

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

Comments of Frontier Communications

Kenneth F. Mason
Vice President – Government & Regulatory
Affairs

Frontier Communications
180 South Clinton Avenue
Rochester, NY 14646-0700
585-777-5645
KMason@czn.com

Gregg C. Sayre
Associate General Counsel – Eastern Region

Frontier Communications
180 South Clinton Avenue
Rochester, NY 14646-0700
(585) 777-7270
gregg.sayre@frontiercorp.com

Date: March 7, 2008

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

Comments of Frontier Communications

I. Introduction and Summary

Frontier Communications (“Frontier”)¹ hereby submits its comments in the above captioned matter pursuant to the Commission’s November 30, 2007 Notice of Proposed Rulemaking (“NPRM”).² In summary, Frontier submits that there is no need for a change in the current process for the Commission’s consideration of petitions for forbearance, and that the proposed rules would damage the process.

II. A “Complete as Filed” or a “Prima Facie Showing” Rule Would Contradict Clear Congressional Policy and Hamstring the Forbearance Petition Process.

Congress enacted Section 10 of the Act to give the Commission flexibility, at the request of a petitioner, to discard unnecessary regulatory processes that impede natural competitive market movements. By establishing a 12-month review period with the option of a 3-month extension, Congress recognized that the Commission would face difficult decisions in finding whether an element of regulation is necessary and whether forbearance is in the public interest.

¹ Frontier is a mid-size carrier with incumbent local exchange carrier (ILEC) operations in 24 states under the common ownership of Citizens Communications Company. As an ILEC, Frontier operates in one of the most competitive (both residential and business) urban markets in the country (Rochester, NY), but the balance of its ILEC operations are located in several small, high cost rural markets throughout the United States.

² Notice of Proposed Rulemaking, WC Docket No. 07-267, FCC 07-202 (Nov. 30, 2007).

Congress cannot have envisioned that the Commission would meditate on a “complete as filed” petition for 12 or 15 months. That period of time is far longer than necessary for a round of comments and replies and consideration of the record. Instead, Congress must have intended a more iterative process, one in which the Commission would seek additional data sparked by its review of the initial filing and round of comments. If Congress had intended the Commission to restrict itself to the initial filing and possibly a round or two of comments, it would have provided a far shorter time period for Commission action.

No one, including the Commission, can possibly predict at the time a forbearance petition is filed what information the Commission will need to make its necessity and public interest findings. For the same reason, neither can anyone determine in advance of the Commission’s final decision what constitutes a “prima facie” showing that forbearance is appropriate. The statutory standards for forbearance are far too general and flexible to determine what is a complete or even a prima facie case, when no one at the time knows what information the Commission needs to consider to make its findings.

It follows that any rule that attempts to establish a “completeness” or “prima facie” standard³ would only hamstring the forbearance process. In addition, such a requirement would waste the time of the Commission and the participants by focusing the proceeding on the “gating” test rather than on the true issues of necessity and public interest that are involved in every forbearance petition. The Commission would be forced into a two-step process, one in which opponents seek the dismissal of the petition on “completeness” or “prima facie” grounds, and only later would the Commission be able to turn to the real issues.⁴

³ NPRM, ¶6.

⁴ For the same reason, Frontier urges the Commission not to establish a process for motions to dismiss. NPRM, ¶9. If there is such a process, it will no doubt be followed in the case of every contested petition. The process would take the Commission’s focus away from the critical and difficult issues related to the merits of each petition, and the winners of the process would be attorneys, not the public interest.

III. No Detailed Timetable Can Fit All Forbearance Petitions.

Another proposal for rules governing the process of considering forbearance petitions is the creation of a timetable, including a provision to “cure minor defects.”⁵ For the same reasons discussed above, it is impossible to create a one-size-fits-all timetable, nor is it possible to determine what are “major” or “minor” defects until the Commission has determined what information it needs to make its necessity and public interests findings for the particular regulatory requirement that is the subject of the petition. Unless the Commission has already considered the identical issue in another forbearance proceeding, no one can tell what information the Commission will need, how it may be obtained, and how long it will take to obtain it.

In particular, the proposed time limits on ex parte submissions would be contrary to the decision of Congress to allow 12 to 15 months for the proceeding. As discussed above, the only logical reason for such an extended proceeding is to allow the Commission plenty of time to gather the information it needs to make its difficult decisions. Congress did not break the statutory period into separate periods of time for data gathering and Commission consideration, and the Commission should not tie its own hands in this respect. Congress did not require, nor does it make sense to require the Commission to take any particular amount of time to meditate on the record without accepting any further information. Moreover, any rule that the clock must be “restarted” when new information is presented at any stage of the proceeding amounts to a determination that Congress was wrong and that the time period should have been even longer. For all these reasons the proposals of a detailed timetable including a cutoff date for ex parte filings must be rejected.

IV. No Detailed Evidentiary Requirement Can Fit All Forbearance Petitions.

Another proposal under consideration by the Commission is a requirement for detail at the wire center level to support any petition for forbearance from section 251 or 271.⁶ It is not possible to foresee what kind of relief may be requested under these sections. For example, a carrier may request relief from the indirect interconnection requirement in §251(a)(1) or the dialing parity requirement in §251(b)(3) in situations where a competitor's network and the competitor's customers are a very long distance away from the requesting carrier's network and customers.⁷ The relevant information would, as far as Frontier can tell, relate to the switches of the carriers involved, the potential means of interconnection between the switches and the relevant costs, and the locations of the calling and called parties. "Supporting data at the wire center level" would not be relevant to the issues. Many other examples of requirements under sections 251 and 271 can be given that have nothing to do with wire centers. It makes no sense to try to specify in advance what data are required for any type of forbearance petition.

V. A Requirement of a Written Order Is Not Necessarily Achievable.

Another proposal is for the Commission to require itself to issue a written order on all forbearance petitions, including those previously granted.⁸ Frontier submits that it may not be possible for the Commission to achieve such a requirement. If there is a 2-2 deadlock, as has happened in the past, it is not clear what kind of order the Commission could issue. Perhaps

⁵ NPRM, ¶9.

⁶ NPRM, ¶10.

⁷ This situation arises when competitive carriers use "Virtual NXX" codes to assign numbers within an ILEC's territory to the competitive carrier's customers, even though neither the competitive carrier nor its customers have any physical presence in the ILEC's territory. It is Frontier's position that long distance charges and access tariffs apply to traffic between the ILEC and the competitive carrier in this situation, but the ILEC may prefer to take the route of a petition for forbearance.

⁸ NPRM, ¶11.

the Commission could issue an order stating that because of the Commission's inaction, the petition is deemed granted, but if the Commission is truly deadlocked it is not clear how the order would issue, and such an order would not accomplish anything that is not already written into the statute.⁹

Such a requirement would also be contrary to the intent of the statute. The statute contemplates and deals with the situation of Commission inaction. A requirement for Commission action would appear to negate the statutory prescription of what happens in the event of Commission inaction.

Finally, again assuming a 2-2 deadlock, one must ask what would be the remedy for failure of the Commission to issue an order. A mandamus petition would be too late, because the petition by that time would have already been deemed granted by statute, and if the 2-2 deadlock remains it is not clear what the Commission could do even if mandated by the court to issue an order. It appears that the only point of such a rule would be to require the Commission to revisit prior "deemed granted" petitions and issue an order. Of course, if the 2-2 deadlock remains when the petition is revisited, such a rule would be a nullity. If the 2-2 deadlock is at some time broken, it is far from clear what legal authority the Commission may have to un-grant a petition that has been granted by operation of the statute.

For all these reasons Frontier urges the Commission not adopt a rule that requires a written decision on every forbearance petition.

⁹ Conceivably, such an order in a 2-2 deadlock situation could define what forbearance was granted by inaction, in case the petition is ambiguous. Even then, an order is not required. In the one situation in which a petition was granted by inaction, the Commission defined the scope of forbearance in its March 20, 2006 Press Release in Docket No. 04-440, by referring to Verizon's amendments on February 7 and 17, 2006. It is also perfectly possible to have a deadlock on the interpretation of what relief is granted by inaction.

Accordingly, the Commission should reject the proposed regulations and should continue to deal with forbearance petitions flexibly, as it does today. The proposed regulations would only add confusion, costs, delays and loss of focus to the process.

Respectfully Submitted,



Gregg C. Sayre
Associate General Counsel – Eastern Region

Kenneth F. Mason
Vice President – Government & Regulatory
Affairs

Frontier Communications
180 South Clinton Avenue
Rochester, NY 14646-0700
585-777-5645
KMason@czn.com

Frontier Communications
180 South Clinton Avenue
Rochester, NY 14646-0700
Tel: (585) 777-7270
Fax: (585) 263-9986
gregg.sayre@frontiercorp.com

Date: March 7, 2008

CERTIFICATE OF SERVICE

I, Gregg C. Sayre, do certify that on March 7, 2008, the aforementioned ***Comments of Frontier Communications*** were electronically filed with the Federal Communications Commission through its Electronic Comment Filing System and were electronically mailed to the following:

Best Copy and Printing, Inc. (BCPI)
Portals II
445 12th Street, SW
Room CY-B402
Washington, DC 20554
fcc@bcpiweb.com

Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
Room 5-C140
445 12th Street, SW
Washington, DC 20554
CPDcopies@fcc.gov

By: 
_____ Gregg C. Sayre