently imposed on international interexchange carriers. As stated in the NPRM, the FCC has found that its "recent deregulatory policies, in conjunction with market forces, decreasing accounting rates, and increasing liberalization and privatization encouraged by the World Trade Organization ("WTO") Basic Telecom Agreement, have resulted in a substantial increase in the level of competition in the international interexchange marketplace that has benefitted consumers through increased choices and lower rates." In particular, in the past few years, the international interexchange marketplace has experienced, to the benefit of consumers and competition in the U.S. market, increased privatization and liberalization of foreign markets, rapidly declining international settlement rates, and significant growth in the number of providers of international interexchange services. In light of the WTO's Basic Telecom Agreement and WTO Members' commitments to open markets, the Commission determined in a series of proceedings that it serves the public interest to adopt rules to promote competition in the international interexchange marketplace by opening further the U.S. market to competition from foreign companies and to reform and streamline its rules and policies governing the provision of U.S. international services.

Based on its findings that international competition has significantly increased as a result of both the WTO's liberalization and privatization policies, and the Commission's own deregulatory policies, the FCC has tentatively concluded that it was no longer necessary or in the public interest to continue to require U.S. non-dominant interexchange carriers to file tariffs for international services.

In the FCC's estimation, detariffing at this time will act to further promote competition. As stated by the FCC, detariffing international interexchange services "will enable consumers to contract with telephone carriers for their international interexchange services as they would contract for other services in an unregulated industry" and will "remove the harmful effects to consumers of the 'filed rate doctrine' that permits telephone carriers unilaterally to alter rates, terms, and conditions for service [simply] by filing a tariff with the Commission."

Consequently, the FCC proposes to extend the complete detariffing regime that it adopted for domestic, interexchange services to the international services of non-dominant, interexchange carriers, including U.S. carriers classified as dominant due to foreign affiliations. Under this proposal, therefore, only carriers classified as dominant, for reasons other than an affiliation with a foreign carrier that possesses market power, would continue to be required to file tariffs.

In connection with its proposal to implement "international detariffing," the FCC also is proposing to adopt the following related measures and findings:

(a) Limited Exceptions for Permissive Detariffing: The FCC tentatively has concluded that limited exceptions for permissive detariffing for international interexchange direct-dial services to which end-users obtain access by dialing a carrier's access code (CAC); and for the first 45 days of service to new customers that contact the local exchange carrier (LEC) to choose their primary interexchange carrier (PIC) are in the public interest.

(b) Public Disclosure Requirement: The FCC is proposing to adopt a public disclosure requirement that non-dominant interexchange carriers make information available to the public concerning current rates, terms, and conditions for all of their international interexchange services, in at least one location during regular business hours, and that such carriers that have Internet websites post this information on-line.

(c) Maintenance of Price and Service Information: The FCC proposes to require non-dominant interexchange carriers to maintain price and service information regarding all of their international interexchange service offerings. This price and service information should include the information provided in the public disclosure requirement as well as supporting documents for the rates, terms, and conditions of the offerings, all of which should be provided to the Commission within ten business days of receipt of a Commission request. Further, the FCC proposes that non-dominant interexchange carriers retain the price and service information for a period of at least two years and six months following the date the carrier ceases to provide international services on such rates, terms and conditions, in order to afford the Commission sufficient time to notify a carrier of the filing of a Section 208 complaint.

(d) Complete Detariffing of International Commercial Mobile Radio Services (CMRS): The FCC proposes to revisit its conclusion that permissive detariffing of CMRS providers for international services on unaffiliated routes is in the public interest. Instead, the FCC has tentatively concluded that its new international competitive analysis is equally applicable to international CMRS providers, and, therefore, that complete detariffing of international interexchange services provided by CMRS providers for affiliated and unaffiliated routes is warranted.

(e) Filing of Carrier-to-Carrier Contracts: The FCC proposes that only interexchange carriers classified as dominant for reasons other than a foreign affiliation should be required to file carrier-to-carrier contracts. The FCC also proposes to maintain the requirement for all authorized carriers, whether classified as dominant or non-dominant, contracting directly for services with foreign carriers that possess market power.

In its NPRM, the FCC has established an expedited comment period in this docket, and invites all interested parties to provide comments on its tentative proposals, and on any other relevant issues, including transition issues, concerning the detariffing of international interexchange services provided by non-dominant carriers. With respect to each issue, parties are requested to specify the bases upon which they believe the FCC can make the findings required to meet the statutory criteria for forbearance. Comments are due on November 17, 2000, and reply comments are due December 4, 2000.

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