

Detariffing Update - Vigilance Needed

by

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The saga of the FCC's policy decision to detariff interstate telecommunications services continues to develop. As most TeleMember readers probably remember, the FCC decided in May 2000 that carrier tariffs for domestic interstate services would have to be removed no later than January 31, 2001. While carriers were permitted to make changes to existing tariffs during a nine-month transition period, no new tariff filings were to be permitted after that period. The FCC ultimately gave carriers until July 31, 2001, to begin providing service without filing tariffs with the agency.

The FCC followed its decision on domestic services with a similar order for international services. In April of this year, the FCC's order detariffing the international interexchange services of nondominant interexchange carriers became effective, in a manner very similar to the domestic order. Virtually all tariffs for international interexchange services by non-dominant providers must be canceled by January 28, 2002. During the nine-month transition period, non-dominant carriers may continue to file new or revised tariffs for mass market international interexchange services only, and may not file new or revised contract tariffs or tariffs for other long-term international service arrangements.

On the practical side, I have begun hearing from business users that carriers are trying to dodge the intended effect of the FCC's decisions, by evading the responsibility to negotiate terms of service with users. The long-standing advantage of tariffs for carriers was the binding effect of those tariffs: the terms and conditions applied to all users, regardless of whether or not the users were informed of or even aware of those terms (or even if the carrier had misrepresented those terms.) With tariffing ended, carriers have no "automatic" terms and conditions to fall back upon.

Instead, carriers have been trotting out variations of an "opt out" approach to terms and conditions, informing (in many cases without clarity or prominence) users that if they continue to take service, the carrier's choice of terms and conditions will apply. There has already been at least one class action lawsuit filed (in California) objecting to AT&T's attempts to force its users to agree to terms and conditions without the opportunity to negotiate (that suit specifically attacks AT&T's attempt to impose mandatory arbitration of all disputes on users.) Similar actions are being contemplated in other states with strong consumer protection statutes.

It is becoming clear that this is an area where telecommunications staff and counsel will need to work closely together to realize the benefits of detariffing. Unless they are pressured, it seems clear that carriers will not voluntarily come to the table to negotiate terms and conditions that users find valuable, and will try to use various forms of the "if you keep using our service you are agreeing to our terms" scam. I recommend that you review the communications you have received from carriers in the last several months to see if they have tried to use this approach on your company. If so, and if there are issues you want to see addressed by a carrier, immediately contact your account rep and insist on the opportunity to meet and confer on your key issues. If a carrier refuses your request, talk with your counsel about rejecting the attempted imposition of terms. so that real negotiations can take place.