

Federal Communications Commission

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

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

ERRATUM

Released: August 5, 2009

By the Acting Chief, Wireline Competition Bureau:

On June 29, 2009 the Commission released a Report and Order, FCC 09-56, in the above-captioned proceeding. This Erratum amends the Report and Order as indicated below:

1. Section 225 is removed from the first sentence in paragraph 44 of the Report and Order.
2. The Report and Order’s Appendix B is replaced with the attached new Appendix B. The new Appendix B contains the rules as published in the Federal Register.
3. Paragraph 35 of Appendix C is corrected to read as follows:

D. Description of Projected Reporting, Record Keeping and other Compliance Requirements

“35. The rules adopted in this Order require that petitions for forbearance must be complete as filed as set forth in new section 1.54 “Petitions for forbearance must be complete as filed.” Section 1.54 requires that petitions for forbearance must identify the requested relief, including each 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; each geographic location, zone, or area for which forbearance is sought; and any other factor, condition, or limitation relevant to determining the scope of the requested relief. Section 1.54 also requires that petitions for forbearance must contain facts and arguments which, if true and persuasive, are sufficient to meet each of the statutory criteria for forbearance and must specify how each of the statutory criteria is met with regard to each provision or rule from which forbearance is sought. If the petitioner intends to rely on data or information in the possession of third parties, the petition must identify: the nature of the data or information; the parties believed to have or control the data or information; and the relationship of the data or information to facts and arguments presented in the petition. Finally, a petition for forbearance must identify any other petition, rulemaking, or waiver proceeding pending before the Commission in which the

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petitioner has requested, or otherwise taken a position regarding, relief that is identical to, or comparable to, the relief sought in the forbearance petition. Alternatively, the petition must declare that the petitioner has not, in a pending proceeding, requested or otherwise taken a position on the relief sought.”

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Acting Chief
Wireline Competition Bureau

APPENDIX B

Final Rules

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1 – PRACTICE AND PROCEDURE

1. The authority of part 1 is amended to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(j), 160, 201, 225, and 303.

2. Section 1.49 is amended by adding paragraph (f)(1)(iv) to read as follows:

§ 1.49 Specifications as to pleadings and documents.

(f)(1)

(iv) Petition for forbearance proceedings.

3. Subpart A [Amended]

Add undesignated center heading below § 1.52 to read as follows:

Forbearance Proceedings

4. Add new §§ 1.54 through 1.59 as follows:

§ 1.54 Petitions for forbearance must be complete as filed.

(a) *Description of relief sought.* Petitions for forbearance must identify the requested relief, including:

- (1) Each statutory provision, rule, or requirement from which forbearance is sought.
- (2) Each carrier, or group of carriers, for which forbearance is sought.
- (3) Each service for which forbearance is sought.
- (4) Each geographic location, zone, or area for which forbearance is sought.
- (5) Any other factor, condition, or limitation relevant to determining the scope of the requested relief.

(b) *Prima facie case.* Petitions for forbearance must contain facts and arguments which, if true and persuasive, are sufficient to meet each of the statutory criteria for forbearance.

- (1) A petition for forbearance must specify how each of the statutory criteria is met with regard to each statutory provision or rule, or requirement from which forbearance is sought.
- (2) If the petitioner intends to rely on data or information in the possession of third parties, the petition must identify:
 - (i) The nature of the data or information.
 - (ii) The parties believed to have or control the data or information.
 - (iii) The relationship of the data or information to facts and arguments presented in the petition.

(3) The petitioner shall, at the time of filing, provide a copy of the petition to each third party identified as possessing data or information on which the petitioner intends to rely.

(c) *Identification of related matters.* A petition for forbearance must identify any proceeding pending before the Commission in which the petitioner has requested, or otherwise taken a position regarding, relief that is identical to, or comparable to, the relief sought in the forbearance petition. Alternatively, the petition must declare that the petitioner has not, in a pending proceeding, requested or otherwise taken a position on the relief sought.

(d) *Filing requirements.* Petitions for forbearance shall comply with the filing requirements in § 1.49.

- (1) Petitions for forbearance shall be emailed to forbearance@fcc.gov at the time for filing.
- (2) All filings related to a forbearance petition, including all data, shall be provided in a searchable format. To be searchable, a spreadsheet containing a significant amount of data must be capable of being manipulated to allow meaningful analysis.

(e) *Contents.* Petitions for forbearance shall include:

- (1) A plain, concise, written summary statement of the relief sought.
- (2) A full statement of the petitioner's *prima facie* case for relief.
- (3) Appendices that list:
 - (i) The scope of relief sought as required in § 1.54(a);
 - (ii) All supporting data upon which the petition intends to rely, including a market analysis; and
 - (iii) Any supporting statements or affidavits.

(f) *Supplemental information.* The Commission will consider further facts and arguments entered into the record by a petitioner only:

- (1) In response to facts and arguments introduced by commenters or opponents.
- (2) By permission of the Commission.

§ 1.55 Public notice of petitions for forbearance.

(a) Filing a petition for forbearance initiates the statutory time limit for consideration of the petition.
(b) The Commission will issue a public notice when it receives a properly filed petition for forbearance. The notice will include:

- (1) A statement of the nature of the petition for forbearance.
- (2) The scope of the forbearance sought and a description of the subjects and issues involved.
- (3) The docket number assigned to the proceeding.
- (4) A statement of the time for filing oppositions or comments and replies thereto.

§ 1.56 Motions for summary denial of petitions for forbearance.

(a) Opponents of a petition for forbearance may submit a motion for summary denial if it can be shown that the petition for forbearance, viewed in the light most favorable to the petitioner, cannot meet the statutory criteria for forbearance.

(b) A motion for summary denial may not be filed later than the due date for comments and oppositions announced in the public notice.

(c) Oppositions to motions for summary denial may not be filed later than the due date for reply comments announced in the public notice.

(d) No reply may be filed to an opposition to a motion for summary denial.

§ 1.57 Circulation and voting of petitions for forbearance.

(a) If a petition for forbearance includes novel questions of fact, law or policy which cannot be resolved under outstanding precedents and decisions, the Chairman will circulate a draft order no later than 28 days prior to the statutory deadline, unless all Commissioners agree to a shorter period.

(b) The Commission will vote on any circulated order resolving a forbearance petition not later than seven days before the last day that action must be taken to prevent the petition from being deemed granted by operation of law.

§ 1.58 Forbearance petition quiet period prohibition.

The prohibition in § 1.1203(a) on contacts with decisionmakers concerning matters listed in the Sunshine Agenda shall also apply to a petition for forbearance for a period of 14 days prior to the statutory deadline under 47 U.S.C. 160(c) or as announced by the Commission.

§ 1.59 Withdrawal or narrowing of petitions for forbearance.

(a) A petitioner may withdraw or narrow a petition for forbearance without approval of the Commission by filing a notice of full or partial withdrawal at any time prior to the end of the tenth business day after the due date for reply comments announced in the public notice.

(b) Except as provided in paragraph (a) of this section, a petition for forbearance may be withdrawn, or narrowed so significantly as to amount to a withdrawal of a large portion of the forbearance relief originally requested by the petitioner, only with approval of the Commission.