

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

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

REPLY COMMENTS

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March 24, 2008

SUMMARY

Comments submitted in this proceeding display overwhelming support for the Commission to establish procedural rules governing forbearance petitions. This would foster more efficient Commission decision making, restore rulemaking as an important process for setting policy, and preclude abuses such as repetitive applications. As expected, the Bell Operating Companies (“BOCs”) oppose procedural safeguards, offering the same empty rhetoric that they repeat in every proceeding. Contrary to their claims, adopting procedural rules will not prevent the Commission from using forbearance as a tool for deregulation *where it is warranted*. Nor will it impair the Commission’s ability and authority to promote broadband investment, intermodal competition, and to eliminate outdated regulations on an expeditious basis. Also, because a petitioner does not have a vested right in the Commission’s continued application of processing policies in effect at the time of the filing, the Commission may apply modified rules to applications that are pending at the time of a rule modification.

The record demonstrates fully that the Commission should establish procedural rules that: apply the APA’s notice-and-comment rules to forbearance proceedings; require all forbearance petitions to be complete-as-filed; require a forbearance petitioner to demonstrate how it satisfies each of the three forbearance criteria under Section 10(a) with respect to each FCC regulation or statutory obligation from which it seeks forbearance relief; and place the burden of proof squarely on the forbearance petitioner.

Additional safeguards are needed for ILEC petitions seeking forbearance from Section 251 obligations, including the requirement that any ILEC seeking § 251(c)(3) forbearance should be required to demonstrate in its petition that the rates, terms and conditions for wholesale

alternatives are just and reasonable and will promote competition. An ILEC's forbearance petition should also include the geographic data the Commission considers in evaluating § 251 forbearance requests—ILECs should not be permitted to ignore or collaterally attack Commission precedent by not providing such detail. In addition, the Commission should establish a process for obtaining input from, and working closely with, state commissions in consideration of these types of petitions.

To ensure fairness in the procedural process and promote compliance with the rules adopted, the Commission should: (1) summarily dismiss and deny a forbearance petition without prejudice when a petitioner violates these rules; (2) promptly issue protective orders; (3) review forbearance petitions within 21 days of filing and allow a forbearance petitioner to correct minor, non-material procedural defects; and (4) establish timelines for resolution of motions to dismiss. Furthermore, the Commission should deem *ex parte* filings made by the petitioner that seek to include new, material information as “major amendments” that require the withdrawal of the initial petition and filing of a new one with this information. Lastly, the Commission should adopt a policy of issuing a decision on every forbearance petition, rather than allowing a petition to be deemed granted, which is consistent with the Section 10(c) requirement that the Commission “explain its decision in writing.”

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TABLE OF FREQUENTLY USED SHORT CITATIONS

March 7, 2008 Comments Cited

Access Point <i>et al.</i>	Access Point, Inc.; Alpheus Communications, L.P.; ATX Communications, Inc.; Bridgecom International, Inc.; Broadview Networks, Inc.; Cavalier Telephone Corporation; CIMCO Communications, Inc.; CP Telecom, Inc.; DSLnet Communications, LLC; Globalcom, Inc.; Lightyear Network Solutions, LLC; Matrix Business Technologies; MegaPath, Inc.; PAETEC Holding Corp.; Penn Telecom, Inc. d/b/a Consolidated Communications Penn Telecom; RCN Telecom Services, Inc.; RNK Inc. d/b/a RNK Communications; segTEL, Inc.; Talk America Holdings, Inc.; TDS Metrocom, LLC; and U.S. TelePacific Corp. and Mpower Communications Corp., both d/b/a TelePacific Communications
ACS	ACS of Anchorage, Inc.
Ad Hoc	Ad Hoc Telecommunications Users Committee
AT&T	AT&T Inc.
COMPTEL	COMPTEL
Telecom Investors	Columbia Capital and M/C Venture Partners
Comcast	Comcast Corporation
Covad <i>et al.</i>	Covad Communications Group, NuVox and XO Communications, LLC
DeltaCom	DeltaCom, Inc.
Discovery Institute	Discovery Institute
EarthLink <i>et al.</i>	EarthLink, Inc. and New Edge Network, Inc.
Frontier	Frontier Communications
ITTA	Independent Telephone & Telecommunications Alliance
MoPSC	State of Missouri
NATOA	National Association of Telecommunications Officers and Advisors

NCTA	National Cable & Telecommunications Association
NARUC	National Association of Regulatory Utility Commissioners
NASUCA	New Jersey Division of Rate Counsel and the National Association of State Utility Consumer Advocates
PAPUC	Pennsylvania Public Utility Commission
Philadelphia	City of Philadelphia
TXPUC	Public Utility Commission of Texas
SBA	Small Business Administration
Sprint	Sprint Nextel Corporation
TEXALTEL	TEXALTEL
MACRUC	The Members of the Mid-Atlantic Conference of Regulatory Utility Commissioners and Their State Commissions
Time Warner Telecom <i>et al.</i>	Time Warner Telecom Inc., One Communications Corp., and Cbeyond Inc.
Qwest	Qwest Communications International, Inc.
Verizon	Verizon and Verizon Wireless

FCC Decisions

<i>Omaha Forbearance Order</i>	<i>Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area, WC Docket No. 04-223, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005), aff'd, Qwest Corp. v. FCC, 482 F.3d 471 (D.C. Cir. 2007)</i>
<i>Updated 271 Filing Requirements</i>	<i>Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act, Public Notice, 16 FCC Rcd 6923, DA 01-734 (CCB rel. Mar. 23, 2001)</i>

<i>Verizon Six MSA Forbearance Order</i>	<i>Petitions of Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas, WC Docket No. 06-172, Memorandum Opinion and Order, FCC 07-212 (rel. Dec. 5, 2007), appeal pending, Verizon v. FCC, No. 08-1012 (D.C. Cir. filed Jan. 14, 2008)</i>
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REPLY COMMENTS

The undersigned parties (“Commenters”), by their counsel, respectfully submit these Reply Comments in the above-captioned proceeding.

I. OBJECTIONS TO THE NEED FOR PROCEDURAL RULES ARE UNPERSUASIVE

In an effort to forestall adoption of reasonable procedural rules to govern forbearance proceedings, BOCs offer the same empty rhetoric that they repeat in every proceeding. They contend that CLEC proposals would reduce broadband investment and intermodal competition¹ and thwart use of forbearance to eliminate expeditiously outdated regulations.² This is nonsense. Adopting procedural rules will not prevent the Commission from using forbearance as a tool for deregulation *where it is warranted*. Nor will it impair the Commission’s ability and authority to promote broadband investment, intermodal competition, and to eliminate outdated regulations on an expeditious basis via rulemakings.

¹ See Verizon at 5-9; AT&T at 2-3.

² See Verizon at 3, 11; AT&T at 1-2, 10, 19.

The issue is not whether particular forbearance requests are appropriate, but whether the Commission should have procedural rules that will permit it to conduct its regulatory agenda in an orderly manner by restoring rulemaking as the primary vehicle for establishing new, or eliminating outdated, industry-wide-impact regulations, while continuing to permit forbearance for discrete regulatory issues that are not otherwise under consideration in other proceedings.

It is not the case that recent forbearance petitions have focused on “outdated” regulations. The Qwest Omaha petition for forbearance from UNE obligations was filed months *before* the Commission released its new UNE rules in the *TRRO*.³ Far from addressing dusty regulations left on the shelf for years, BOCs have filed petitions that raise cutting-edge regulatory issues. Qwest acknowledges that “notable” areas of recent forbearance activity have concerned, among others, Section 251 UNE and related obligations and Title II regulation of next generation broadband networks.⁴

Verizon states that the Commission has issued 55 orders that resolved 98 petitions, of which 70 percent were denied in whole or in part.⁵ This shows the Commission is devoting a large amount of resources to forbearance petitions that are likely preventing resolution of impor-

³ See Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area, WC Docket No. 04-223 (filed June 21, 2004). The *TRRO* was released on February 4, 2005. See *Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No 04-313, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533 (rel. Feb. 4, 2005) (“*TRRO*”) (subsequent history omitted).

⁴ Qwest at 7.

⁵ Verizon at 3.

tant policy issues in pending rulemaking proceedings. Some of these important proceedings have languished for years.⁶

AT&T likens forbearance proceedings to adjudications.⁷ AT&T is wrong. As explained in the initial Comments, forbearance falls within the APA definition of rulemaking.⁸ AT&T also suggests that reform is unnecessary or unlawful because the focus of CLEC concerns is with the forbearance statute itself.⁹ As Commenters explained, however, the Commission may use forbearance to forbear from Section 10 itself.¹⁰ This will enable the Commission to establish an improved forbearance process that will not subvert rulemaking. Moreover, the Commission has ample authority to adopt procedural rules to protect the integrity of its deliberations.¹¹ Contrary to AT&T's assumption, the Commission is not helpless to prevent BOC abuses of the forbearance process.

BOCs have made a few suggestions for procedural rules. For the most part, their proposals help them invoke the forbearance process with as few restrictions as possible. Verizon's proposal that the Commission should dispose of forbearance petitions within six months would exacerbate the existing drain on the Commission's resources by requiring an even more disrup-

⁶ For example, as pointed out by Ad Hoc, matters that have been put aside so that the Commission can process BOC forbearance petitions within the statutory deadline include reform of: (1) the methodology used to assess Universal Service Fund contributions; (2) policies for high cost USF subsidy eligibility and levels; and (3) inter-carrier compensation methods. *See* Ad Hoc at 1-2.

⁷ AT&T at 18.

⁸ *See* Access Point *et al.* at 16, n.38.

⁹ AT&T at 1.

¹⁰ Access Point *et al.* at 6.

¹¹ 47 U.S.C. § 154(i).

tive reordering of agendas to address every item on the BOC wish list. AT&T's proposal for barring new submissions during a very brief period of repose prior to decision is not without merit,¹² but merely sidesteps more serious reform needed to ensure complete petitions and orderly decision-making.

Initial comments provide ample justification for the need for strong procedural rules governing forbearance proceedings.¹³ Procedural rules would foster more efficient Commission decision making, restore rulemaking as an important process for setting policy, and preclude abuses like repetitive applications, of which the Verizon Rhode Island petition is a prime example.¹⁴ The Commission should move promptly to adopt such rules and decline BOCs' pleas to maintain the *status quo* or actually make matters worse.

II. THE COMMISSION MAY APPLY PROCEDURAL RULES TO PENDING FORBEARANCE PROCEEDINGS

The BOCs oppose the application of any rules the Commission may establish in this proceeding to pending forbearance proceedings. AT&T argues that the *Landgraf* test prohibits the Commission from applying any such rules to pending petitions because doing so would impose new duties on petitioners with respect to completed filings and therefore, have improper retroactive effects.¹⁵ Verizon contends that the APA forbids retroactive rules, whether legislative or

¹² AT&T at 20.

¹³ See COMPTTEL at 5-6; Covad *et al.* at 6; Philadelphia at 7; NASUCA at 9-10; NATOA at 5; SBA at 5; Access Point, Inc. *et al.*, at 14-15; Telecom Investors at 3-6.

¹⁴ Petition of Verizon New England for Forbearance Pursuant to 47 U.S.C. § 160(c) in Rhode Island, WC Docket No. 08-24 (filed Feb. 14, 2008).

¹⁵ AT&T at 27 (citing and quoting *Landgraf v. USI Film Products at al.*, 511 U.S. 244, 280 (1994)).

procedural, that alter the past legal consequences of such actions.¹⁶ Qwest asserts that it would be “unfair to subject forbearance petitions to new procedural rules that did not exist when petitions were filed with the Commission.”¹⁷

Contrary to the BOCs’ claims, the Commission may apply modified rules to applications that are pending at the time of a rule modification.¹⁸ A petitioner does not have a vested right in the Commission’s continued application of processing policies in effect at the time of the filing.¹⁹ Even if a procedural change “may result in an applicant’s expectations being frustrated, the application of changed eligibility criteria to pending applicants does not constitute retroactive

¹⁶ Verizon at 40.

¹⁷ Qwest at 18.

¹⁸ Access Point *et al.* at 13-14.

¹⁹ *Chadmore Communications, Inc. v. FCC*, 113 F.3d 235, 240-41 (D.C. Cir. 1997) (filing of upgrade applications did not vest petitioners with a legally cognizable expectation that the criteria for considering their applications would remain unchanged); *Pacific Broadcasting of Missouri, LLC For Special Temporary Authorization to Operate Station KTKY-FM, Refugio, Texas Facility ID No. 40798*, Memorandum Opinion and Order, 19 FCC Rcd 10950, ¶ 15 (June 16, 2004) (“*Pacific Broadcasting*”) (stating that the Order at issue “merely changed a processing policy, and the Commission clearly has the authority to cease application of a policy” to pending cases); *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Eldorado, Mason, Mertzson and Fort Stockton, Texas)*, MB Docket No. 00-53, Memorandum Opinion and Order, 22 FCC Rcd 280, ¶ 7 & n.15 (MB Jan. 12, 2007) (explaining that the Commission would apply its “revised policy to pending cases” and that “[I]t is well settled that a filer does not have a vested right in the Commission’s continued application of processing policies in effect at the time of the filing.”); *Applications of Crabtree Aircraft Company INC. for Renewal of Aeronautical Advisory Station KGW6, Guthrie, OK, Spirit Wing Aviation Services LTD., for New Aeronautical Advisory Station at Guthrie, OK*, FCC File Nos. 0001278243, 0001300645, Order, 19 FCC Rcd 23187, n.10 (WTB 2004) (“*Crabtree Aircraft*”) (stating that “it is well settled that the Commission may apply modified rules to applications that are pending at the time of a rule modification.”); *See also* Letter to Pamela C. Cooper, Esq., *et al.*, from Barbara A. Kreisman, Chief, Video Services Division, Mass Media Bureau, 16 FCC Rcd 12668, 12672 (MMB 2001) (explaining “changes in processing rules may be applied in cases arising before their promulgation”).

rulemaking.”²⁰ Stated differently, the Commission has the authority to “make midstream rule adjustments, even though it disrupts expectations....”²¹ The Supreme Court has even found that pending applications may be dismissed based on changed processing rules.²² Moreover and similar to the Commission’s finding in *Chadmore*, it would be “contrary to the underlying goals” of this rulemaking not to apply the rules established to both pending and future forbearance proceedings.²³

AT&T’s reliance on the *Landgraf* test for retroactivity is misplaced. Under *Landgraf*, “there are three ways in which a rule can be retroactive: if it ‘impair[s] rights a party possessed when he acted, increases a party’s liability for past conduct, or impose[s] new duties with respect to transactions already completed.’”²⁴ Here, the lack of a formal set of procedural rules did not give a forbearance petitioner any rights to a forbearance grant and clearly do not increase its liability for past conduct or impose new duties with respect to existing regulatory obligations that

²⁰ *Crabtree Aircraft*, 19 FCC Rcd 23187, n.10 (citing *Review of the Pioneer’s Preference Rules, First Report and Order*, ET Docket No. 93-266, 9 FCC Rcd 605, 610 n.24 (1994), and cases cited therein.); *Pacific Broadcasting*, 19 FCC Rcd 1095, ¶ 15; see also *DirecTV, Inc. v. FCC*, 110 F.3d 816, 826 (D.C. Cir. 1997) (“[A] new rule or law is not retroactive merely because it ... upsets expectations based on prior law,” quotation omitted); *Chemical Waste Management, Inc. v. EPA*, 869 F.2d 1526, 1536 (D.C. Cir. 1989) (“[I]t is often the case that a business will undertake a certain course of conduct based on the current law and will then find its expectations frustrated when the law changes. This has never been thought to constitute retroactive lawmaking ...”).

²¹ *Bachow Communications, Inc., et al. v. FCC*, 237 F.3d 683, 687 (D.C. Cir. 2001) (citing *Maxcell Telecom Plus, Inc. v. FCC*, 815 F.2d 155 (D.C. Cir. 1987); and *DIRECTV*, 110 F.3d 816).

²² *United States v. Storer Broadcasting Co.*, 351 U.S. 192, 202 (1956).

²³ See *Chadmore*, 113 F.3d at 242.

²⁴ *DirecTV*, 110 F.3d at 825-826 (quoting and interpreting *Landgraf*, 511 U.S. at 280).

apply to it.²⁵ While the BOCs argue that the establishment of procedural rules upsets their pending petitions based on the lack of procedural rules, the Courts and the Commission have firmly have found that a new rule or law is not retroactive for these reasons.²⁶ Moreover, new procedural rules would not alter past legal consequences but govern pending petitions on a going-forward basis. Therefore, any procedural rules the Commission establishes in this proceeding should apply to both pending and future forbearance proceedings.

III. THE COMMISSION SHOULD REJECT THE BOCS' OPPOSITION TO THE PROPOSED PROCEDURAL RULES

A. AT&T's Arguments that APA Notice and Comment Requirements Should Not Apply to Forbearance Proceedings Have No Merit

Most commenting parties support applying the APA's notice-and comment rules to forbearance proceedings. AT&T contends that the Commission should retain its flexibility and not apply the APA to forbearance proceedings.²⁷ It further asserts that the APA's notice and comment rulemaking procedures do not apply because a forbearance proceeding is an adjudication rather than a rulemaking. However, as explained previously, the APA's rulemaking procedures

²⁵ See *Chadmore*, 113 F.3d at 240-41; *DirecTV*, 110 F.3d at 826; Cf. *Hispanic Info. & Telecomms. Network v. FCC*, 865 F.2d 1289, 1294-95 (D.C. Cir. 1989) ("The filing of an application creates no vested right to a hearing; if the substantive standards change so that the applicant is no longer qualified, the application may be dismissed."). See also *Community Television, Inc.*, 216 F.3d 1133, 1143 (D.C. Cir. 2000) ("... the mere filing of upgrade applications did not vest petitioners with a legally cognizable expectation interest. See *Chadmore Comm., Inc.*, 113 F.3d at 240-41. Thus, the FCC was free to alter its criteria for considering those applications.").

²⁶ See, e.g., *DirecTV*, 110 F.3d at 826 (quoting *Landgraf*, 511 U.S. at 269); *Pacific Broadcasting*, 19 FCC Rcd 1095, ¶ 15 & n.53; *Crabtree Aircraft*, 19 FCC Rcd 23187, n.10.

²⁷ AT&T at 17.

apply to forbearance proceedings by their very terms.²⁸ Ignoring the APA would be grounds for reversal of any forbearance decision.

Qwest essentially acknowledges that the APA rulemaking procedures apply. It admits that forbearance proceedings are not an “adjudicat[ion]” but rather a “policy-making activity.”²⁹ Because policy-making activities fall within the definition of a rule under the APA³⁰ and an APA rulemaking is an “agency process for formulating, amending or repealing a rule,”³¹ Qwest, in effect, concedes that the APA’s rulemaking provisions apply to forbearance proceedings.

In short, the Commission is obligated to comply with these APA rules in forbearance proceedings. Any forbearance procedural rules the Commission establishes should acknowledge this obligation.

B. The Commission should adopt a Requirement that Forbearance Petitions be Complete-as-Filed

With a few exceptions,³² commenting parties support a complete-as-filed rule for forbearance petitions because it will promote orderly and fair consideration of forbearance peti-

²⁸ Access Point *et al.* at 14-16. The APA defines “rule” as “the whole or a part of an agency statement of *general or particular applicability and future effect* designed to implement, interpret, or prescribe law or *policy* or describing the organization, procedure, or practice requirements of an agency” 5 U.S.C. § 551(4) (emphasis supplied). A forbearance order may have general or particular applicability, depending on the terms of the petition; it has future, not retroactive, effect; and it prescribes what law and policy will (or will not) apply to the telecommunications carriers or services specified in the petition.

²⁹ Qwest at 11.

³⁰ See note 28 above.

³¹ 5 U.S.C. § 551(5).

³² See Verizon at 29; AT&T at 13; Qwest at 13; Frontier at 2; Discovery Institute at 4.

tions.³³ While ILECs oppose this requirement, it is plain that they do so only for their own convenience. They seek the flexibility to update their forbearance petitions during the later phases of a forbearance proceeding with any amount of data and in a manner that is prejudicial to interested parties.

The BOCs argue that a complete-as-filed rule was appropriate for 271 applications because the Commission had only 90 days to consider and rule on 271 applications.³⁴ They argue that the Commission has far more time under Section 10(c) so the complete-as-filed requirement should not apply to forbearance proceedings. The BOCs ignore the fact, however, that the Section 271 complete-as-filed requirement was imposed to, among other things, prevent procedural gamesmanship,³⁵ which would also be achieved by a similar rule in forbearance proceedings.³⁶

³³ COMPTTEL at 8; Covad *et al.* at 6; Deltacom at 5; Sprint at 7; TEXATEL at 7; Time Warner Telecom *et al.* at 23; NCTA at 4; Philadelphia at 8; MoPSC at 4; MACRUC at 3; NARUC at 4; NASUCA at 11; NATOA at 5; Ad Hoc at 2; SBA at 7; Telecom Investors at 5.

³⁴ AT&T at 15; Verizon at 31.

³⁵ As the Commission emphasized,

When new factual information is filed either in the applicant's reply comments, or after the reply period, other parties have no opportunity to comment on the veracity of such information except through the submission of *ex partes*. [R]eliance on [ex partes] to update the record would simply exacerbate the problem, since each attempt by commenting parties to correct [alleged] BOC misstatements or oversights would unquestionably prompt the BOCs to file new *ex partes* themselves. In addition, ... allowing BOCs to rely on new factual evidence to demonstrate compliance with the requirements of section 271 may encourage [them] to *game the system* by withholding evidence until the reply round of comments, when they are immune from attack.

Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543, ¶ 52 (1997) (emphasis added; footnotes,

The BOCs also oppose a complete-as-filed rule because they claim they do not have access to third-party information that may support their petitions when they do file and contend that the Commission can consider information that is filed later in the proceeding by any party.³⁷ They fail to recognize, however, that under the APA, an agency may not rely on material information on which interested parties are not given adequate time, access and opportunity to comment, particularly after the comment cycle has closed.³⁸ The APA imposes this requirement

internal quotations, and subsequent history omitted).

³⁶ See *Access Point et al.* at 17. Verizon also argues that proposals to create a complete-as-filed rule in § 10 proceedings that parallels the § 271 requirement ignore the differences between these two statutory sections. It asserts that under § 271, Congress required the applicant to demonstrate that it had met the requirements specified in the statute; whereas under § 10, the burden is on the Commission to forbear whenever it determines that the statutory criteria are satisfied. Verizon at 30. Contrary to Verizon's claims and as further discussed below, the Commission has no such burden. As noted herein, under § 10(c) the Commission evaluates a forbearance petition as filed and can deny it if it fails to satisfy any of the Section 10(a) criteria.

³⁷ See, e.g., Verizon at 30-32. AT&T also argues that the Commission has not adopted a strict complete-as-filed rule in formal complaint proceedings and that the Commission's complaint rules "contemplate that additional discovery will be conducted and that additional evidence will be submitted after the complaint is filed." AT&T at 16. While this may be so, Section 208 specifically contemplates that the Commission will launch an investigation based on the complaint filed. Unlike a Section 208 complaint proceeding, a Section 10(c) forbearance proceeding is not an investigation but rather a determination of whether the filed forbearance petition satisfies the Section 10(a) criteria.

³⁸ See *Access Point et al.* at 18 (explaining that a federal agency commits reversible error where it relies on material, post-comment information to support its final rule and citing *Ober v. EPA*, 84 F.3d 304, 315 (9th Cir. 1996) ("Petitioners were prejudiced when they did not have notice of or an opportunity to comment on the post-comment period justifications which were submitted by the State and were critical to the EPA's approval decision."); *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1403 (9th Cir. 1995) ("...opportunity for public comment is particularly crucial when the accuracy of important material in the record is in question.")). For instance, the Commission has relied extensively on information filed by cable operators close to the Commission's deadline to rule on Verizon's six MSA forbearance petitions and did not put the information out for formal public comment. *Verizon Six MSA Forbearance Order*, n.71. This is practice is unlawful under the APA and should not be continued by the Commission.

so that interested parties are not prejudiced and are given an opportunity to comment on whether such information or data is accurate and appropriate before the Commission relies on it in its decision-making. As suggested in the Petition, procedural rules should provide for early responses to any third-party data requests that the Commission deems appropriate, so that all participants will have an opportunity to comment on the factual record.

1. AT&T and Most Other Comments Agree that Each Petition Should Clearly State the Requested Forbearance Relief and Demonstrate that It Satisfies All Statutory Criteria

Most commenting parties, including AT&T, embrace the establishment of a rule that requires a forbearance petitioner to demonstrate in its petition how it satisfies each of the three forbearance criteria with respect to each obligation from which it seeks forbearance relief.³⁹ AT&T even acknowledges that the “statute already requires this.”⁴⁰ Verizon opposes this proposal because the petitioner may not possess all necessary information at the time of filing and because it imposes “rigid, inflexible pleading rules are inconsistent with the nature of the forbearance process.”⁴¹

Verizon’s objections have no merit. Section 10(a) specifically states the three forbearance criteria that need to be satisfied. Moreover, while Section 10(c) permits any telecommunications carrier or class of telecommunications carriers to submit a forbearance petition with the Commission, it adds that the Commission may “deny the *petition for failure to meet the requirements*

³⁹ See, e.g., AT&T at 16; COMPTTEL at 7; Covad *et al.* at 6; EarthLink at 10; TEXALTEL at 8; Time Warner *et al.* at 21-22; MACRUC at 6; PAPUC at 10-11; Telecom Investors at 5.

⁴⁰ AT&T at 16.

⁴¹ Verizon at 34.

for forbearance under subsection (a)...”⁴² Given this, the petitioner should, among other things,⁴³ make a clear and coherent demonstration *in its petition* that each of the Section 10 requirements are fully satisfied for each law or regulation for which the petitioner seeks forbearance relief.⁴⁴

2. Contrary to the BOCs’ Arguments, the Burden of Proof Rests with the Forbearance Petitioner

An overwhelming majority of Commenters also agree that the forbearance petitioner has the burden of proof,⁴⁵ which is consistent with the statutory language in Section 10. As explained above, while Section 10(c) gives a telecommunications carrier or class of telecommunications carriers the right to file a petition for forbearance with the Commission, Section 10(c) expressly

⁴² 47 U.S.C. § 160(c) (emphasis added).

⁴³ See, e.g., *Access Point et al.* at 20 (requesting that the forbearance petitioner also state in its forbearance petition the original basis for the rules at issue and potential impact if the Commission forbears from applying them to the petitioner); see also *Covad et al.* at 9 (asking that the Commission require the forbearance petitioner to include in its petition a summary of the history of each of the rules and/or statutory requirements from which it is seeking forbearance and to indicate whether a grant of forbearance would impact any other ongoing Commission docket or proceeding).

⁴⁴ AT&T asserts that CLECs’ proposal should not be construed as requiring repetition of arguments or evidence from factor to factor or regulation to regulation, because the Commission’s and court decisions indicate there is overlap between the factors and there will be substantial overlap in reasons why forbearance is appropriate for a group of related regulations. AT&T at 16-17. Verizon makes similar arguments. Verizon at 34-35 As noted, the statute requires that the petition explain why each of the Section 10(a) requirements are satisfied for each regulation in which the forbearance petitioner seeks forbearance relief. Conceivably, this could be accomplished in a manner that avoids repeating arguments but still addresses each of the Section 10 criteria independently, as the Commission has done in its forbearance orders. See, e.g., *Verizon Six MSA Forbearance Order*, ¶¶ 37, 43-44; *Omaha Forbearance Order*, ¶¶ 25, 44, 46.

⁴⁵ COMPTTEL at 5; *Covad et al.* at 6; *DeltaCom* at 6; *EarthLink et al.* at 8-10; *Sprint* at 6; *TEXATEL* at 8; *Time Warner Telecom et al.* at 24; *NCTA* at 4; *MACRUC* at 6; *NASUCA* at 10-11, 17; *PAPUC* at 11; *Philadelphia* at 6; *SBA* at 8.

states that the Commission “deny *the petition for failure to meet the requirements for forbearance under subsection (a)....*”⁴⁶ It is therefore the petitioner’s burden to demonstrate in “the petition” that each of the “requirements for forbearance under subsection (a)” are met. If the petitioner fails to make this showing, the Commission may, and should, consistent with the statutory language, deny the petition. In denying forbearance petitions filed, the Commission has therefore properly placed the burden squarely on the petitioner to demonstrate that forbearance is warranted.⁴⁷ Moreover and apart from the above, placing the burden on the forbearance petitioner is consistent with the APA,⁴⁸ the Commission’s waiver rules,⁴⁹ (which is similar to a forbearance request) other Commission rules,⁵⁰ and long standing legal precedent associated with Section 208 and other complaint proceedings.⁵¹

⁴⁶ 47 U.S.C. § 160(c).

⁴⁷ See, e.g., *Verizon Six MSA Forbearance Order*, ¶¶ 27, 34, 37, 43-45 (explaining that Verizon has not demonstrated that the Section 10 criteria are satisfied); *Omaha Forbearance Order*, ¶¶ 87, 88, 103, 108-09 (explaining that Qwest has not demonstrated that the Section 10 criteria are satisfied).

⁴⁸ 5 U.S.C. § 556(d) (“Except as otherwise provided by statute, a proponent of a rule has the burden of proof.”)

⁴⁹ The Commission’s rules may be waived for good cause shown. 47 C.F.R. §1.3 and, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner. See *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971). Forbearance petitions are similar to a waiver petition because in both situations the petitioner is requesting that the Commission not apply a particular rule to it.

⁵⁰ See 47 C.F.R. § 1.254 (The burden of proof “shall be upon the applicant...”); 1.731(a) (“the party claiming confidentiality shall have the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the standards for nondisclosure enunciated in the FOIA”); 1.1409(b) (“The complainant shall have the burden”).

⁵¹ See generally, *Hi-Tech Furnace Systems, Inc. v. FCC*, 224 F.3d 781, 787 (D.C. Cir. 2000) (affirming that the complainant in a proceeding conducted under section 208 of the Act bears the burden of proof); *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to be Followed when Formal Complaints are Filed Against*

Incredibly, the BOCs argue that once a petitioner files a forbearance petition, the language of the statute places the burden on the Commission to justify continuation of a regulation.⁵² Nothing in the statute supports this wild assertion and, if anything, it is contrary to the express statutory language in Section 10(c). The only burden the Commission has under Section 10(c)—if it does not allow the petition to be deemed granted by operation of law—is to explain any decision that grants or denies a forbearance petition “in writing.”⁵³

Relatedly, Verizon argues that when third parties fail to submit relevant data in forbearance proceedings, that failure should give rise to an inference that the evidence is unfavorable to the third party, and in fact, supports the forbearance petition.⁵⁴ Contrary to Verizon’s claims, the failure of third-parties, such as cable parties, to respond to a Commission data request should not effectively shift the burden of production. As the Commission has held, “[a] rule that ...shift[s] the burden of production in all cases would be prejudicial....”⁵⁵

Common Carriers, Report and Order, 12 FCC Rcd 22497, ¶ 294 (1997) (“*Formal Complaints Rulemaking Order*”) (the complainant has the burden of proof in expedited complaint proceedings pursuant to Sections 260, 274, and 275 of the Act and the burden does not shift).

⁵² AT&T at 7-9; Qwest at 14-15; Verizon at 40.

⁵³ 47 U.S.C. § 160(c) (emphasis added).

⁵⁴ See Verizon at 15-16 (referring to Cablevision’s data request and response in the Verizon Six-MSA Forbearance Proceeding.); see also ACS at 4.

⁵⁵ *Formal Complaints Rulemaking Order*, ¶ 296. As explained above, the forbearance petitioner has the burden of proof. That burden does not shift, whereas it might in Section 208 cases. In that connection, the Commission has stated that staff retains “the discretion” in Section 208 cases to effectively shift the burden of production by directing defendant carriers to produce relevant information to be within their exclusive possession and noted that “this discretion is conferred under Section 208 of the Act which authorizes the Commission to investigate complaints” *Id.*, ¶ 295. As demonstrated above, a forbearance proceeding prompted by a forbearance petitioner’s Section 10(c) petition is not a Section 208 investigation but rather a

IV. ADDITIONAL SAFEGUARDS ARE APPROPRIATE FOR ILEC PETITIONS SEEKING FORBEARANCE FROM SECTION 251 OBLIGATIONS

A. An ILEC Must Prove in Its Forbearance Petition that Its Rates for Non-§ 251(c)(3) Alternatives, and Other Terms and Conditions, are Just and Reasonable

As Commenters proposed, any ILEC seeking § 251(c)(3) forbearance should be required to demonstrate in its forbearance petition that the rates, terms and conditions for wholesale services that it offers or intends to offer as substitutes for unbundled network elements are just and reasonable and will promote competitive market conditions.⁵⁶ This tracks the Section 10 forbearance criteria that the Commission must consider in determining whether to grant or deny a forbearance request. Because this information is uniquely available to the ILEC petitioner and not to any other party, the Commission should require that the ILECs make this showing in their petitions. Given prior erroneous predictions, the Commission should not make predictions as to whether the ILEC has an incentive to offer just and reasonable alternatives to § 251(c)(3) services.⁵⁷ The Commission should specifically determine that the available wholesale offerings are just and reasonable before granting an ILEC's § 251(c)(3) forbearance request.

Commission proceeding that determines whether the petition fails “to meet the requirements for forbearance under subsection (a).” See 47 U.S.C. § 160(c).

⁵⁶ See Access Point *et al.* at 27-28.

⁵⁷ See Access Point *et al.* at 22-24, 27-28.

B. Forbearance Petitions Seeking Relief from Sections 251 or 271 Should Provide Geographic Detail and Support Consistent with Commission Precedent

The BOCs oppose a requirement that a petition seeking forbearance from Sections 251 and 271 include all supporting data at the wire center level.⁵⁸ Verizon argues that nothing in Section 10 requires a more specific pleading requirement for these sections.⁵⁹ AT&T asserts that in future proceedings, analysis at the wire center level may not be required or a less granular approach may be more suitable.⁶⁰

Regardless of what the Commission may do in the future, ILECs should be required to provide the supporting data consistent with Commission precedent and not withhold from providing it until the end of or after the comment cycle. Verizon did just that in the Six MSA proceeding. In an effort to avoid comment on its wire center analysis, it provided extensive information on a wire center basis at the close of the comment cycle rather than with its petition.⁶¹ Petitions should, at a minimum, include the geographic data the Commission considers in evaluating 251 forbearance requests. ILECs should not be permitted to ignore Commission precedent and collaterally attack it by not providing such detail.⁶²

⁵⁸ AT&T at 21-22; Verizon at 35; Qwest at 16.

⁵⁹ Verizon at 35.

⁶⁰ AT&T at 21-22.

⁶¹ See *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, Reply Comments of Verizon, WC Docket No 06-172 (filed April 18, 2007).

⁶² As Commenters proposed, forbearance petitions that do not make this showing when seeking forbearance relief from § 251(c)(3) obligations should be denied automatically on procedural grounds. Access Point *et al.* at 30.

C. The Commission Should Seek Input from, and Work Closely with, States in Reviewing Petitions Seeking Forbearance from Section 251 and 271 Obligations

State commissions unanimously agree that the Commission should establish rules that specifically encourage and foster state input on any forbearance petitions.⁶³ Verizon, Qwest and ITTA argue that such a rule is unnecessary.⁶⁴

Verizon asserts that § 10 provides no statutory role for the states in considering the merits of a forbearance petition.⁶⁵ Of course, it is equally true that § 10 does not exclude or limit state participation. The Commission may rely on state commissions for fact gathering along with policy recommendations when considering forbearance petitions. The D.C. Circuit Court of Appeals has specifically held that “a federal agency may use an outside entity, such as a state agency ..., to provide the agency with factual information” and “may turn to an outside entity for advice and policy recommendations, provided the agency makes the final decisions itself.”⁶⁶ As Commenters demonstrated, assistance from state commissions in this respect is especially appropriate when the Commission is considering an ILEC’s request for forbearance from its obligations under Sections 251 and 271.⁶⁷ Accordingly, the Commission should establish a

⁶³ MACRUC at 12; MoPSC at 7; NARUC at 2; NASUCA at 20-21; TXPUC at 1-2; PAPUC at 15; Philadelphia at 8.

⁶⁴ Verizon 32-33; Qwest 15; ITTA at 5.

⁶⁵ Verizon at 33.

⁶⁶ *United States Telecom Ass’n v. FCC*, 359 F.3d 554, 567-68 (D.C. Cir. 2004), *cert. denied sub nom. Nat’l Ass’n Regulatory. Util. Comm’rs v. United States Telecom Ass’n*, 73 USLW 3234 (U.S. Oct. 12, 2004) (Nos. 04-12, 04-15, 04-18).

⁶⁷ Access Point *et al.* at 30-31; *see also* NASUCA at 21.

process for obtaining input from, and working closely with, state commissions when considering these types of petitions.

V. BOCS TAKE AN UNNECESSARILY RESTRICTIVE AND IMPRACTICAL VIEW GOVERNING ACCESS TO CONFIDENTIAL INFORMATION

There is widespread support for the proposal to permit authorized persons, including State commissions, to use confidential information in related forbearance proceedings.⁶⁸ BOC fears that this would create a serious risk of disclosure of confidential information are exaggerated.⁶⁹ They unreasonably assume that persons who have signed the protective order and made themselves subject to sanctions by the Commission will nonetheless violate the Commission's orders. The Commission's protective orders establish procedures for objecting to disclosure of confidential information to any person who seeks access to it. Therefore, it is not the case that permitting use of confidential information in related proceedings, including related state proceedings, will create a significant risk of disclosure of confidential information. At the same time, this will promote efficient decision making by the Commission and more effective participation by interested parties in related proceedings, who will not be hampered by artificial restrictions that require talking around key information of precedential value.

The Commission should also adopt the proposal that confidential information be made accessible in electronically searchable format. Most parties commenting on this proposal support it.⁷⁰ AT&T and Qwest appear not to object to the electronic availability of confidential informa-

⁶⁸ See TEXALTEL at 8-9; Time Warner Telecom *et al.* at 11-12, & 27; NASUCA at 19; Access Point *et al.* at 37.

⁶⁹ See AT&T at 23; Qwest at 17; Verizon at 36-38.

⁷⁰ See Time Warner at 27; MoPSC at 5; NARUC at 6; NASUCA at 19-20.

tion, or to protective orders that require this; rather, they object to any rule requiring electronic availability of confidential information.⁷¹ This position makes no sense. It would be very inefficient and impractical for the Commission to consider whether to require disclosure of confidential information in an electronically searchable format on a case-by-case basis. Disclosure of confidential information in a searchable format will promote effective participation by interested parties in every instance. At the same time, safeguards set forth in protective orders against unauthorized disclosure will assure that the information remains confidential. Therefore, the Commission should adopt a rule requiring that confidential information in forbearance proceedings be disclosed in an electronically searchable format.

VI. THE COMMISSION SHOULD SUMMARILY DISMISS FORBEARANCE PETITIONS THAT VIOLATE PROCEDURAL RULES

The majority of comments filed support dismissing forbearance petitions that violate procedural rules adopted in this proceeding.⁷² As Ad Hoc and Covad explained, while the Commission cannot stop BOCs from filing forbearance petitions that comply with reasonable procedural rules, the Commission should adopt procedural rules that ensure fairness in the process and reduce consumption of valuable Commission resources.⁷³ To accomplish this objective and to ensure that forbearance petitioners comply with these rules, the Commission should summarily

⁷¹ See AT&T at 26; Qwest at 17.

⁷² See Covad *et al.* at 9; Earthlink *et al.* at 16, MACRUC at 8; NASUCA at 22-23; Philadelphia at 8; Ad Hoc at 2.

⁷³ See Ad Hoc at 2; Covad *et al.* at 9.

dismiss and deny a forbearance petition without prejudice when a petitioner violates these rules.⁷⁴

AT&T argues that the Commission has no authority to dismiss a forbearance petition without considering the merits of it.⁷⁵ Nonetheless, the Commission has the authority under Section 154(i) of the Act to adopt forbearance procedural rules and can dismiss forbearance petitions that violate them without addressing the merits of the petition.⁷⁶

VII. THE COMMISSION SHOULD ADOPT FORBEARANCE PROCEEDING TIMETABLES

A. Protective Orders Should be Issued Promptly

Both BOCs and competitive carriers agree that the Commission should issue a protective order delineating the treatment of Confidential and Highly Confidential Information promptly after a forbearance petition is filed to facilitate and expedite the review of confidential documents.⁷⁷ As Time Warner Telecom emphasized, “full, fair, and timely access” to confidential information reduces “the injustice from parties’ inability to access or use critical information that forms the basis for the legal standards under which petitions are decided.”⁷⁸

⁷⁴ As Commenters recommend, to ensure that a forbearance petitioner does not file back-to-back defective petitions, the Commission should also only deny a petition “without prejudice” once in a six-month period. If the petitioner’s allegedly corrected and resubmitted forbearance petition still has procedural violations, the second denial should be “with prejudice,” so that refilings are submitted no more frequently than twelve months from the date of the second denial. *See Access Point et al.* at 40.

⁷⁵ AT&T at 20-21.

⁷⁶ *See* 47 U.S.C. § 154(i); *see also Access Point et al.* at 11-12.

⁷⁷ *See* Qwest at 17; Time Warner Telecom *et al.* at 27; EarthLink *et al.* at 16; Ad Hoc at 16.

⁷⁸ Time Warner Telecom *et al.* at 26-27.

B. Forbearance Petitions Should be Reviewed Within 21 Days of Filing, and Petitioner Should be Required to Cure Non-Material Defects Within 14 Days

Although most commenters agree that petitions should be complete when initially submitted to the Commission, there is strong support in the record to allow a forbearance petitioner to correct minor, non-material procedural defects in its forbearance petition, rather than rejecting the forbearance petitions outright.⁷⁹ Therefore, as Commenters suggest, the Commission should review a forbearance petition within 21 days of its filing.⁸⁰ As Verizon points out, this review will also ensure that each petition actually seeks forbearance from existing regulations and not as a vehicle to impose new regulations on others.⁸¹

C. Contrary to BOCs' Claims, Establishing a Timetable for the Commission to Rule on Motions to Dismiss Would Not Invite an Endless Stream of Motions that Consume Commission Resources

AT&T contends that formalizing a rule that establishes procedural timelines for resolution of motions to dismiss would only invite an endless stream of motions that consume Commission resources.⁸² Contrary to AT&T's claims, motions to dismiss are the only vehicle to enforce critically needed filing procedures. Without such measures, forbearance petitioners will have no incentive to file substantively and procedurally complete petitions and Commission resources will be squandered by reviewing substantively or procedurally deficient petitions.⁸³

⁷⁹ See MoPSC at 4; NASUCA at 18; Telecom Investors at 2.

⁸⁰ See Access Point *et al.* at 41. The petitioning party should be allowed 14 days to correct such errors. If the defects are not cured within 14 days, then the petition should be denied. *Id.*

⁸¹ See Verizon at 17-18.

⁸² See AT&T at 20.

⁸³ As Commenters urge, the Commission should establish that interested parties have 45 days from public notice of the forbearance petition to file motions to dismiss the petition, for

**D. Adoption of a Standard Comment Cycle Would Not Delay Resolution of
Forbearance Petitions**

Verizon erroneously asserts that adopting a standard comment cycle would delay speedy consideration of forbearance petitions.⁸⁴ The statute already guarantees expedited consideration of forbearance petitions. The Commission has no duty to act faster than this expedited time-frame. Establishing a standard comment cycle will ensure that the Commission affords adequate due process and applies specific and consistent standards to arrive at a reasoned decision.⁸⁵ Further, the proposed comment cycle will not require the Commission to take 15, or even 12, months to consider every forbearance petition.

Commenters stress that the comment cycle should not begin until after the Commission has reviewed the forbearance petition for non-substantive defects and the party seeking forbearance has cured any non-substantive defects; and until 21 days after the Commission has received responses to any data requests it issues to the petitioner or other entities concerning the petition.⁸⁶ Verizon agrees that responses should be provided no later than the time comments are due.⁸⁷ This will provide all interested parties sufficient time to conduct a meaningful review and comment on all of data submitted, consistent with APA mandates.

reasons such as the petition is not complete or is repetitious. *See Access Point et al.* at 41. The forbearance petitioner should have no more than 10 days to oppose the motion, and the party filing the motion should have 5 days to reply to the opposition. *Id.* The Commission should issue such decision within 15 days of these filings. *Id.*

⁸⁴ *See Verizon* at 13-16.

⁸⁵ *See Sprint* at 5.

⁸⁶ *Access Point et al.* at 43.

⁸⁷ *See Verizon* at 15.

E. Rules Governing *Ex Parte* Submissions Should Go Further Than a Period of Repose Prior to Decision

Unsurprisingly, Verizon and Qwest generally oppose any requirement that would limit petitioners from submitting *ex partes* that include new data, well after the comment cycle has closed.⁸⁸ Their preference for a constantly shifting record does nothing to promote efficient and fair decision-making.

The Commenters were hardly alone in suggesting that they are “prejudiced when they d[o] not have notice of or an opportunity to comment on post-comment period justifications.”⁸⁹ In fact, the overwhelming record submitted in this proceeding demonstrates that the Commission should limit any *ex parte* filings made by the petitioner that seeks to include new, material information.⁹⁰ For example, as noted by Ad Hoc, banning late-filed *ex partes* “would compel parties to divulge information in a timely manner” and “preserve Commission resources by saving Commission personnel from apparently never-ending and last-minute *ex parte* meetings.”⁹¹ Furthermore, as Time Warner Telecom established, the Commission’s decision making will suffer if petitioners can submit late-filed *ex partes* with new data and legal arguments.⁹² Therefore, the Commission should adopt rules that treat major substantive filings later in the

⁸⁸ See Qwest at 15; Verizon at 25, 38-39.

⁸⁹ See *Ober*, 84 F.3d at 315.

⁹⁰ See AT&T at 11, 20; COMPTTEL at 6, 8; Covad *et al.* at 5; Sprint at 8; TEXALTEL at 9; Time Warner Telecom *et al.* at 9-10; MoPSC at 4; Ad Hoc at 3-4; Telecom Investors at 5.

⁹¹ See Ad Hoc at 3.

⁹² See Time Warner Telecom *et al.* at 9-10.

process as a “major amendment” that requires withdrawal of the initial petition and filing a new petition with the new information or position that the petitioner desires to present.

VIII. THE COMMISSION SHOULD ISSUE ORDERS ON ALL FORBEARANCE PETITIONS AND KEEP FORBEARANCE PROCEEDINGS OPEN AFTER GRANT

The BOCs object to the CLEC Petitioners’ proposal that the Commission keep a forbearance proceeding open after a decision is issued or a forbearance petition is deemed granted.⁹³ Contrary to their claims however, the Commission may issue an order clarifying its granted petitions, including those “deemed granted.”⁹⁴ Nothing in the statute precludes the Commission from keeping forbearance proceedings open in order, for example, to consider petitions for reconsideration and to rescind previous forbearance decisions. Nor does Section 10 state or imply that forbearance, once granted, is irrevocable and unalterable. The Commission’s forbearance orders even recognize this.⁹⁵

It is also appropriate for the Commission to adopt a policy of issuing a decision on every forbearance petition, rather than allowing a petition to be deemed granted. A written order reduces industry uncertainty as to the extent of forbearance granted⁹⁶ and adopting this policy is

⁹³ See AT&T at 11; Qwest at 12; Verizon at 23.

⁹⁴ 47 U.S.C. § 160(c). Nothing in Section 10(c) suggests the Commission is unable to issue a clarifying order with respect to forbearance petitions that have been deemed granted by Congress under this Section. Just as the Commission interprets and implements statutes under Title I, the Commission has the same authority to interpret petitions that have been deemed granted under this Title.

⁹⁵ See, e.g., *Omaha Forbearance Order*, n.204 (noting that “To the extent our predictive judgment proves incorrect, carriers can file appropriate petitions with the Commission and the Commission has the option of reconsidering this forbearance ruling.”).

⁹⁶ See, e.g., *Time Warner Telecom et al.* at 14-15.

consistent with Section 10(c) that requires the Commission to “explain its decision in writing” when granting or denying a forbearance petition.⁹⁷ Significantly, BOCs, among others, do not object to a requirement that the Commission institute a policy of issuing a written decision on every forbearance petition, as doing so brings “more certainty and specificity to the process.”⁹⁸

⁹⁷ 47 U.S.C. § 160(c). Contrary to Frontier’s assertions (Frontier at 5), a Commission policy to issue forbearance decisions would not undermine Section 10(c). While under Section 10(c) a forbearance petition is deemed granted based on Commission inaction, a policy to issue a decision does not undercut that provision, but rather promotes Commission compliance with the Section 10(c) requirement that its decision be “in writing.” See 47 U.S.C. § 160(c).

⁹⁸ See Sprint at 9.

CONCLUSION

For the foregoing reasons, the Commission should adopt procedural requirements for forbearance proceedings as recommended by Commenters.

Respectfully submitted,

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