

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

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

**REPLY COMMENTS OF COMPTTEL**

The initial comments in the above-referenced proceeding overwhelmingly support the Commission’s adoption of procedural rules for the consideration of forbearance petitions. COMPTTEL, nonetheless, respectfully submits these comments in reply to comments submitted by AT&T. In its comments, AT&T alleges that the proposal for the Commission to adopt a rule specifying that the forbearance petitioner has the “burden of proof” is unlawful.<sup>1</sup> AT&T argues that this proposal shifts the Commission’s burden under the statute to a private carrier.<sup>2</sup> This, however, is not the case. AT&T fails to recognize the distinction in roles between decision-maker and petitioner. The burden of proof being placed on the petitioner is not only lawful; it is consistent with the statutory language and Commission precedent.

AT&T seems to suggest that, because the statute has a default grant provision, the Commission has a burden of proof in denying a petition. AT&T seems to be confusing

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<sup>1</sup> Comments of AT&T, *In the Matter of Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, As Amended*, WC Docket No. 07-267, pp. 7-9 (filed Mar. 7, 2007).

<sup>2</sup> *Id.* at 8.

the obligation to decide a matter within a certain time period, and to explain that decision, with the obligation to present sufficient evidence to the decision-maker in the petition when making a request for consideration for forbearance. These are two separate and distinct responsibilities. In administrative proceedings, the general rule is that an applicant has the burden of proving that it is entitled to the relief it seeks.<sup>3</sup> In submitting a petition for forbearance, the petitioner is asking for relief under an existing rule or statutory requirement, claiming the regulation is unnecessary. They must provide credible and sufficient support for the proposition that the regulations are no longer needed pursuant to the standard established in the forbearance provision.

Contrary to AT&T's claims, the language of the statute specifically contemplates a denial when *the petition* fails to meet the requisite burden of proof. When addressing the default provision, the statute reads: "Any such petition shall be deemed granted if the Commission does not *deny the petition for failure to meet the requirements for forbearance* under section (a)..."<sup>4</sup> Thus, it is clear from this statement that the Commission is to deny any petition that does not provide sufficient evidence that each and every statutory criterion for forbearance is met. It is also clear from the statement that the case for forbearance must be made in the petition and not a subsequent *ex parte* submission by the petitioner.

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<sup>3</sup> See, *Irin v. Hobby*, 131 F. Supp. 851 [In administrative proceedings, the general rule is that an applicant for relief benefits or a privilege has the burden of proof]. See also, *Norment v. Hobby*, 124 F. Supp. 489 [The burden of proof rests upon one who files a claim with an administrative agency to establish that the required conditions of eligibility have been met.]; *England v. Weinberger*, 387 F. Supp. 343; *Brock v. Weinberger*, 405 F.Supp. 1329.

<sup>4</sup> 47 U.S.C. § 160(c).

Additional language in the statute further refutes AT&T's outrageous contention that the Commission has the burden to prove a petition should be denied. Specifically, the statute requires the Commission to grant forbearance "if" the Commission determines the specified criteria are met.<sup>5</sup> Significantly, the statute does not state that the Commission must grant forbearance "unless" the Commission can demonstrate that certain criteria are not satisfied. If a petition does not sufficiently demonstrate that the statutory criteria for forbearance have been met, the Commission should deny the petition.

Finally, while AT&T interprets prior statements of certain Commissioners to oppose the burden being placed on the petitioner, Commission precedent recognizes the petitioner's burden of proof when submitting a petition for forbearance. In prior orders "the Commission determined that in order to meet the public interest forbearance criterion, a petitioner must explain how the benefits of a statutory provision can be attained in the event of forbearance."<sup>6</sup> In its more recent unanimous decision in the *Qwest Omaha Forbearance*, the Commission expressly declined "to forbear from applying dominant carrier regulations to Qwest's provision of enterprise services because *Qwest has failed to demonstrate* satisfaction of any of the three conjunctive section 10(a) forbearance criteria."<sup>7</sup> In the accompanying statements to the *Qwest Omaha*

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<sup>5</sup> 47 U.S.C. § 160(a).

<sup>6</sup> *Petition of Ameritech Corporation for Forbearance from Enforcement of Section 275(a) of the Communications Act of 1934, as amended*, Memorandum Opinion and Order, CC Docket No. 98-65, FCC 99-215, ¶ 7 (1999)(emphasis added).

<sup>7</sup> *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, FCC 05-170, ¶19 (2005)(emphasis added).

*Forbearance* Order, not one of the Commissioners opposed or even expressed concern with this standard.<sup>8</sup>

In conclusion, the standard that the Commission will deny a petition if that petition does not provide sufficient evidence to demonstrate that the specifically enumerated statutory criteria are satisfied is consistent with the statute and Commission precedent, and in no manner conflicts with the Commission's obligation to act within the statutory time period if it is going to deny the petition for forbearance.

Respectfully submitted,

/s/Karen Reidy

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<sup>8</sup> *See Id.*, Statement of Chairman Kevin J. Martin and Concurring Statement of Commissioners Michael J. Copps and Jonathan S. Adelstein.