

Dated: June 14, 2000.

Howard L. Hime,

Acting Director of Standards.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 61, and 69

[CC Docket Nos. 96-262 and 97-146; DA 00-1268]

Commission Asks Parties To Update and Refresh Record on Mandatory Detariffing of CLEC Interstate Access Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule: comments requested.

SUMMARY: The Federal Communications Commission (Commission) sought comment in two rulemaking dockets, the Access Charge Reform rulemaking docket and the Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers (CLEC Detariffing) rulemaking docket, regarding the regulatory or market-based approaches that would ensure that competitive local exchange carrier (CLEC) rates for interstate access are reasonable. Among the proposals discussed in these proceedings, the Commission invited interested parties to comment on whether mandatory detariffing of CLEC interstate access service rates would provide a market-based deterrent to excessive terminating access charges. As indicated in this Notice, interested parties may file comments and reply comments to update and refresh the records of these proceedings regarding mandatory detariffing of CLEC interstate access services.

DATES: Submit comments on or before July 12, 2000. Submit reply comments on or before July 24, 2000.

ADDRESSES: Submit electronic comments and other data to <http://www.fcc.gov/e-file/ecfs.html>. See Supplementary Information for file formats and other information about electronic filing. Submit paper copies to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission 445-12th Street S.W., TW-A325, Washington, D.C. 20554. See Supplementary Information for information on additional instructions for filing paper copies.

FOR FURTHER INFORMATION CONTACT: Joi Roberson Nolen, 202-418-1537.

SUPPLEMENTARY INFORMATION: On April 28, 2000, the court of appeals upheld the Commission's 1996 order requiring detariffing for interstate, domestic, interexchange services of nondominant interexchange carriers. See *MCI WorldCom v. FCC*, 209 F.3d 760 (D.C. Cir. 2000); *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Second Report and Order, 61 FR 59340 (November 2, 1996) (*IXC Detariffing Order*). On May 1, 2000, the court lifted the stay of the *IXC Detariffing Order* and the rules adopted in the order became effective. See *MCI WorldCom v. FCC*, No. 96-1459, slip op. (D.C. Cir., May 1, 2000). In light of the court's ruling, in this Notice, we invite parties to update and refresh the record regarding mandatory detariffing of CLEC interstate access services.

Specifically, commenters should discuss whether and, if so, how mandatory detariffing: (1) Addresses any market failure to constrain terminating access rates; (2) provides a market-based solution to excessive terminating charges by encouraging parties to negotiate terminating access charges; (3) provides the same benefits identified in the *CLEC Detariffing* rulemaking proceeding for permissive detariffing; (4) offers additional public interest benefits beyond permissive detariffing; (5) precludes the use of the filed rate doctrine to nullify contractual arrangements; (6) reduces the administrative burden on the Commission of maintaining tariffs; and (7) reduces the economic burden on the non-ILECs of filing tariffs.

This matter shall be treated as a "permit but disclose" proceeding in accordance with the Commission's *ex parte* rules. See 47 CFR 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Regulatory Flexibility Analysis and Paperwork Reduction Analysis. The Notice of Proposed Rulemaking in the *CLEC Detariffing* rulemaking docket and both the Notice of Proposed Rulemaking

and the Further Notice of Proposed Rulemaking in the *Access Charge Reform* rulemaking docket contained Initial Regulatory Flexibility Analyses (IRFA) as required by the Regulatory Flexibility Act (RFA). See 5 U.S.C. 603; see also 5 U.S.C. 601 *et seq.*, as amended by the Contract with America Advancement Act of 1996, Public Law 104-121, 110 Stat. 8747 (1996)(CWA). See *Access Charge Reform*, CC Docket No. 96-262, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, 62 FR 4670 (January 31, 1997); *Access Charge Reform*, CC Docket No. 96-262, Fifth Report and Order and Further Notice of Proposed Rulemaking, 64 FR 51280 (September 22, 1999); Hyperion Telecommunications, Inc. and Time Warner Petitions for Forbearance, Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers, CC Docket No. 97-146, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 62 FR 38244, June 19, 1997 (collectively, *NPRMs*). In addition, the *NPRMs* also invited the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in the *NPRMs*, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Because this Notice does not set forth substitute rules for, or changes to, those contained in the *NPRMs*, the initial IRFAs therefore are not revised nor do we now solicit additional comments on the information collections contained in the *NPRMs*.

Legal Basis. The proposed action is supported by Sections 4(i), 4(j), 201-205, 251, 252, 253 and 403.

Filing Comments. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before July 12, 2000. Interested parties may file reply comments on or before July 24, 2000. Comments may be filed using the Commission's Electronic Comment Filing system (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 64 FR 24121 (May 1, 1998). Comments filed through ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties also may submit an electronic comment by Internet e-mail. To get filing instructions for e-mail

comments, commenters should send an e-mail message to ecfs@fcc.gov and include "get form <your e-mail address>" in the body of the message. A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing with the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445—12th Street, S.W., TW—A325, Washington, D.C. 20554. In addition, one copy of each pleading must be filed with International Transcription Services (ITS), the Commission's duplicating contractor, at its office at 1231—20th Street, N.W., Washington, D.C. 20036, and one copy with the Chief, Competitive Pricing Division, 445—12th Street, S.W., TW—A225, Washington, D.C. 20554.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Telecommunications.

47 CFR Part 61

Access Charges, Communications common carriers, Telephone.

47 CFR Part 69

Communications common carriers, Telephone.
Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 00-16166 Filed 6-23-00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 000225052-005201; I.D. 102599C]

RIN 0648-AN29

Regulations Governing the Approach to Humpback Whales in Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to prohibit the approach within 200 yards (182.8 m) of a humpback whale, *Megaptera novaeangliae*, in waters within 200

nautical miles (370.4 km) of the coast of Alaska. Under these regulations, it would be unlawful for a person subject to the jurisdiction of the United States to approach, by any means, within 200 yards (182.8 m) of a humpback whale. This action is necessary to minimize disturbance to humpback whales in waters off Alaska. It is intended to promote conservation and recovery of humpback whales.

DATES: Comments must be submitted by August 10, 2000.

ADDRESSES: Mike Payne, Assistant Regional Administrator, Protected Resources Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, Alaska 99802-1668. Comments also may be sent via facsimile (fax) to 907/586-7012. Comments will not be accepted if sent via email or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 461, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, NMFS Alaska Region, 907/586-7235, or Jeannie Drevenak, Permits Division, NMFS Office of Protected Resources, 301/713-2289.

SUPPLEMENTARY INFORMATION:

Species Description

The humpback whale, *Megaptera novaeangliae*, is a highly migratory species that is found in all oceans of the world. Humpback whales, listed as endangered under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* (ESA), are baleen whales belonging to the family Balaenopteridae. Humpback whales frequenting the North Pacific basin spend the winter months in the warmer tropical waters off Hawaii, Mexico and southern Japan. The summer feeding range of these animals extends along coastal inland waters of British Columbia, southeast Alaska, through western Alaska to Russia, and as far north as the Bering Sea.

Humpback whales in the North Pacific have been divided into three stocks: (1) the California/Oregon/Washington and Mexico stock; (2) the Central North Pacific stock; and (3) the Western North Pacific stock (NMFS 1999; Calambokidis *et al.* 1997). The Central and Western North Pacific stocks feed during summer months in the waters of coastal Alaska. The Central North Pacific stock of humpback whales winters in Hawaiian waters and migrates to feeding grounds in the summer months in northern British Columbia/Southeast Alaska and Prince William Sound west to Kodiak (NMFS 1998, 1999). The Western North Pacific stock winters in the waters off Japan and

likely spends summer months feeding in coastal Alaska waters west of the Kodiak Archipelago (NMFS 1998).

Prior to commercial whaling the worldwide population of humpback whales was thought to have been in excess of 125,000 animals (NMFS 1991). Approximately 15,000 animals were believed to have been present in the North Pacific prior to 1905. Humpback whales were heavily hunted until the International Whaling Commission banned commercial harvest in 1966 (Rice 1978). As a result of commercial whaling the North Pacific population may have been reduced to as low as 1,000 animals (Rice 1978). Recent population estimates indicate that the numbers are greater than immediately post-harvest, but have not yet reached the level estimated for the time period prior to intensive whaling. The current annual abundance estimate for the North Pacific population is 6,010 animals (Calambokidis, *et al.* 1997). The abundance of the Central North Pacific stock is estimated to be 4,005 animals (Straley 1994, NMFS 1998).

Annual abundance estimates have also been calculated for feeding aggregations of the Central North Pacific stock of humpback whales in specific locations off Alaska (NMFS 1998). The estimate for Prince William Sound is less than 200 animals; for southeast Alaska, 404 animals; and for the Kodiak Island region, 651 whales. These estimates represent minimum estimates for the three known feeding areas because the study areas do not include the entire geographic region. Little is known regarding humpback whale abundance between feeding areas, for example, south of Chatham Strait and west of Kodiak Island.

An extensive data set exists on the seasonal movements and distribution of humpback whales in the North Pacific, primarily for the Central North Pacific stock. The Western North Pacific stock is not as well studied, due primarily to the remote locations in which these animals range. Humpback whales generally spend the period between early spring to late fall in localized coastal areas engaged in intensive feeding activity.

Humpback whales congregate in the waters of their summer range in distinct feeding aggregations (Baker *et al.* 1987, 1990 in Baker, *et al.* 1992), with the same whales returning repeatedly to localized feeding areas. The identified feeding areas in Alaska for the Central North Pacific stock are southeast Alaska, Prince William Sound and Kodiak Island. Interchange among feeding areas has been at very low rates, usually involving just a few individuals