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April 24, 1996

BY OVERNIGHT MAIL

Mr. William F. Caton  
Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

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**Re: CC Docket No. 96-61 -- Forbearance Issues**

Dear Mr. Caton:

Enclosed please find an original plus eleven (11) copies, two of which are marked "Extra Public Copy," of the Comments of Frontier Corporation on Forbearance Issues in the above-docketed proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed, self-addressed envelope.

Very truly yours,

Michael J. Shortley, III

cc: Ms. Janice Myles (cover letter and diskette)

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
)  
Policies 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

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COMMENTS OF FRONTIER CORPORATION  
ON FORBEARANCE ISSUES

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## Summary

The Commission should take two steps, in response to the forbearance issues set forth in the Notice, to advance the pro-competitive goals enunciated in the Telecommunications Act of 1996. *First*, the Commission should not adopt its proposed mandatory detariffing policy. A permissive detariffing policy will yield significant public interest benefits that the proposed mandatory detariffing policy will not produce. The relaxed tariff-filing requirements that exist today cannot reasonably be found to facilitate tacit price coordination, as the Commission surmises. Indeed, advertising -- which usually precedes the introduction of price decreases, new pricing options and the like -- is actually more conducive to price coordination than is the Commission's one-day notice requirement. The Commission, however, does not plan on limiting advertising. Thus, the basis contained in the Notice for the proposed mandatory detariffing policy does not justify that policy.

To address its concerns in a less intrusive manner than proposed, the Commission could permit, but not require, non-dominant carriers to tariff their rates, terms and conditions. Alternatively, the Commission could permit non-dominant carriers to tariff the basic terms and conditions under which they offer interexchange services to the public. Under either alternative, non-dominant interexchange carriers could select the mix of tariff and contract provisions that best suit their individual circumstances. The administrative savings and lower costs that will accompany a permissive detariffing policy will yield

commercial certainty and savings for consumers. Either approach would better serve the public interest than the Commission's proposed mandatory detariffing policy.

*Second*, the Commission should eliminate the prohibition on the bundling of interexchange services and CPE by non-dominant suppliers in either market, so long as the individual components are available independently at comparable rates, terms and conditions. The competitive conditions that the prohibition on bundling was intended to address do not exist in today's environment.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Policies and Rules Concerning the Interstate, Interexchange Marketplace</b>	)	<b>CC Docket No. 96-61</b>
	)	
<b>Implementation of Section 254(g) of the Communications Act of 1934, as Amended</b>	)	

**COMMENTS OF FRONTIER CORPORATION  
ON FORBEARANCE ISSUES**

**Introduction**

Frontier Corporation ("Frontier"), on behalf of its local telephone and long distance subsidiaries, submits these comments on the regulatory forbearance issues set forth in the Notice initiating this proceeding.<sup>1</sup> Sections 10(a) and (b) of the Communications Act, as amended by the Telecommunications Act of 1996 ("Act")<sup>2</sup> permit the Commission to forebear from imposing or continuing regulatory requirements that: (a) are not necessary to ensure that rates are just, reasonable and nondiscriminatory; (b) are not necessary to protect consumers; and (c) do not further the public interest. With respect to the issues set forth for comment here, the Commission may best implement this statutory mandate by: (a) forbearing from requiring that tariffs be filed for interstate, interexchange services provided by non-dominant carriers, but doing so on a permissive, but not a mandatory,

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<sup>1</sup> *Policies and Rules Concerning the Interstate, Interexchange Marketplace*, CC Dkt. 96-61, Notice of Proposed Rulemaking, FCC 96-123 (March 25, 1996) ("Notice").

<sup>2</sup> 47 U.S.C. §§ 10(a) and (b).

basis; and (b) rescinding its rule proscribing the bundling of interexchange services and customer premises equipment ("CPE"), so long as customers can purchase the unbundled components independently.

*First*, strict tariffing requirements that include lengthy notice periods and the provision of detailed cost support are unnecessary in a market characterized by substantial competition. Such requirements are not only unnecessary, they may actually impede competition by increasing the carriers' costs of doing business and injecting business risk that is unrelated to competition. However, tariffs can reduce the costs of doing business for certain market segments. Thus, tariffing should be available to carriers when they find it cost effective to employ. Contrary to the suggestions otherwise, the current, short-notice tariff filing requirements -- coupled with the flexibility afforded to interexchange carriers to enter into customized service arrangements through contracts -- cannot lead to the type of tacit price coordination that the Commission fears.<sup>3</sup>

Moreover, there are significant non-price-related benefits to the public interest that result from tariff publication of terms and conditions. The Commission should permit interexchange carriers to tariff the basic terms and conditions under which they hold their services out to the public under any alternative that it adopts. Tariffing of basic terms and conditions lends certainty to the expected relationship between an interexchange carrier

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<sup>3</sup> Notice, ¶¶ 30, 34, 81.

and its customers. This certainty is procompetitive and beneficial to both carriers and customers alike.

*Second*, the Commission's current rule proscribing the bundling of interexchange services and CPE is outmoded. Both the interexchange and CPE markets are highly competitive. In these circumstances, the Commission cannot reasonably consider the offering of a package of interexchange services and CPE to be anticompetitive, so long as the unbundled components are available separately at comparable charges. The Commission should rescind any total ban on bundling.

### **Argument**

#### **I. THE COMMISSION SHOULD ADOPT A PERMISSIVE DETARIFFING POLICY.**

In the competitive environment that characterizes today's interexchange market, strict tariffing requirements are both unnecessary and often counterproductive. Long notice periods can limit the rapid delivery of consumer benefits through the introduction of lower prices or new services. The burdens of detailed cost support by small carriers can reveal valuable information that will only help the largest competitor(s). This may actually impede competition.

The Commission currently permits non-dominant carriers to file tariffs on one day's notice with no cost support. Such filings are presumed reasonable. Moreover, the administrative costs of processing such filings -- while not completely *de minimis* -- are not

tremendously burdensome.<sup>4</sup> Thus, the Commission's current treatment of non-dominant carriers cannot reasonably be found to lead to the price signaling and price coordination concerns that the Commission raises.<sup>5</sup> By the time a non-dominant carrier's rate changes have become effective, those changes are already old news. The current, one-day notice period precludes the type of *advance* notice that is necessary to facilitate price coordination. The advertising of price reductions, discounts or rate plans are actually more likely to provide information to competitors, as new pricing plans anticipate advertising to educate the target market segment. Yet, the Commission does not plan to limit advertising. Thus, the basis contained in the Notice for the proposed mandatory detariffing policy does not justify that policy.

To the extent that the Commission believes that mandatory tariffing of rates in a competitive environment is anticompetitive, it may directly address this concern in a less intrusive manner by adopting a permissive detariffing policy. The Commission can permit, but not require, non-dominant carriers to tariff the rates, terms and conditions of their interstate, interexchange offerings. Alternatively, the Commission could permit non-

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<sup>4</sup> The burden, if any, falls mostly on the carriers themselves. The administrative burden on Commission staff cannot fairly be characterized as substantial. For example, the Commission has only rejected *one* tariff filing of a non-dominant carrier. See *Capital Network Systems, Inc., Tariff F.C. C. No. 2, Trans. No. 1*, Memorandum Opinion and Order, 6 FCC Rcd. 5609 (CCB 1991), *on review*, 7 FCC Rcd. 8092 (1992). That tariff filing was so blatantly unreasonable that rejection was virtually automatic.

<sup>5</sup> *E.g.*, Notice, ¶¶ 29-30.

dominant carriers to tariff the basic terms and conditions under which they offer their interexchange services to the public.

A permissive detariffing policy will better serve the public interest than a mandatory detariffing policy. A permissive detariffing regime will provide carriers the flexibility to employ a mix of tariff and contract provisions that best suit their individual circumstances. A carrier that serves a large number of consumers may find it administratively easier and far less costly and burdensome to tariff basic residential services than to attempt to enter into a multitude of contracts with these individual consumers. The lower transaction costs and administrative savings from such a regime have resulted in less upward pricing pressure over the years. On the other hand, when a carrier serves larger customers with specialized needs, it will likely need to forego general-purpose tariff offerings in favor of customized contract offerings.<sup>6</sup>

Under this approach, the price signaling and price coordination concerns -- to the extent that they are realistic at all -- that the Commission raises are substantially

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<sup>6</sup> The Commission expresses concern that carriers may attempt to utilize the filed-rate doctrine to evade responsibilities that they freely undertook in negotiated contract arrangements. Notice, ¶¶ 94-98. A mandatory forbearance policy, however, is an overly broad and possibly unlawful (because "forbearance" does not necessarily encompass removing a carrier's section 203 tariff-filing right) response to this concern. The Commission may address this concern by requiring carriers that choose to tariff contract offerings to provide substantial justification on lengthened notice periods before implementing changes to tariffed, contract-based arrangements that adversely affect existing customers. This proposal mirrors current Commission policy. See *RCA American Communications Inc., Revisions to Tariff F.C.C. Nos. 1 and 2*, CC Dkt. 80-766, Memorandum Opinion and Order, 86 FCC 2d 1197 (1981); *RCA American Communications Inc., Tariff F.C.C. Nos. 1 and 2, Trans. No. 273*, 2 FCC Rcd. 236 (1987). Moreover, the filed-rate doctrine would, by definition, not apply to contract-based arrangements that carriers choose not to file in their tariffs.

ameliorated. A carrier looking for price information regarding its competitor's offerings could no longer rely upon the tariff filing process as a complete source of information. The uncertainty that permissive detariffing would engender is itself sufficient to preclude tacit coordination. Information would be sufficiently incomplete and the incentive to "cheat" sufficiently great to preclude effective price coordination.

In any event, the Commission should permit non-dominant interexchange carriers to tariff their basic terms and conditions, regardless of its decision about rates.<sup>7</sup> These deliver significant public interest benefits. Essential terms and conditions can be known in advance, defining the commercial rules of the game between a carrier that chooses to tariff its terms and conditions and its customers. Such certainty permits all parties prospectively to understand the nature of the relationship and to plan their conduct accordingly. A mandatory detariffing policy would eliminate this efficiency mechanism for customers that select to transact business with those carriers. Moreover, to the extent that customers dislike the terms and conditions contained in a tariff filed by an individual non-

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<sup>7</sup> The Commission relies extensively upon its decision to prohibit commercial mobile radio service ("CMRS") providers from filing interstate tariffs (*see Regulatory Treatment of Mobile Services*, GN Dkt. 93-252, Second Report and Order, 9 FCC Rcd. 1411 (1994)) to justify its mandatory detariffing proposal here. *See* Notice, ¶¶ 28-35. The analogy is inapposite and a better analogy is to state practices in this area. In the first instance, relatively little cellular traffic is jurisdictionally interstate. Thus, a Commission policy with respect to CMRS providers has little direct relevance to the interstate, interexchange business. Moreover, although the Commission preempted intrastate *rate* regulation of CMRS providers (*see, e.g., Petition of New York Public Service Commission To Extend Rate Regulation*, PR Dkt. 94-108, Report and Order, 10 FCC Rcd. 8187 (1995)), it could not, consistent with the Omnibus Budget Reconciliation Act of 1993, have preempted state regulation of a CMRS provider's other terms and conditions. Since the Commission's preemption decision, Frontier's cellular affiliate has filed tariffs at the intrastate level governing the non-rate terms and conditions of its cellular offerings.

dominant interexchange carrier, those customers may always choose to seek contract alternatives or to deal with another provider.

Frontier suggests that the permissive detariffing approach it proposes better advances the public interest goals of section 254(g) of the Communications Act than the Commission's mandatory detariffing proposal.<sup>8</sup>

## **II. THE COMMISSION SHOULD RESCIND ITS PROHIBITION ON BUNDLING INTEREXCHANGE SERVICES AND CPE.**

The Commission adopted its proscription on the bundling of interexchange services and CPE in an era when the interexchange market and the equipment market were not characterized by substantial competition. The current regime was designed to prevent one company with market power in the potential tying product -- interexchange service -- from impeding competition in the market for the potential tied product -- CPE, or *vice versa*.<sup>9</sup> The rule made little sense from the start as applied to non-dominant interexchange carriers and it is unnecessary today.

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<sup>8</sup> Frontier wishes to emphasize that the proposals it advances in these comments apply only to carriers and services that the Commission classifies as non-dominant. Stricter tariff regulation -- such as the Commission's price cap rules -- is appropriate for dominant carriers that possess market power, such as local exchange carriers with respect to interstate access services. While Frontier believes that the existing access charge rules are in need of reform, the Commission should not abandon the basic concept of tariff regulation for dominant carriers. In addition, the Commission should not -- as it will undoubtedly be requested to -- address any such pleas in this proceeding. The Commission should address these issues in its forthcoming access charge reform proceeding.

<sup>9</sup> *Amendment of Section 64.702 of the Commission's Rules and Regulations*, CC Dkt. 20828, Final Decision, 77 FCC 2d 384, 496 (1980), *aff'd sub nom.*, *Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

Basic antitrust analysis (which encompasses a looser standard than the Communications Act) teaches that a tying arrangement presents competitive concerns *only* if a provider exerts power in the market for the tying product such that it possesses the ability to force customers to take the unwanted, tied product in order to obtain the tying product.<sup>10</sup> That circumstance does not exist in the interexchange market today for non-dominant carriers. Their businesses are subject to robust competition.<sup>11</sup> As such, competitive concerns regarding the bundling of interexchange service and CPE by non-dominant suppliers in each market are non-existent, provided that the individual components are available independently at comparable rates, terms and conditions.

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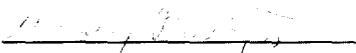
<sup>10</sup> See generally *Jefferson Parish Hospital District No. 2 v. Hyde*, 466 U.S. 2 (1984).

<sup>11</sup> Although Frontier submits that AT&T still possesses a degree of market power in the interexchange business, it accepts, for purposes of this discussion, the fact that the market is effectively competitive in most aspects.

**Conclusion**

For the foregoing reasons, the Commission should act upon the forbearance proposals contained in the Notice in the manner suggested herein.

Respectfully submitted,

  
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