

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

PETITION TO ESTABLISH)	
PROCEDURAL REQUIREMENTS)	
TO GOVERN PROCEEDINGS FOR)	WC Docket No. 07-267
FORBEARANCE UNDER SECTION 160)	
OF THE COMMUNICATIONS ACT)	
OF 1934, AS AMENDED)	

**COMMENTS OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

To the Commission:

The Independent Telephone and Telecommunications Alliance (ITTA) hereby files these comments in the above-captioned proceeding. ITTA members are mid-size local exchange carriers that provide a broad range of high-quality wireline and wireless voice, data, Internet, and video telecommunications services to 25 million customers in 44 states.

In a Notice of Proposed Rulemaking,¹ the Commission seeks comment on the adoption of procedural rules to govern the Commission’s consideration of petitions for forbearance pursuant to Section 160 of the Communications Act of 1934, as amended.² ITTA submits that Section 160 manifests the general deregulatory intent of the 1996 Act by demanding prompt Commission response to evolving market-place conditions.

¹ *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended: Notice of Proposed Rulemaking*, WC Docket No. 07-267, FCC 07-202 (rel. Nov. 30, 2007) (NPRM).

² The 1996 Act amended the Communications Act of 1934. *See*, Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (1996 Act). Hereinafter, the Communications Act of 1996, as amended by the 1996 Act, will be referred to as “the Act.”

The intent of the 1996 Act was to deregulate and promote competitive markets by allowing natural economic forces, rather than regulatory imprint, to shape industry practice. Section 10(a) of the 1996 Act (codified at 47 USC § 160) requires the Commission to forbear from enforcing a regulation or any provision of the Act when the Commission finds that the regulation is “not necessary to ensure that charges, practices, classifications, or regulations . . . are just and reasonable and are not unjust or unreasonably discriminatory,” “is not necessary for the protection of consumers,” and that forbearance “is consistent with the public interest.” The general goals of the 1996 Act are to “promote competition and *reduce regulation*”³ The forbearance process facilitates fulfillment of that goal. As articulated by the Commission, “Congress sought to establish ‘a pro-competitive, de-regulatory national policy framework’ for the telecommunications industry.”⁴ Section 10 is a Congressionally-ordered device intended to eliminate regulatory practices that otherwise decelerate market-fueled adjustments. The Commission must ensure that it does not counter Commission intent by adopting procedures that would thwart deregulation or create greater regulatory hurdles.

Congress enacted Section 10 to enable the Commission to discard rapidly unnecessary regulatory processes that impede natural market movements. Congress balanced its desire to address matters swiftly with the fundamental need to ensure that forbearance from the enforcement of any regulation is truly in the public interest. Toward that end, Congress imposed specific qualifications upon any forbearance action.

³ Preamble, 1996 Act (1996 Act).

⁴ *Implementation of Section 402(b)(1) of the Telecommunications Act of 1996: Notice of Proposed Rulemaking*, CC Dkt. No. 96-187, 11 FCC Rcd 11233, FCC 96-367, at para. 5 (1996), *quoting* Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113 (1996).

Forbearance may be effected only if the Commission finds that (1) enforcement of the regulation is not necessary to ensure that the telecommunications carrier's charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the regulation is not necessary to protect consumers; and (3) forbearance from applying the provision or regulation is consistent with the public interest.⁵ But, if the Commission finds that all three conditions are met, it is *required* to forbear from enforcing the statute or regulation.⁶ Congress was careful to ensure that any Commission modification of enforceable measures is governed by sound consideration of potential impacts on both consumers and the market.⁷

Moreover, Congress recognized the need to respond rapidly to market needs in order to facilitate the deregulatory environment envisioned by the Act, and accordingly ordered the Commission to complete any consideration of a petition for forbearance within 12 months, with the possibility of a 90-day extension where necessary.⁸ The Legislative History of the 1996 Act emphasizes that Congress was determined to spur prompt deregulatory action by stipulating that the Commission “may only extend the one-year time period for 90 days.”⁹ The current system has worked by enabling carriers that identify inappropriate and non-useful regulation to petition the Commission for relief. In doing so, the goals of the 1996 Act are fulfilled. The forbearance process enables those affected most by out-of-date regulations to demonstrate the need for forbearance from

⁵ 47 USC § 160(a).

⁶ *Id.* (“ . . . the Commission *shall* forbear . . .”) (emphasis added).

⁷ 47 USC § 160(b).

⁸ *See* 47 USC § 160(c).

⁹ H.R. Conf. Rep. 104-458, H.R. Conf. Rep. No. 458, 104th Cong., 2nd Sess., 1996 U.S.C.C.A.N. 10, at 185, 1996 WL 46795 (Leg. Hist.)

those burdens, and to “jump start” the process toward rapid relief. The Congressionally-imposed deadline compels prompt resolution of outstanding questions regarding the current applicability of specific regulations.

ITTA acknowledges, however, that the statute does not address with specificity procedural aspects of the forbearance process. Nevertheless, the Commission has compensated adequately. Most importantly, although notice and comment periods are not required by the statute, the Commission’s practice has been to ensure that potentially-affected parties have an opportunity to present their views.¹⁰ Additionally, the Commission has facilitated the sharing of confidential information relevant to petitioners’ requests. The process allows opposing views to be heard and considered fully, and enables thorough Commission and peer review of each petition. The Commission should reject proposals that would allow parties to use information submitted pursuant to protective order in one forbearance proceeding in another proceeding.¹¹ By definition and intent, a protective order is intended to limit and guard disclosure of confidential information; to the extent a party seeks information for use in another proceeding, a separate protective order should apply in order to ensure that any relevant aspects of each particular proceeding are considered.

Formal regulations that “incorporate a limited period for a petitioning party to cure minor defects in the petition without having to re-start the statutory clock”¹² are unnecessary. The issue of whether a modification to a pending petition is sufficiently

¹⁰ NPRM at para. 5.

¹¹ See NPRM at para. 8.

¹² NPRM at para. 9.

substantive so as to render the petition a “new” petition for purposes of reestablishing the deadline for decision would in any event require case-by-case investigation; a formal rule stating that condition would be superfluous. ITTA further submits that a specific vehicle for state commission is input¹³ is also unnecessary. State commissions have the same rights as other parties to participate in the process, and a specialized regulation addressing state commission participation in this regard risks shifting consideration of “what is a state concern” from the state to an amorphous Commission presumption; states are capable of determining when and at what level their involvement is necessary. Finally, to the extent any new procedures are adopted, they must apply only to petitions submitted after the effective date of any new rule; it would be inequitable to apply procedural rules retroactively.¹⁴

In sum, the process as it currently exists has enabled relatively rapid response to market conditions. Congressional vision of a deregulated market is fulfilled each time the forbearance process concludes successfully. The introduction of redundant or superfluous regulations is neither necessary nor beneficial. Accordingly, the Commission should refrain from imposing requirements that would conflict with deregulatory objectives of Section 10.

Respectfully submitted,
s/ Joshua Seidemann
 Joshua Seidemann
 Vice President, Regulatory Affairs
 Independent Telephone & Telecommunications Alliance
 975 F Street, NW, Suite 550
 Washington, DC 20004
 202-552-5846
www.itta.us

¹³ *See, id.*

¹⁴ *See* NPRM at para. 12.