



Federal Communications Commission
Washington, D.C. 20554

May 19, 2010

DA 10-812

Small Entity Compliance Guide

Forbearance Procedures Order

FCC 09-56
WC Docket No. 07-267
Released: June 29, 2009

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)

TTY: 1-888-TELL-FCC (1-888-835-5322)

Fax: 1-866--418-0232

fccinfo@fcc.gov

BACKGROUND AND OBJECTIVES

On June 29, 2009, the Commission adopted rules to implement section 10 of the Communications Act of 1934, which governs forbearance from regulatory requirements.¹ Section 10 of the Act requires the Commission to forbear from applying to a telecommunications carrier any statutory provision or regulation if certain statutory criteria are satisfied.²

The rules require forbearance petitions to be “complete as filed” so that the process is fairer for commenters, more manageable for the Commission, and more predictable for petitioners.

I. PREPARING YOUR PETITION – COMPLETE AS FILED

Your petition for forbearance must be complete at the time of filing. To be considered complete, your petition must comply with the requirements listed below.

In summary, you must state explicitly the scope of the relief you are seeking. Then, address each prong of the statute as it applies to the rules or provisions from which you are seeking relief. In other words, make your case for forbearance. Your petition must also identify any other proceedings pending before the Commission in which you are seeking the same, or comparable, relief. Alternatively, you must declare there are no other relevant proceedings, if that is the case. Finally, you must comply with simple format requirements intended to facilitate the Commission’s and the public’s review of the petition.

Appendix A of this Guide is an informal checklist you can use to prepare your petition.

A. Formatting Your Petition

Your petition must include the following items:

- A plain, concise, written summary statement of the relief you seek;
- A full statement of your case for relief; and
- Appendices that list:
 - the scope of relief you seek;
 - all relevant data, including market analysis; and
 - any supporting statements or affidavits.

Your petition must comply with the general filing requirements in 47 C.F.R. §1.49, which include requirements on the paper size, margins and font size you should use in your petition.³

¹ A copy of the rules is at <http://www.fcc.gov/wcb/cpd/forbearance/forbearance-rules.pdf>. You can also find the Commission’s order on the Commission website at <http://www.fcc.gov/wcb/cpd/forbearance>. See *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, Report and Order, WC Docket No. 07-267, 24 FCC Rcd 9543 (2009).

² The full text of section 10 can be found at [http://frwebgate.access.gpo.gov/cgi-bin/usc.cgi?ACTION=RETRIEVE&FILE=\\$\\$xa\\$\\$busc47.wais&start=300671&SIZE=3525&TYPE=TEXT](http://frwebgate.access.gpo.gov/cgi-bin/usc.cgi?ACTION=RETRIEVE&FILE=$$xa$$busc47.wais&start=300671&SIZE=3525&TYPE=TEXT). See 47 U.S.C. § 160.

³ The requirements can be found at http://edocket.access.gpo.gov/cfr_2004/octqtr/47cfr1.49.htm. See 47 C.F.R.. §§ 1.53–1.59.

The petition must also be searchable electronically. If you plan to give the Commission any data related to your petition, the data should also be searchable. Make sure that you provide the Commission with electronic versions of large spreadsheets and that those spreadsheets can be manipulated and analyzed by Commission staff and interested parties.

B. State the Scope of the Relief

In your petition, specifically identify:

- each statutory provision, rule, or requirement from which forbearance is sought;
- each carrier, or group of carriers, for which forbearance is sought;
- each service for which forbearance is sought;
- the geographic location, zone, or area in which forbearance is sought; and
- any other factor relevant to determining the scope of the requested relief.

C. Make Your Case

Your petition must contain the facts, information, data and arguments on which you want to rely to make a case for forbearance. Explain how the facts, information and data in your petition meet the three statutory criteria for forbearance in section 10 of the Act.

Making your case means you must develop the supporting arguments for your request for forbearance before filing. You must also take into account relevant Commission precedents in making your case.

Third Party Information: If you want to rely on data or information that belongs to third parties, your petition must:

- identify the nature of the data or information you wish to rely on;
- identify the parties that have or control the data or information; and
- explain the relationship of the third party data or information to the facts and arguments in your petition.

When you file your petition, you must provide a copy of the petition to each third party you have identified.

Other Information: Other than third party information, you must make any other data or information available to Commission staff and interested parties without charge.

D. Identify Related Matters

Your petition must identify whether there is a proceeding before the Commission in which you have requested relief that is the same as, or comparable to, the relief you are seeking in your petition. If there are no related proceedings pending before the Commission, then declare in your petition that there are no such proceedings.

E. Contacting the Commission

Before you file your petition, you may wish to speak to Commission staff to make sure you have met all the requirements for forbearance petitions. You can call the Commission's Consumer Center on 1-888-225-5322, or you can contact

Commission staff who will review your petition for completeness by calling 202-418-1580.

II. FILING YOUR PETITION AND INITIAL REVIEW

A. Filing Your Petition

When you file your petition, you must email a copy to forbearance@fcc.gov along with electronic versions of any data related to the petition.

B. Initial Review of Petitions

Filing your petition starts the clock on the statutory time limit of 1 year (plus 90 days if necessary), which is the time frame in which the Commission must make a decision on your petition. A timeline that identifies the stages of review of forbearance petitions can be found on the Commission's website at <http://www.fcc.gov/wcb/cpd/forbearance/timeline.html>.

If your petition appears to be complete, the Commission will issue a public notice and post your petition on <http://www.fcc.gov/wcb/cpd/forbearance>. The notice will announce the pleading cycle, which will typically allow 30 days for comments and 15 days for replies, with longer cycles for more complex petitions.

III. AFTER YOU FILE

A. Add Supplemental Information

The "complete as filed" rule does not prevent you from giving the Commission additional facts and arguments to respond to facts and arguments introduced by commenters or opponents, or as otherwise permitted by the Commission.

B. Withdraw or Narrow Your Petition

At any time before the date that your reply comments are due, plus 10 business days, you may withdraw or narrow your forbearance petition. After this date, you will need to obtain Commission approval to withdraw or narrow your petition so significantly that you are withdrawing a large part of the forbearance relief you requested originally.

C. What the Commission Does with Your Petition

The Bureau will circulate a draft order addressing a complex forbearance petition no later than **28 days before the statutory deadline**, unless all Commissioners agree to a shorter period. A "quiet period" will be established for **14 days before the statutory deadline** for the Commissioners and their staff to consider the draft order. Contact with outside parties, including you, is restricted during this period.

The Commission votes on the forbearance order no later than **7 days before the statutory deadline**.

Appendix A

Forbearance Procedures – Compliance Checklist

Preparing Your Petition – “Complete As Filed”

- 1) Your petition identifies:
 - a) Each statutory provision, rule, or requirement from which forbearance is sought?
 - b) Each carrier, or group of carriers, for which forbearance is sought?
 - c) Each service for which forbearance is sought?
 - d) The geographic location, zone, or area in which forbearance is sought?
 - e) Any other factor, condition, or limitation relevant to determining the scope of the requested relief?
- 2) Your petition includes facts and arguments that explain how the request for relief satisfies the 3 statutory criteria (i.e. you have made your case and included supporting arguments).
- 3) You have taken into account relevant Commission precedents.
- 4) Your petition relies on third party data or information and your petition identifies:
 - a) The nature of data and information.
 - b) The third party who have the data or information.
 - c) The relationship of third party data or information to your case.
- 5) Other information you are relying on is available, without charge, to Commission staff and interested parties (subject to compliance with protective orders).
- 6) Your petition:
 - a) identifies proceedings pending before the Commission in which the petitioner has requested identical or comparable relief; OR
 - b) contains a declaration that there are no proceedings pending before the Commission in which the petitioner has requested identical or comparable relief.

Formatting and Filing Your Petition

- 7) Your petition includes the following:
 - a) Plain, concise summary of the prima facie case for relief.
 - b) A full statement of the petitioner’s prima facie case for relief.
 - c) Appendices listing the scope of relief sought, all relevant data, and any support statements or affidavits.
- 8) The format of your petition complies with the requirements in 47 C.F.R. §1.49.
- 9) You have emailed your petition to forbearance@fcc.gov.
- 10) Your petition and data related to your petition can be searched electronically.
- 11) Electronic versions of large spreadsheets of data have been submitted to the Commission.
- 12) Any large spreadsheets you submitted can be manipulated and analyzed in a meaningful way.

A copy of the rules is at <http://www.fcc.gov/wcb/cpd/forbearance/forbearance-rules.pdf>. You can also find the Commission’s order on the Commission website at <http://www.fcc.gov/wcb/cpd/forbearance>.