

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Section 11 Wireless Telecommunications
Bureau Biennial Review
Removal or Streamlining of Regulations

DA 98-1687

Further Forbearance from
Title II Regulation for Certain Types of
Commercial Mobile Radio Service
Providers

WT
Docket No. ~~98-168~~
98-166

**COMMENTS ON REQUEST FOR BIENNIAL REVIEW AND REMOVAL OF
WIRELESS REGULATIONS**

The Personal Communications Industry Association ("PCIA") hereby submits these comments on the Commission's *Public Notice*¹ seeking comment on PCIA's request for Commission removal or streamlining of administratively unnecessary wireless regulations.² The *Public Notice* states that the Commission will incorporate some of PCIA's suggestions and

¹ Wireless Bureau Seeks Comment on July 31, 1998 Letter from Personal Communications Industry Association Proposing Streamlining of Wireless Regulations, Public Notice, DA 98-1687 (Aug. 21, 1998) ("*Public Notice*"). The *Public Notice* was published at 63 Fed. Reg. 47460 (Sept. 8, 1998).

² Letter from Mary McDermott, Senior Vice President & Chief of Staff, Government Relations, Personal Communications Industry Association to Daniel B. Phythyon, Chief, Wireless Telecommunications Bureau, Re: Section 11 Wireless Telecommunications Bureau Biennial Review Removal or Streamlining of Regulations (July 31, 1998) ("*Biennial Review Letter*").

comments in response thereto into the ongoing Wireless Forbearance proceeding.³ PCIA wishes to express its concerns that this step impermissibly mingles the standards of Sections 10 and 11 of the Communications Act of 1934, as amended (“Act”).⁴

In the *Forbearance NPRM*,⁵ the Commission sought comment on whether it should forbear, pursuant to Section 10, from applying any Commission regulation or provision of the Act to wireless telecommunications carriers.⁶ While PCIA supports appropriate forbearance from wireless regulations, PCIA, in its *Biennial Review Letter*, seeks removal or streamlining of the specified wireless regulations pursuant to Section 11, not Section 10, of the Act.

Sections 10 and 11 of the Act set forth different tests that must be satisfied prior to the Commission’s exercise of its delegated authority. Under Section 10,⁷ the Commission must satisfy a three-prong test to exercise its forbearance authority. Specifically, the agency must conclude that: 1) the regulation is unnecessary to ensure that rates, charges, practices and classifications are just, reasonable and not unreasonably discriminatory; 2) the regulation is unnecessary to protect consumer interests; and 3) forbearance from applying the regulation is consistent with the public interest.⁸ Section 11, on the other hand, only requires the Commission

³ *Public Notice*, at 2.

⁴ 47 U.S.C. §§ 160, 161 (1996).

⁵ Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers, WT Docket No. 98-100, Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 98-134 (July 2, 1998) (“*Forbearance NPRM*”).

⁶ *Id.*, ¶ 112.

⁷ 47 U.S.C. § 160.

⁸ *Id.* § 160(a).

to determine whether a regulation is no longer necessary in the public interest because of “meaningful economic competition between providers of [telecommunications] services” prior to eliminating or modifying the regulation.⁹

PCIA has demonstrated that there is a sufficient basis, under Section 11 of the Act, for the agency to conclude that the wireless regulations specified in its *Biennial Review Letter* are no longer necessary in the public interest.¹⁰ As stated in the *Biennial Review Letter*, the wireless industry is one of the most dynamic, competitive industries within the telecommunications field.¹¹ Accordingly, the Commission is compelled under Section 11 to eliminate or streamline its wireless regulations in light of the competitive conditions in the CMRS marketplace.

In its letter, PCIA did not attempt to make the requisite showing for forbearance under Section 10. To the extent the Commission determines that forbearance is warranted for any of the specified regulations, PCIA supports such action. Nonetheless, PCIA wishes to make clear that the proposals contained in the PCIA *Biennial Review Letter* can be expeditiously implemented as part of the Commission’s biennial review process and should not be delayed by applying the wrong test. Thus, PCIA urges the Commission not to defer considering the

⁹ *Id.*

¹⁰ *See Biennial Review Letter*, at 1-2.

¹¹ *Id.*, at 1.

proposals set out in its *Biennial Review Letter* and, instead, promptly act to delete the unnecessary regulatory requirements consistent with Section 11.

Respectfully submitted,

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