

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

In the Matter of)	
)	
Petition to Establish Procedural Requirements)	WC Docket No. 07-267
To Govern Proceedings for Forbearance)	
Under Section 10 of the Communications Act)	
Of 1934, as Amended)	

**COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”) hereby submits its comments in the above-captioned proceeding.¹ NCTA supports the adoption of a minimal set of procedural rules to govern forbearance petitions, particularly petitions seeking relief from Section 251.

INTRODUCTION AND SUMMARY

NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation’s largest broadband provider of high-speed Internet access after investing \$110 billion since 1996 to build a two-way interactive network with fiber optic technology. Cable companies also provide voice service to millions of American homes and are rapidly making these services available nationwide.

Section 10(a) of the Communications Act requires the Commission to forbear from applying any statutory provision or regulation to a telecommunications carrier or service, or a

¹ *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act*, WC Docket No. 07-267, Notice of Proposed Rulemaking, FCC 07-202 (rel. Nov. 30, 2007) (*Notice*).

class of carriers or services, when it finds that certain conditions are met.² Under Section 10(c), any telecommunications carrier, or class of carriers, may petition the Commission to exercise its forbearance authority.³ Such a petition is “deemed granted” if the Commission does not deny the petition within one year.⁴

The *Notice* seeks comment on the general need for procedural rules to govern the Commission’s consideration of forbearance petitions under Section 10. In particular, the Commission asks whether it should adopt a “complete as filed” requirement or otherwise specify the information needed to make a *prima facie* showing that forbearance is warranted.⁵ The Commission also asks whether it should adopt specific timetables for various pleadings, including a time limit on substantive *ex parte* submissions.⁶

THE COMMISSION SHOULD ADOPT A MINIMAL SET OF PROCEDURES TO ENSURE THAT IT HAS A COMPLETE RECORD IN A TIMELY MANNER

NCTA has encouraged the Commission to deregulate wherever competition is flourishing, regardless of the particular service at issue. Consistent with NCTA’s deregulatory philosophy, cable operators generally have not opposed requests for forbearance under Section 10. Whether or not a cable operator opposes a forbearance petition, however, the process for considering such petitions often has proven to be unnecessarily burdensome for cable operators because they often are required to comply with requests from Commission staff for information on the state of competition in particular geographic areas. Often these requests come relatively late in the process. The timing of these requests is not the fault of the Commission staff. Rather,

² 47 U.S.C. § 160(a).

³ 47 U.S.C. § 160(c).

⁴ *Id.* The Commission may extend the one-year period by an additional 90 days.

⁵ *Notice* at ¶ 6.

⁶ *Id.* at ¶ 9.

usually it is attributable to deficiencies in the initial forbearance petition that make it difficult for the staff and for third parties to quickly and thoroughly review the filing.

The underlying problem is that the Commission has not established sufficiently clear guidelines as to when regulatory relief is warranted, the process to be followed in requesting such relief, and the information to be provided by parties seeking such relief. In analogous situations, the Commission has used rulemaking proceedings to establish a set of procedures by which individual companies can seek regulatory relief with respect to particular geographic areas. With respect to video services, for example, cable operators have the opportunity to obtain relief from rate regulation in particular geographic areas by filing “effective competition” petitions. After Congress made a policy determination that relief was warranted under particular circumstances,⁷ the Commission then established relatively detailed guidelines as to the information that must be submitted, the parties that must be notified of the request, and the standards that will be used to decide whether relief is warranted.⁸

Section 10 is similar in that Congress has made a policy decision that relief is warranted under certain circumstances and has established general criteria for relief. But it is the Commission’s responsibility to adopt specific procedural and substantive requirements in a rulemaking proceeding to implement the statutory provision. In that regard, forbearance petitions filed under Section 10 present a unique set of challenges relative to other forms of regulatory relief. Unlike the company-specific relief the Commission grants in the context of a petition seeking an effective competition determination, forbearance petitions are not limited to a

⁷ 47 U.S.C. § 543(a)(2).

⁸ See *Implementation of the Cable Act Reform Provisions of the Telecommunications Act of 1996*, CS Docket No. 96-85, Report and Order, 14 FCC Rcd 5296 (1999) (updating effective competition rules to reflect 1996 amendments to Section 623). That process is far from perfect. Unlike forbearance petitions, there is no statutory time frame for consideration of effective competition petitions and those petitions often languish for years.

single topic but instead can cover any provision of the Act that applies to telecommunications carriers or services. Given the broad range of potential topics, it is difficult to adopt any detailed procedures that would be appropriate for all forbearance proceedings.

That said, the Commission can and should establish a minimal set of requirements designed to produce a complete record fairly early in the process. Establishing such procedures is critical given the limited period of time before such petitions are deemed granted under the statute. Given the significant consequences that result if the Commission is unable to reach a decision, it should take steps to generate a complete record as early as possible in the process. In particular, the burden should be on the petitioner to identify each and every statutory or regulatory provision from which it is seeking relief and to provide all information within its control that demonstrates that the statutory criteria are satisfied. A “complete as filed” rule, pursuant to which petitioners would be prohibited from supplementing their applications, would be a sound way to implement this policy.

In addition to these general requirements, the Commission should consider adopting more specific requirements to govern petitions seeking relief from Section 251 obligations. Section 251 is the cornerstone of the regulatory framework that enables providers to compete with the incumbent LECs and the Commission has an obligation to ensure that it only grants relief from those obligations upon a full and complete record. Because of the significant implications such relief generally will have on competitive providers, it is crucial that the Commission engage in a thorough substantive analysis to ensure that any relief is consistent with the pro-competitive goals of the 1996 Act and is fully supported by the record. Under these circumstances, it is especially important that the Commission obtain all of a petitioner’s data at the time of filing. This also will enable the Commission staff to seek additional data from competitive providers,

when necessary, early in the process and not at the last minute, as has been the case in a number of recent forbearance proceedings.

CONCLUSION

For all the reasons explained above, NCTA supports the adoption of a minimal set of procedural rules to govern all forbearance applications, particularly those seeking relief from Section 251 requirements.

Respectfully submitted,

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