

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

In the Matter of)	
)	
Junk Fax Prevention Act of 2005)	CG Docket No. 05-338
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	

COMMENTS OF ANDA, INC.

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COMMENTS OF ANDA, INC.

Anda, Inc. (“Anda”) hereby files these comments in response to the Public Notice issued on January 31, 2014, in the above-captioned dockets.¹

INTRODUCTION AND SUMMARY

Anda welcomes the Commission’s Public Notice and appreciates the opportunity to comment on the growing number of petitions seeking declaratory rulings, waivers, and other forms of relief in connection with Section 64.1200(a)(4)(iv) of the Commission’s rules.² The rule at issue, which appears to require that a fax advertisement sent with the recipient’s prior express consent include the same detailed opt-out notice as an unsolicited advertisement, has been a source of considerable controversy. As the Commission is aware, Anda filed the first petition regarding this rule in November 2010,³ and for years has maintained that the rule is

¹ See Public Notice, *Consumer and Governmental Affairs Bureau Seeks Comment on Petitions Concerning the Commission’s Rule on Opt-Out Notices on Fax Advertisements*, CG Docket Nos. 02-278, 05-338, DA 14-120 (rel. Jan. 31, 2014) (“Public Notice”).

² 47 C.F.R. § 64.1200(a)(4)(iv).

³ See Petition for Declaratory Ruling, *Petition for Declaratory Ruling To Clarify That 47 U.S.C. § 227(b) Was Not the Statutory Basis for Commission’s Rule Requiring an Opt-Out Notice for Fax Advertisements Sent with Recipient’s Prior Express Consent*, CG Docket No. 05-338 (filed Nov. 30, 2010) (“Anda Petition”). The Commission’s Public

inconsistent with the governing statute—which imposes an opt-out notice requirement only with respect to *unsolicited* advertisements sent pursuant to an established business relationship⁴—and also poses grave First Amendment concerns.⁵ Making matters worse, plaintiffs’ lawyers increasingly are filing putative class action lawsuits seeking enterprise-crippling damages under the rule—relying on the private right of action contained in Section 227(b)(3) of the Communications Act for violations of the statutory prohibitions in Section 227(b) “or the regulations prescribed thereunder.”⁶ Anda is facing two such lawsuits, one in Missouri and one in Florida, where plaintiffs collectively are seeking *billions* of dollars in statutory damages based on Anda’s transmission of faxes with the recipients’ express consent.⁷ And as the various petitions filed before the Commission demonstrate, such lawsuits are quickly becoming an epidemic; over the past eight months, 11 parties representing a wide range of industries have informed the Commission that they face similar lawsuits seeking massive liability based solely on the parties’ participation in consensual business communications.⁸

Notice did not expressly seek comment on the Anda Petition, as it was denied on procedural grounds in a 2012 order of the Consumer and Governmental Affairs Bureau that is currently on review by the full Commission. *See Junk Fax Prevention Act of 2005; Petition for Declaratory Ruling to Clarify That 47 U.S.C. § 227(b) Was Not the Statutory Basis for Commission’s Rule Requiring an Opt-Out Notice for Fax Advertisements Sent with Recipient’s Prior Express Consent*, Order, 27 FCC Rcd 4912 ¶ 5 (CGB 2012); *see also* Application for Review, *Junk Fax Prevention Act of 2005; Petition for Declaratory Ruling to Clarify That 47 U.S.C. § 227(b) Was Not the Statutory Basis for Commission’s Rule Requiring an Opt-Out Notice for Fax Advertisements Sent with Recipient’s Prior Express Consent*, CG Docket No. 05-338 (filed May 14, 2012) (“Anda Application for Review”).

⁴ *See* 47 U.S.C. § 227(b)(2)(D).

⁵ *See* Anda Petition at 10-11; Anda Application for Review at 12-13.

⁶ 47 U.S.C. § 227(b).

⁷ *See* Anda Application for Review at 7.

⁸ *See* Public Notice at 1 n.1 (listing petitions filed since June 2013).

In an effort to stem this tide of abusive and opportunistic lawsuits brought pursuant to the Commission's rule, Anda's Petition sought a declaratory ruling clarifying that, at a minimum, Section 227(b) was not the statutory basis for the rule, and accordingly cannot give rise to a private right of action under Section 227(b)(3).⁹ More recently, however, Anda has argued that other forms of relief also might be appropriate, as long as such relief would eliminate the threat of private lawsuits brought pursuant to the rule.¹⁰ Having considered the various remedial options teed up in the Public Notice, Anda believes that a blanket retroactive waiver of the rule likely would offer an effective means of putting an end to such baseless lawsuits. Thus, while Anda continues to believe that the declaratory ruling it initially sought is justified, Anda supports the alternative measure of granting a blanket retroactive waiver of the rule, and hereby requests that the Commission deem its Petition amended to include a request for such a waiver. Indeed, the grant of a retroactive blanket waiver could render the need for a declaratory ruling moot.

As discussed herein, public interest considerations, coupled with the unique and inequitable circumstances described in the petitions filed by Anda and others, provide compelling justifications for a blanket retroactive waiver of the rule. Indeed, the Commission should not hesitate to waive a rule that was adopted without prior notice, arose from an internally contradictory order, appears to conflict with the governing statute, poses serious First Amendment concerns, and exposes legitimate companies to crushing liability in class action lawsuits based solely on consensual, business-to-business communications. If the Commission grants such relief, it should take care to frame its waiver broadly, in order to ensure that it has the desired effect of preventing companies from being held liable for sending faxes with express

⁹ See Anda Petition at 1, 3, 12.

¹⁰ See, e.g., Letter of Matthew A. Brill, Counsel for Anda, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 02-278, 05-338, at 4 (filed Dec. 5, 2013) ("Dec. 5 Letter").

consent. As several of the petitions indicate, and as these comments confirm, such retroactive relief falls squarely within the Commission’s power to grant waivers under Section 1.3 of its rules. In fact, the Commission has granted retroactive waivers of its rules on several occasions in analogous circumstances. The Commission therefore should grant the same relief here, and should do so without delay.

DISCUSSION

I. **ANDA CONTINUES TO SUPPORT A DECLARATORY RULING THAT THE OPT-OUT NOTICE REQUIREMENT FOR SOLICITED FAXES WAS NOT PRESCRIBED UNDER SECTION 227(B)(3)**

As an initial matter, Anda continues to believe that the declaratory ruling sought in its November 2010 Petition—a ruling that would clarify that the rule at issue here was not “prescribed under” Section 227(b), and thus cannot give rise to a private right of action under Section 227(b)(3)—is entirely justified. As Anda’s Petition explained, it is unclear that the Commission had *any* authority to adopt a rule requiring an opt-out notice on fax advertisements sent with the recipients’ express prior consent, because Congress expressly limited the opt-out notice provisions in Section 227(b) to *unsolicited* advertisements.¹¹ Anda’s Petition also pointed to legislative history confirming that Congress intended to mandate opt-out notices only with respect to “unsolicited facsimile advertisement[s].”¹² The Petition further noted that a contrary reading of the statute raises serious First Amendment concerns; while courts have upheld statutory requirements applicable to unsolicited faxes by citing “a substantial interest” in preventing “the cost shifting and interference such *unwanted* advertising places on the recipient,” that governmental interest vanishes when the recipient provides express consent to

¹¹ Anda Petition at 5, 8-10 (citing the statutory opt-out notice requirement at 47 U.S.C. § 227(b)(2)(D), which applies only to “unsolicited advertisement[s]” sent pursuant to an established business relationship).

¹² *Id.* at 9 & n.32 (quoting S. Rep. No. 109-76, at 7 (2005)).

receive such faxes.¹³ Accordingly, there continue to be strong grounds for granting a declaratory ruling making clear that the Commission did not rely on Section 227(b) when adopted this rule, particularly when such reliance would expose legitimate senders of consensual faxes to massive damages awards that could effectively *end* their ability to engage in commercial speech.¹⁴

II. ANDA ALSO SUPPORTS THE PROPOSAL TO GRANT A BLANKET RETROACTIVE WAIVER OF THE RULE

Alternatively, the Commission could address many of the serious legal and equitable problems arising under its opt-out notice rule for solicited faxes by granting a blanket retroactive waiver of the rule. Such a waiver is plainly justified under the unique circumstances present here; indeed, Anda is aware of no other instance in which a Commission rule: was adopted without any prior notice, arose from an internally contradictory order, conflicts with the text of the governing statute, poses serious First Amendment concerns, and exposes legitimate business to enterprise-threatening liability in class action lawsuits. These circumstances warrant a broad waiver—one that retroactively covers the entire period the rule has been in effect, applies to all parties that may have been subject to the rule, excuses non-compliance and partial compliance alike, and expunges liability in both administrative and judicial proceedings. As explained

¹³ *Id.* at 10-11 (quoting *Missouri ex rel. Nixon v. American Blast Fax, Inc.*, 323 F.3d 649, 655 (8th Cir. 2003) (emphasis added), *cert. denied*, 540 U.S. 1104 (2004)); *see also Destination Ventures, Ltd. v. FCC*, 46 F.3d 54, 56, 57 (9th Cir. 1995) (articulating “the government’s substantial interest in preventing the shifting of advertising costs to consumers” and finding that “unsolicited fax advertisements shift significant advertising costs to consumers”).

¹⁴ Anda’s Petition suggested that the Commission might conclude that the rule is valid based on some other statutory grant of authority, such as Section 4(i) or Section 303(r) of the Communications Act. However, if the Commission were inclined to conclude that *no* other statutory provision furnished the requisite authority, Anda would support the proposal made by Staples and other petitioners that the Commission declare that the rule was *ultra vires* when adopted and cannot be enforced by the courts or the Commission. *See* Dec. 5 Letter at 3; *see also* Petition of Staples, Inc. and Quill Corporation for a Rulemaking to Repeal Rule 64.1200(a)(3)(iv) and for a Declaratory Ruling to Interpret Rule 64.1200(a)(3)(iv), at 17, CG Docket Nos. 02-278, 05-338 (filed Jul. 19, 2013).

below, such retroactive relief is well within the bounds of the Commission’s waiver authority, and the Commission has granted similar retroactive waivers in the past. The Commission thus should move swiftly to grant such relief here.

A. Public Interest Considerations and the Unique Circumstances Present Here Strongly Support the Grant of Such a Waiver

Section 1.3 of the Commission’s rules provides that the Commission may waive any of its rules for “good cause shown.”¹⁵ In reviewing waivers granted by the Commission under Section 1.3, the D.C. Circuit has held that the “good cause” standard is satisfied where a waiver would “serve[] the public interest” and where “special circumstances” warranting a waiver are present.¹⁶ Both of these requirements are easily met in this case. As numerous petitioners have explained, the requested waiver would serve the public interest by eliminating abusive lawsuits that could result in catastrophic damages despite the absence of any genuine harm.¹⁷ In contrast,

¹⁵ 47 C.F.R. § 1.3.

¹⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see also NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008) (holding that the FCC may grant waivers where it can “explain why deviation better serves the public interest, and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation” (internal citations and quotation marks omitted)). The D.C. Circuit’s two-part test dovetails with some of the more specific waiver standards set forth in the Commission’s rules, such as the standard for waiving rules in the wireless context. *See* 47 C.F.R. § 1.925(b)(3) (providing that the Commission may grant a waiver where “[t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest,” or where, “[i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative”).

¹⁷ *See, e.g.*, Purdue Pharma Petition for Declaratory Ruling Regarding the Statutory Basis for the Commission’s Opt-Out Notice Rule with Respect to Solicited Faxes, and/or Regarding Substantial Compliance with Section 64.1200(a)(4)(iii) and (iv) of the Commission’s Rules, CG Docket Nos. 02-278, 05-338, at 18 (filed Dec. 12, 2013) (“Purdue Petition”); Petition of Futuredontics, Inc. for Declaratory Ruling to Clarify

no public interest principle would be served by maintaining a rule that subjects legitimate businesses to massive liability based solely on their transmission of faxes with the recipients' express consent. Indeed, the *only* interest served by maintaining such a rule is that of plaintiffs' class action lawyers, who will continue to cash in on suing unwary businesses if the rule is found to be enforceable in courts.

Moreover, this scenario presents several unique and inequitable circumstances—any one of which might warrant a waiver on its own, and which together provide an overwhelming justification for a waiver. To begin with, when the Commission adopted its opt-out notice rule for solicited faxes in 2006, it did so without any prior notice. The 2005 Notice of Proposed Rulemaking that preceded the 2006 Order adopting the rule made no mention of any proposed requirement that *solicited* faxes include an opt-out notice. Instead the NPRM's proposals largely tracked the statutory language of the Junk Fax Prevention Act, enacted earlier that year to impose "specific [opt-out] notice requirements on *unsolicited* facsimile advertisements."¹⁸ In particular, the NPRM proposed adopting new rules that would "require[] senders of *unsolicited* facsimile advertisements to include a notice on the first page of the facsimile that informs the recipient of the ability and means to request that they not receive future unsolicited facsimile advertisements from the sender."¹⁹ But nowhere did the Commission seek comment on, or even raise the possibility of, extending the opt-out notice requirement to faxes sent with the recipients' express permission. Thus, parties that would have opposed such an expansion of the opt-out notice rule were denied an opportunity to be heard before the rule was adopted.

Scope and/or Statutory Basis for Rule 64.1200(a)(3)(iv) and/or for Waiver, CG Docket Nos. 02-278, 05-338, at 14 (filed Oct. 18, 2013).

¹⁸ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005*, Notice of Proposed Rulemaking and Order, 20 FCC Rcd 19758 ¶¶ 19-20 (2005).

¹⁹ *Id.* (emphasis added).

Moreover, the 2006 Order adopting the rule confusingly included two contradictory statements as to whether the opt-out notice requirement would in fact extend to solicited faxes. The Order first states that “the opt-out notice requirement *only* applies to communications that constitute *unsolicited* advertisements.”²⁰ However, in a later paragraph, the Order states that “entities that send facsimile advertisements to consumers from whom they obtained permission” must include the same opt-out notice required for unsolicited advertisements.²¹ Although the Commission ultimately codified the latter of these two statements, this direct contradiction in the Order created substantial uncertainty regarding the requirements applicable to faxes sent with express consent.

In addition, there remain serious doubts as to the statutory basis for and constitutionality of applying an opt-out notice requirement to solicited faxes. As noted above, Section 227(b) mandates opt-out notice rules only for “unsolicited advertisement[s]” sent pursuant to an established business relationship—*not* for faxes sent with express consent.²² This mismatch between the governing statute and the Commission’s rules has prompted multiple courts to express skepticism as to whether Section 227(b) could have furnished the requisite authority. The Eighth Circuit, in its recent decision in *Nack v. Walburg*, acknowledged that it was “questionable” whether the opt-out notice rule for solicited faxes “properly could have been promulgated under” Section 227(b), before concluding that it lacked jurisdiction to resolve the

²⁰ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005*, Report and Order and Third Order on Reconsideration, 21 FCC Rcd 3787 ¶ 42 n.154 (2006) (emphasis added).

²¹ *Id.* ¶ 48.

²² 47 U.S.C. § 227(b)(2)(D).

issue.²³ Other courts have made similar observations, with one recently remarking that it was “inclined to agree with the defendants that the FCC lacks authority to regulate solicited faxes pursuant to section 227(b) of the TCPA.”²⁴ And these serious questions regarding the Commission’s authority to adopt this rule are only compounded by the grave First Amendment concerns noted above and in Anda’s Petition,²⁵ in light of the constitutional avoidance doctrine.²⁶

Finally, this potentially *ultra vires* and unconstitutional rule has had—and continues to have—a massively disproportionate impact on legitimate business across the country that communicate with their customers via fax. Many of the putative class actions seeking massive damages involve technical violations where the sender allegedly neglected to include one or more of the required elements in its opt-out notice.²⁷ If these lawsuits are allowed to continue, such technical violations—usually the result of simple ministerial oversight—could mean the

²³ *Nack v. Walburg*, 715 F.3d 680, 682 (8th Cir. 2013). The district court in *Nack* likewise questioned whether the Commission could have adopted a rule governing solicited faxes under Section 227(b), and noted the internal contradiction in the 2006 Order in support of its holding that the rule did not apply to the faxes at issue in that case. *Nack v. Walburg*, No. 4:10-cv-478, 2011 WL 310249, at *4 (E.D. Mo. Jan. 28, 2011).

²⁴ *Physician’s Health Source, Inc. v. Purdue Pharma, L.P.*, No. 3:12-cv-1208, slip op. at 5 (D. Conn. Feb. 3, 2014); *see also Raitport v. Harbour Capital Corp.*, No. 09-cv-156-SM, 2013 WL 4883765, at *1 (D.N.H. Sep. 12, 2013) (explaining that the “amended proposed class definition in this case is premised upon a doubtful proposition of law—that the Federal Communication Commission can, by regulation, govern specific business activity that Congress did not regulate by statute (and, implicitly did not authorize the FCC to regulate)—the sending of ‘solicited’ facsimile advertisements”).

²⁵ *See* Anda Petition at 10-11; *see also* Anda Application for Review at 12-13.

²⁶ *See Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trade Council*, 485 U.S. 568, 575 (1988) (explaining, in a case where an agency’s interpretation of a statute “pose[d] serious questions . . . under the First Amendment,” that “where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems”); *see also Univ. of Great Falls v. NLRB*, 278 F.3d 1335, 1340 (D.C. Cir. 2002) (holding that “the constitutional avoidance canon of statutory interpretation trumps *Chevron* deference”).

²⁷ *Purdue* Petition at 15-16.

end of a defendant’s business. Tellingly, in contrast to the rising tide of class action lawsuits brought under the Commission’s rule, the Commission itself has *never* taken enforcement action against *any* business for failing to include a compliant opt-out notice on a fax sent with the recipient’s express consent. In all likelihood, the absence of any Commission enforcement history reflects that fact that businesses that expressly consented to receive fax communications—that is, businesses that chose to *opt in* to receiving such faxes—have had no reason to complain about receiving faxes with incomplete or missing opt-out notices.

B. The Commission Should Ensure That the Scope of Any Waiver Is Broad

These unique circumstances—from the procedural irregularities surrounding the rule’s adoption, to the substantive questions over the rule’s validity under the statute and the Constitution, to the serious equitable and public interest concerns posed by the continued application of the rule—together warrant a broad waiver of the Commission’s rule. Most importantly, the Commission should make clear that any waiver applies retroactively, and covers the entire period during which the rule has been in effect. A prospective waiver, on its own, would provide no relief to the parties currently facing class action lawsuits under the rule, as these lawsuits all seek damages based on *prior* alleged violations of the rule.²⁸

The Commission also should ensure that the waiver is broad in other respects. First, the Commission should not to make the waiver party-specific, and should instead provide a blanket waiver that applies to all parties that might have been subject to the rule, regardless of whether they already have filed petitions with the Commission. Granting only individualized, party-specific waivers would merely invite the numerous other defendants facing class actions under

²⁸ Nevertheless, if the Commission issues a retroactive waiver, it should consider giving prospective effect to the waiver as well, so that it remains in place while the Commission decides whether it ultimately should rescind the rule in a further rulemaking.

the rule to file similar petitions, and would consume far more Commission resources than necessary. Second, the Commission should make clear that the waiver excuses non-compliance and partial compliance alike. After all, the legal and equitable factors supporting a waiver apply with equal force regardless of the degree to which a company included a compliant opt-out notice on a fax sent with express consent; indeed, many parties that were unaware that the Commission had (using contradictory language) arguably applied the statutory opt-out provision to solicited faxes had no reason to include an opt-out notice on such faxes. And third, the Commission should clearly state that the waiver has the effect of expunging *all* liability for alleged violations of the rule—both in administrative enforcement proceedings brought by the Commission and in private lawsuits brought in court. If the Commission were to leave open the possibility that the waiver applies only in the administrative enforcement context, plaintiff’s class action lawyers might well attempt to argue that they remain free to pursue massive damages under the rule and Section 227(b)(3)—a result that would fly in the face of core justifications for the waiver.

C. The Commission Has Ample Authority To Grant a Retroactive Waiver of This Rule

The requested relief is well within the Commission’s power to grant waivers of its rules and is consistent with precedent. As noted above, Section 1.3 of the Commission’s rules enables the Commission to waive any of its rules for “good cause shown.”²⁹ The D.C. Circuit has long recognized the importance of affording agencies wide latitude in granting waivers, and has explained that an “agency’s discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application

²⁹ 47 C.F.R. § 1.3.

for exemption based on special circumstances.”³⁰ Where, as here, the rule at issue is not *mandated* by any statute—even if it is arguably *permitted* by statute—the Commission’s discretion to grant a waiver is at its height.³¹

On several occasions involving analogous circumstances, the Commission has used its broad power under Section 1.3 to grant retroactive waivers of its rules. For instance, in *Rath Microtech*, the Commission granted a retroactive waiver of its equipment registration rules where a manufacturer of emergency elevator telephones had improperly labeled its devices with superseded registration numbers.³² The Commission determined that a retroactive waiver was appropriate because the manufacturer’s conduct had caused no harm to the public switched telephone network or to purchasers of the telephones,³³ and came as a result of having “misunderstood the Commission’s rules.”³⁴ Here, too, there is no evidence that the sending of solicited faxes without compliant opt-out notices has caused any genuine harm. Moreover, as noted above, the order adopting the opt-out notice rule for solicited faxes was internally

³⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

³¹ Indeed, the Commission often adopts regulations that are *permitted* under but not *mandated* by the governing statute. One such example is the Commission’s 2010 order adopting rules enabling video distributors to pursue program access complaints involving terrestrially delivered, cable-affiliated programming, even though the governing statute addressed only satellite-delivered programming. *See Review of the Commission’s Program Access Rules and Examination of Programming Tying Arrangements*, First Report and Order, 25 FCC Rcd 746 (2010), *affirmed in part, vacated in part, Cablevision Sys. Corp. v. FCC*, 649 F.3d 695 (D.C. Cir. 2011). No one could dispute that the Commission has discretion to repeal its rules regarding terrestrially delivered programming if it articulates a reasonable justification for doing so. And if the Commission can repeal such rules, it can certainly waive such rules in appropriate circumstances.

³² *Rath Microtech Complaint Regarding Electronic Micro Systems, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 16710 (Network Servs. Div. 2005).

³³ *Id.* ¶¶ 17-18.

³⁴ *Id.* ¶ 14.

contradictory, thus inevitably leading to “misunderstandings” regarding the Commission’s requirements. Accordingly, the same logic that supported a retroactive waiver in *Rath Microtech* justifies the grant of such relief here.

The Commission also has granted several retroactive waivers of the definition of “study area” under its rules pertaining to the Universal Service Fund (“USF”).³⁵ The Commission justified these retroactive waivers by explaining that such relief “would be in the public interest and would not adversely [a]ffect the USF.”³⁶ The Commission also has occasionally granted retroactive waivers of certain filing requirements, finding in one case that “difficulties” associated with a recent merger led to “anomalous” filings, but that the errors had had minimal impact, and that the prospect of recreating past data and submitting backdated filings would

³⁵ See, e.g., *ALLTEL Service Corporation on behalf of Texas ALLTEL, Inc. and ALLTEL Texas, Inc., Petition for Waiver of the Definition of “Study Area” contained in Part 36, Appendix-Glossary, of the Commission’s Rules*, Memorandum Opinion and Order, 9 FCC Rcd 4450 ¶¶ 8–9 (CCB 1994) (granting a retroactive waiver and finding no adverse effect on Commission policy and strong public interest in cost-effective service and transparency) (“*ALLTEL Order*”); *Petition for Waiver Filed by Vermont Telephone Company, Inc. Concerning the Definition of “Study Area” in the Part 36 Appendix-Glossary of the Commission’s Rules*, Order on Reconsideration, 14 FCC Rcd 826 ¶ 6 (CCB 1998) (granting a retroactive waiver and finding that implementing the rule would be “unduly burdensome and unnecessarily complex” and inconsistent with “Commission’s goal of reducing regulatory burdens on small telephone companies”); *Petitions for Waiver and Reconsideration Concerning Sections 36.611, 36.612, 61.41(c)(2), 69.605(c), 69.3(e)(11) and the Definition of Study Area Contained in Part 36 Appendix-Glossary of the Commission’s Rules, Filed by Copper Valley Telephone Inc., et al.*, Memorandum Opinion and Order, DA 99-1845, 1999 WL 700555, ¶ 25 (CCB 1999) (granting request that “study area changes be made effective on January 1, 1996, instead of June 14, 1996, the release date of the Memorandum Opinion and Order granting the study area waivers”). Cf. *Petition for Forbearance of Iowa Telecommunications Services, Inc.*, Order, 17 FCC Rcd 24319 ¶ 19 (2002) (granting similar relief—in the form of retroactive “forbearance”—from the \$0.0095 per minute “average traffic sensitive” rate set forth in Section 61.3(qq)(2) of the Commission’s rules, finding that that “strict enforcement” of the rule was “not necessary to protect consumers”).

³⁶ *ALLTEL Order* ¶ 9.

