Frontier Corporation

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December 18, 1996

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

Re: CC Docket No. 96-237

Dear Mr. Caton:

Enclosed for filing please find an original plus sixteen (16) copies of the Comments of Frontier Corporation 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: International Transcription Services

Thomas J. Beers, Industry Analysis Division

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

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In the Matter of	)	
	)	
Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996	)	**CC Docket 96-237**

COMMENTS OF
FRONTIER CORPORATION

Introduction

Frontier Corporation ("Frontier") submits these comments in response to the Commission's Notice of Proposed Rulemaking initiating this proceeding.[1] In the Notice, the Commission seeks comment on the manner in which it should implement section 259 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Act").[2]

Congress designed section 259 to permit small, qualifying carriers (*i.e.*, those that provide services that qualify for universal service support and lack economies of scale and scope) to share infrastructure deployed by incumbent local exchange carriers to provide technologically advanced services to their own customers and not in competition with larger incumbent local exchange carriers.[3] The plain language of section 259 evidences that it serves a purpose far different

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1 *Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996*, CC Dkt. 96-237, Notice of Proposed Rulemaking, FCC 96-456 (Nov. 22, 1996) ("Notice").

2 47 U.S.C. § 259.

3 47 U.S.C. § 259(b)(6).

from the unbundling, interconnection and resale requirements of section 251.[4] The Commission should not -- contrary to the suggestion in the Notice[5] -- attempt to harmonize the two sections. Rather, it should strictly confine the regulations implementing section 259 of the Act to achieving that section's narrow purposes.

First, the Commission should narrowly define the class of qualifying carriers that are entitled to request infrastructure-sharing agreements.

Second, the Commission should respect the non-competition requirement of section 259. That is, the Commission should recognize that qualifying carriers have a choice -- they may acquire unbundled elements or resell services in competition with a larger incumbent local exchange carrier *or* they may enter into non-competitive infrastructure-sharing agreements.

Third, the Commission should affirmatively declare that elements of infrastructure sharing agreements do not need to be made available as unbundled elements or resold services under section 251 of the Act.

Argument

I. The Commission Should Narrowly Define the Class of Carriers Entitled To Request Infrastructure-Sharing Agreements.

Section 259 provides that those carriers that lack economies of scale or scope may qualify for infrastructure sharing.[6] Neither the Act nor the legislative

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4 47 U.S.C. §§ 251(a), (b).

5 Notice, ¶¶ 13-14.

6 47 U.S.C. § 259(b)(4), (d).

history define what constitutes a lack of economies of scale or scope. Moreover, this provision is somewhat at odds with the general procompetitive tenor of the Act in that it prohibits the use of facilities or services obtained pursuant to an infrastructure-sharing agreement to compete with the supplying carrier.[7] As such, it raises the potential for anticompetitive conduct or effect. By entering into infrastructure-sharing agreements, two or more carriers could insulate themselves from competition among themselves.

In this context, the Commission should confine the availability of infrastructure-sharing agreements to the narrowest class possible, consistent with the requirements of the Act. As a starting point, the Commission should declare that non-rural telephone companies are categorically ineligible to request infrastructure-sharing agreements. The Act itself recognizes distinctions between rural and non-rural telephone companies, for example, by not applying the full interconnection, unbundling and resale requirements of section 251 to rural telephone companies.[8] The Act's distinction between rural and non-rural telephone companies provides a logical starting point for separating those companies that are entitled to seek infrastructure-sharing agreements from those that are not.

In addition, it will then be necessary for the Commission and the states to address the issue of qualification on an *ad hoc* basis. What constitutes a "lack of

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7 47 U.S.C. § 259(b)(6).

8 47 U.S.C. § 251(f).

economies of scope and scale" will necessarily be fact-based. Since these situations will be in derogation of full competition in a given geographic area, there should be a reasonably strong showing made that an individual carrier is entitled to section 259 preferences.

II. The Commission Should Sharply Distinguish Sections 251 and 259 of the Act.

The Commission requests comment on the extent to which it should harmonize sections 251 and 259 of the Act.[9] In fact, the Commission should take the opposite approach. Sections 251 and 259 serve fundamentally different purposes and have fundamentally different intended beneficiaries. Congress designed the unbundling, resale and interconnection requirements of section 251 to facilitate local exchange competition with incumbent local exchange carriers. Section 259, on the other hand, precludes the use of facilities and services obtained pursuant to an infrastructure-sharing agreement in competition with the local exchange carrier providing such facilities or services.[10] Thus, the Act provides qualifying carriers with a choice. They may obtain advanced network services pursuant to infrastructure-sharing agreements *for use in serving their*

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9 Notice, ¶¶ 13-14.

The Commission should also limit the types of services and facilities that incumbent local exchange carriers must make available pursuant to infrastructure-sharing agreements. While a carrier that lacks economies of scale or scope may not be able to deploy advanced technologies, presumably it does have the resources to deploy a network and, in the case of an incumbent rural telephone company, already has. Thus, the Commission should limit the types of facilities and services available pursuant to infrastructure-sharing agreements to advanced network facilities and services, such as SS7 interconnection, data base access, advanced intelligent network features and the like.

10 47 U.S.C. § 259(b)(6).

own customers.[11] Alternatively, they may obtain unbundled elements and interconnection for any purpose permitted by the Act. What the Act precludes is a qualifying carrier from obtaining both.

III. The Commission Should Respect the Non-Common-Carriage Nature of Infrastructure-Sharing Agreements.

Section 259 provides that infrastructure-sharing agreements are not to be treated as common carriage.[12] The clear purpose of this section is to permit incumbent local exchange carriers that provide services under infrastructure-sharing agreements to structure those relationships such that they are not required to offer those arrangements on the same terms to all requesting carriers.[13] In particular, services and facilities offered under infrastructure-sharing agreements do not need to be made available as unbundled elements or resold services under section 251 of the Act. Therefore, the Commission should

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11 In this regard, the Commission should permit an incumbent local exchange carrier providing services under an infrastructure-sharing agreement to terminate the economic benefits of such an agreement if it discovers that the beneficiary is using those facilities or services in competition with the providing carrier. Frontier recognizes that a carrier supplying services pursuant to an infrastructure-sharing agreement cannot, as a practical matter, terminate services under such an agreement because of the potential for service disruption. Nonetheless, a carrier that misuses an infrastructure-sharing agreement should not be permitted to continue to reap the economic benefits of such an arrangement.

12 47 U.S.C. § 259(b)(3).

13 The Commission asks whether the Act's infrastructure-sharing requirements contain an inherent non-discrimination obligations. Notice ¶ 22. These provisions do contain an inherent nondiscrimination principle, albeit a narrow one. Competing qualifying carriers that obtain facilities or services pursuant to infrastructure-sharing agreements should be treated comparably. The Commission should not expand this inherent non-discrimination principle any further.

not require incumbent local exchange carriers to make the terms and conditions of these agreements generally available.

Conclusion

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

Respectfully submitted,

Michael J. Shortley, III

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December 19, 1996