

SUPPORTING STATEMENT

This collection is being submitted to extend the existing collection. The Commission is reporting a decrease in the number of responses and therefore the estimated burden hours have decreased by 150 hours.

A. Justification:

1. In the Report and Order, *Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-237, the Commission adopted rules to implement section 259 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (1996 Act), including the following collection of information. This submission seeks an extension of the following collection of information:

a. Section 259(b)(7) Filing of Tariffs, Contracts or Arrangements: Section 259(b)(7) requires that incumbent local exchange carriers (incumbent LECs) file with the appropriate state commission or the Commission for public inspection any tariffs, contracts or other arrangements showing the conditions under which the incumbent LEC is making available public switched network infrastructure and functions pursuant to section 259.¹ The purpose of these agreements is to allow infrastructure sharing between large incumbent LECs and small carriers, which benefit the small carriers, allowing them access to the infrastructure that they might not otherwise have. The reporting of these agreements to the Commission is incidental to this purpose, since the Commission only requires that agreements be filed with it if the state commission is unwilling to accept the agreements for filing. The agreements are placed in a public file that is maintained in the Commission's Reference Information Center as a matter of record for no more than three years. Cost and burden figures set out herein are estimates based on the assumption that state commissions are unwilling to accept the agreements in the future.² To date, seventeen agreements have been filed with the Commission. These agreements involve certain infrastructure of incumbent LECs in two states. The effective date of each agreement was more than three years ago.

b. Section 259(c) Information Concerning Deployment of New Services and

¹ 47 U.S.C. § 259(b)(7).

² In the Report and Order, the Commission concluded that section 259 agreements must be filed with the appropriate state commission, or with the Commission if the state commission is unwilling to accept the filing; must be made available for public inspection; and must include the rates, terms, and conditions under which an incumbent LEC is making available all "public switched network infrastructure, technology, information, and telecommunications facilities and functions" that are the subject of the negotiated agreement. The Commission further concluded that this filing requirement refers only to agreements negotiated pursuant to section 259 and affirmed that all previous interconnection agreements must be filed pursuant to section 252 as mandated by the Commission's Local Competition First Report and Order. See 47 C.F.R. § 59.2(f).

Equipment: Section 259(c) states that incumbent local exchange carriers that have "entered into an infrastructure sharing agreement under this section shall provide to each party to such an agreement timely information on the planned deployment of telecommunications services and equipment, including any software or upgrades of software integral to the use or operation of such telecommunications equipment."³ The Commission decided that section 259(c) requires notice to qualifying carriers of changes in the incumbent LECs' network that might affect qualifying carriers' ability to utilize the shared public switched network infrastructure, technology, information and telecommunications facilities and functions; that section 259(c) requires timely information disclosure by each providing incumbent LEC for each of its section 259-derived agreements; and that such notice and disclosure, provided pursuant to a section 259 agreement, are only for the benefit of the parties to a section 259-derived agreement. The Commission also decided that section 259(c) does not include a requirement that providing incumbent LECs provide information on planned deployments of telecommunications and services prior to the make/buy point. See 47 CFR § 59.3.

c. Notice Upon Termination of Section 259 Agreements: Section 259(b)(1) states that a providing incumbent LEC cannot be required to take any actions that are economically unreasonable or contrary to the public interest.⁴ Section 259(b)(6) establishes that providing incumbent LECs are also not required to share infrastructure under section 259 that will be used by the qualifying carrier to provide "services or access" to consumers in the providing incumbent LECs "telephone exchange area."⁵ The Commission concluded that providing incumbent LECs should be permitted to withdraw from section 259 sharing agreements if the arrangement subsequently becomes in contra to either the provisions of section 259(b)(1) or (b)(6). The Commission also concluded that providing incumbent LECs should be required to give sixty days notice prior to termination to protect a qualifying carrier's customers from sudden changes in service. See 47 CFR § 59.2(d).

This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

The statutory authority for this collection is contained in sections 4(i), 4(j), 201-205, 259, 303(r), 403 of the Communications Act of 1934, as amended by the 1996 Act, 47 U.S.C. 154(i), 154(j), 201-205, 259, 303(r), and 403.

2. First, the information collected under the requirement that incumbent LECs file any tariffs, contracts or other arrangements for infrastructure sharing will be made available for public inspection. Second, the information collected under the requirement that incumbent LECs provide timely information on planned deployments of new services and equipment will be provided to

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² 47 U.S.C. § 259(c).

⁴ 47 U.S.C. § 259(b)(1).

⁵ 47 U.S.C. § 259(b)(6).

third parties (qualifying carriers). Third, the information collected under the requirement that providing incumbent LECs furnish sixty days notice prior to termination of a section 259 sharing agreement will be provided to third parties, *i.e.*, qualifying carriers, to protect customers from sudden changes in service.

3. Generally, there is no improved technology to reduce the burden of collection. The information sought is relatively modest, *i.e.*, merely copies of infrastructure sharing agreements or simple notification letters. Thus, there does not appear to be a technological method of collection that would significantly reduce the burden.

4. There will be no duplication of information. The information sought is unique to each providing incumbent LEC participating in section 259 arrangements.

5. The collection of information may affect small entities as well as large entities. The Commission does not believe that the requirements will impose significant burdens on small businesses. In fact, the information collections discussed above should benefit primarily small businesses, *i.e.*, those entities that lack economies of scale or scope. In addition, we note that Section 259(b)(1) provides that the Commission shall not require a local exchange carrier, to which Section 259 applies, to take any action that is "economically unreasonable."

6. Failing to collect the information, or collecting it less frequently, would undermine the language and intent of the 1996 Act to ensure that access to the evolving, advanced telecommunications infrastructure would be made broadly available in all regions of the nation at just, reasonable and affordable rates.

7. While it is possible, as detailed below, that these regulations would require parties to report information more than quarterly, we do not specifically require quarterly filings and do not believe that such an outcome is likely, nor do we believe that our requirements impose any other special circumstances. To date, the Commission has received a total of seventeen agreements involving two incumbent LECs in two states. Nevertheless, in some instances, a respondent might need to make a filing more often than quarterly due to its own actions or actions by private parties. For example, if in any given quarter a local exchange carrier were to enter into more than one contract to share infrastructure pursuant to section 259, it would be required to file copies of such contracts more often than quarterly. Similarly, if an incumbent LEC were to plan more than one deployment of new services or equipment in any given quarter, then that incumbent LEC may be required to provide timely information to third parties more often than quarterly. In certain instances, a providing incumbent LEC might terminate more than one section 259 sharing agreement in a quarter. In such situations, the providing incumbent LEC would be required to furnish sixty days notice of such termination to qualifying carriers.

8. A notice was placed in the Federal Register as required by 5 CFR § 1320.8(d). See 74 FR 2073 (January 14, 2009). No comments were received.

9. The Commission does not anticipate providing any payment or gift to respondents.

10. The Commission is not requesting respondents to submit confidential information to the Commission. If the Commission requests respondents submit information which respondents believe is confidential, respondents may request confidential treatment of such information under Section 0.459 of the Commission's rules.

11. There are no questions of a sensitive nature with respect to the information collected.

12. The following represents the estimates of hour burden of the collection of information:

a. Section 259(b)(7) Filing of Tariffs, Contracts or Arrangements:

(1) Number of respondents: We estimated that there are approximately 1,311 incumbent LECs, *in toto*.⁶ We estimate that approximately 75 of these incumbent LECs will enter into Section 259-derived agreements.

(2) Frequency of response: On occasion reporting requirement and third party disclosure requirement. This obligation will arise any time an incumbent LEC and a qualifying carrier enter into a Section 259-derived agreement for public switched network infrastructure and functions. We believe that a reasonable estimate is that, on average, an incumbent LEC would have to make such a filing approximately 3 times annually. This estimate is lower than our previous estimate of 5 times annually because these regulations have been in effect for more than a decade, during which time there has been substantial opportunity to negotiate agreements that typically remain in force until terminated by either party.

(3) Annual hour burden per respondent: 75 (respondents) x 1 hour per response x 3 responses per year. Total annual hour burden is **225 hours**.

(4) Total estimate of annualized cost to respondents for the hour burdens for collection of information: \$9,250.

(5) Explanation of calculation: We estimate that approximately 75 incumbent LECs would be subject to the Section 259(b)(7) filing requirement. We estimate that it would take approximately 1 hour or less any time an incumbent LEC is required to comply with the requirement and that 3 filings will be made per year per incumbent LEC. We estimate that respondents will use staff equivalent to GS 11, Step 5, plus 30% overhead, to comply with the requirement throughout the authorized period (\$41.09 per hour). Thus, 75 (number of respondents) x 3 (number of annual notifications) x 1 (hours per notification) x \$41.09 per hour = \$9,250.

b. Section 259(c) Information Concerning Deployment of New Services and Equipment:

(1) Number of respondents: We estimated, *supra*, that approximately 75

⁶ See FCC, Wireline Competition Bureau, Industrial Analysis and Technology Division, *Trends in Telephone Service*, at 5-5, Table 5.3 (August 2008).

of incumbent LECs will enter into Section 259-derived agreements. We believe that, in any given year, it is possible that all 75 of the incumbent LECs entering Section 259-derived agreements may introduce new services or equipment such that they must comply with the Section 259(c) notice requirement.

(2) Frequency of response: On occasion reporting requirement and third party disclosure requirement. This obligation will arise any time an incumbent LEC makes specified deployments of new services or equipment. We estimate that, on average, an incumbent LEC would have to make such a filing approximately 12 times annually.

(3) Annual hour burden per respondent: 75 (respondents) x 2 hours per response x 12 responses per year. Total annual hour burden is **1,800 hours**.

(4) Total estimate of annualized cost to respondents for the hour burdens for collection of information: \$73,960.

(5) Explanation of calculation: We estimate that approximately 75 incumbent LECs would be subject to the Section 259(c) disclosure requirement. We estimate that it would take approximately 2 hours any time an incumbent LEC is required to comply with the requirement and that 12 filings will be made per year per incumbent LEC. We estimate that respondents will use staff equivalent to GS 11, Step 5, plus 30% overhead, to comply with the requirement throughout the authorized period (\$41.09 per hour). Thus, 75 (number of respondents) x 12 (number of annual notifications) x 2 (hours per notification) x \$41.09 per hour = \$73,960.

c. Notice Upon Termination of Section 259 Agreements:

(1) Number of respondents: We estimated, *supra*, that approximately 75 of incumbent LECs will enter into section 259-derived agreements.

(2) Frequency of response: On occasion reporting requirement and third party disclosure requirement. This obligation will arise any time a providing incumbent LEC seeks to terminate a section 259 sharing agreement with a qualifying carrier. We believe that this obligation will arise very rarely and believe that a reasonable estimate is that, on average, an incumbent LEC would have to furnish such notice of termination approximately 2 times annually.

(3) Annual hour burden per respondent: 75 (respondents) x 1 hour per response x 2 responses per year. Total annual hour burden is **150 hours**.

(4) Total estimate of annualized cost to respondents for the hour burdens for collection of information: \$6,160.

(5) Explanation of calculation: We estimate that approximately 75 providing incumbent LECs would be subject to the "Notice of Termination" requirement. We estimate that it would take approximately 1 hour or less any time an incumbent LEC is required to comply with the requirement and that 2 filings will be made per year per providing incumbent LEC. We estimate that respondents will use staff equivalent to GS 11, Step 5, plus 30% overhead, to comply with the requirement throughout the authorized period (\$41.09 per hour). Thus, 75 (number of respondents) x 2 (number of annual notifications) x 1 (hours per notification) x \$41.09 per hour = \$6,160.

225 + 1,800 + 150 = 2,175 total annual burden hours.

13. The following represents the Commission's estimate of the annual cost burden to respondents or record keepers resulting from the collection of information: We estimate that there will be no capital or start-up costs for any of these requirements. We do not believe that these requirements will necessitate additional equipment. We estimate that there will be no operation and maintenance and purchase of service costs for these requirements.

14. There will be few if any costs to the Commission because the notice requirements will not require review by the Commission. The following represent the Commission's estimates of the annual cost to the federal government as a result of the proposed requirements:

a. Section 259(b)(7) Filing of Tariffs, Contracts or Arrangements: Any cost to the Commission as a result of these filing should be minimal because the Commission has concluded that such filings should be made with the appropriate state commission, or, if the state is unwilling to accept such filing, with the Commission.

b. Section 259(c) Information Concerning Deployment of New Services and Equipment: No costs anticipated.

c. Notice Upon Termination of Section 259 Agreements: No costs anticipated because this notice should be made to the appropriate third parties to the particular section 259 agreement.

15. The reason for the change in burden is due to a decrease in the estimated number of responses per year for item 12a. Therefore, the total annual burden hours has been adjusted by -150 burden hours.

16. The Commission does not anticipate that it will publish any of the collections of information.

17. Not applicable. The information collection requirements are contained in rules – not FCC forms or documents. Therefore, there is no reason to display the OMB expiration date. Finally, the Commission publishes a list of all OMB-approved information collections in 47 CFR 0.408 which displays the OMB expiration date along with the OMB control numbers and titles of the information collections.

18. There are no exceptions to Item 19.

B. Collections of Information Employing Statistical Methods:

The Commission does not anticipate that the collection of information will employ statistical methods.