

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

In the Matter of)	
)	
United States Telecom Association Petition for)	WC Docket No. 12-61
Forbearance Under 47 U.S.C. § 160(c) from)	
Enforcement of Certain Legacy)	
Telecommunications Regulations)	

ORDER

Adopted: February 19, 2013

Released: February 28, 2013

By the Commission: Commissioners McDowell and Pai issuing separate statements.

I. INTRODUCTION

1. In this order, we address portions of a petition for forbearance filed by the United States Telecom Association (USTelecom) pursuant to section 10 of the Communications Act of 1934, as amended (the Act).¹ The USTelecom Petition seeks forbearance from 17 different categories of our rules, which USTelecom argues are “legacy telecommunications regulations” that are unnecessary and outdated.² We address three of those categories here: Traffic Damage Claim Rules;³ Rules Governing Extension of Unsecured Credit for Interstate and Foreign Communications Services to Candidates for Federal Office;⁴ and Rules Governing Furnishing of Facilities to Foreign Governments for International Communications.⁵

2. We conclude that forbearance from these rules, in the limited circumstances discussed below, furthers the Act’s and Commission’s goals of eliminating unnecessary and outdated legacy regulations that do not reflect today’s marketplace. USTelecom’s request regarding the remaining

¹ Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations, WC Docket No. 12-61 at 2 (filed Feb. 16, 2012) (USTelecom Petition). On February 7, 2013, pursuant to section 10(c) of the Act, the Wireline Competition Bureau (Bureau) extended until May 17, 2013, the date on which the USTelecom Petition shall be deemed granted in the absence of a Commission decision that the petition fails to meet the standard for forbearance under section 10(a) of the Act. *See Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, Order, DA 13-172 (WCB rel. Feb. 7, 2013).

² *See Pleading Cycle Established for Comments on United States Telecom Association Petition for Forbearance from Certain Telecommunications Regulations*, WC Docket No. 12-61, Public Notice, DA 12-352 (WCB rel. March 8, 2012) (*USTelecom Forbearance PN*). In some instances, USTelecom seeks forbearance for all telecommunications carriers, and in other instances only for a subset of telecommunications carriers. USTelecom Petition.

³ 47 C.F.R. § 64.1 (identified as category eleven in the *USTelecom Forbearance PN*).

⁴ 47 C.F.R. § 64.804(g) (identified within category thirteen in the *USTelecom Forbearance PN*).

⁵ 47 C.F.R. § 64.301 (identified as category fifteen in the *USTelecom Forbearance PN*).

categories of rules is pending and under active consideration by the Commission, and will be addressed at a later time.⁶

II. BACKGROUND

A. USTelecom's Petition

3. The portions of USTelecom petition that we address in this Order relate to rules that the Commission enacted before the development of the public Internet or the widespread availability of broadband. USTelecom claims that these rules are based on outdated assumptions about the technologies and business models that form the basis of the current communications industry.⁷ USTelecom asserts that these regulations no longer serve any regulatory purpose or provide the Commission with any useful information necessary to perform its regulatory functions.⁸ USTelecom further states that the regulations at issue impose undue costs and burdens, and apply only to incumbent local exchange carriers (ILECs) or a small subset of ILECs, while other competitors, including cable operators, wireless carriers and VoIP providers, enjoy a competitive advantage as they are exempt from these rules.⁹ Finally, USTelecom argues that these regulations adversely affect competition, and are therefore detrimental to consumers, and that the elimination of the legacy telecommunications regulations at issue is necessary to realize the pro-competitive goals of the 1996 Act.¹⁰

B. Forbearance Standard

4. The Commission is required to forbear from any statutory provision or regulation if it determines that: (1) enforcement of the regulation is not necessary to ensure that the telecommunications carrier's charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the regulation is not necessary to protect consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.¹¹ In determining whether forbearance is consistent with the public interest, the Commission also must consider "whether forbearance from enforcing the provision or regulation will promote competitive

⁶ See *USTelecom Forbearance PN*. The remaining categories are: Category 1: Equal Access Scripting Requirement; Category 2: Open Network Architecture and Comparably Efficient Interconnection Requirements, Enhanced Services Structural Separation Rule (47 C.F.R. § 64.702), and All-Carrier *Computer Inquiry* Rules; Category 3: Cost Assignment Rules; Category 4: Part 32 Uniform System of Accounts (47 U.S.C. § 220(a)(2), 47 C.F.R. §§ 32.1-2.9000); Category 5: Property Record Rules (47 C.F.R. §§ 32.2000(e), (f)); Category 6: Part 42 Recordkeeping Requirements (47 C.F.R. §§ 42.4, 42.5, 42.7, 42.10(a)); Category 7: ARMIS Report 43-01; Category 8: Annual Revenue and Total Communications Plant Reporting (47 C.F.R. § 43.21(c)); Category 9: Rules Governing Notices of Network Changes (47 C.F.R. §§ 51.329(a)(2), 51.333(a)-(f), 52.333(b)); Category 10: Service Discontinuance Approval Requirements (47 U.S.C. § 214, 47 C.F.R. §§ 63.30, 63.61, 63.62, 63.63, 63.71(a)(5), 63.71(c), 63.90(a)(8)); Category 12: Structural Separation Requirements for Independent ILECs (47 C.F.R. § 64.1903); Category 13: Rules Governing Extension of Unsecured Credit for Interstate and Foreign Communications Services to Candidates for Federal Office (47 C.F.R. §§ 64.801, 64.804(a)-(f)); Category 14: "Cash Working Capital Allowance" Requirement (47 C.F.R. § 65.820(d)); Category 16: Rules Governing Recording of Telephone Conversations with Telephone Companies (47 C.F.R. § 64.501); and Category 17: Prepaid Calling Card Reporting Requirements (47 C.F.R. § 64.5001). *Id.*

⁷ USTelecom Petition at 2-3.

⁸ *Id.* at 3.

⁹ *Id.* at 5.

¹⁰ *Id.* at 5.

¹¹ 47 U.S.C. § 160(a).

market conditions.”¹² Forbearance is warranted under section 10(a) only if all three elements of the forbearance criteria are satisfied.¹³ In a forbearance proceeding, the petitioner has the burden of proof, including both the burden of production and the burden of persuasion.¹⁴ Finally, as the D.C. Circuit has held, “[o]n its face” section 10 “imposes no particular mode of market analysis or level of geographic rigor,” but rather “allow[s] the forbearance analysis to vary depending on the circumstances.”¹⁵

III. DISCUSSION

A. General Arguments

5. The Wireline Competition Bureau (Bureau) sought comment on USTelecom’s petition.¹⁶ The majority of filers filed oppositions against or comments in support of or against only certain of the seventeen categories of rules raised in USTelecom’s petition.¹⁷ No filer specifically objected to USTelecom’s request for forbearance from the three categories of rules addressed in this order. Some commenters, however, filed oppositions and comments generally against granting any portion of USTelecom’s petition.

6. Comptel, Broadview, and the Michigan PUC objected to granting USTelecom’s Petition on the basis that USTelecom has not properly sought forbearance relief under section 10(c) because it is not a “telecommunications carrier,” and because it seeks relief for a class of carriers without demonstrating that all members of the class are members of USTelecom.¹⁸ We reject this argument, and instead find that USTelecom’s petition is a petition for forbearance within a reasonable interpretation of the statute. Section 10(c) allows “[a]ny telecommunications carrier, or class of telecommunications

¹² 47 U.S.C. § 160(b) (providing that, in making the determination under section 10(a)(3), the Commission shall consider whether forbearance will promote competitive market conditions).

¹³ See *Cellular Telecomms. & Internet Ass’n v. FCC*, 330 F.3d 502, 509 (D.C. Cir. 2003) (explaining that the three prongs of section 10(a) are conjunctive and that the Commission could properly deny a petition for failure to meet any one prong).

¹⁴ *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, Report and Order, 24 FCC Rcd 9543 (2009) (*Forbearance Procedural Requirements Order*). Thus, in addition to the burden of production of stating a prima facie case in the petition, “the petitioner’s evidence and analysis must withstand the evidence and analysis propounded by those opposing the petition for forbearance” (*i.e.*, the burden of persuasion). *Id.* at 9556, para. 21.

¹⁵ *EarthLink Inc. v. FCC*, 462 F.3d 1, 6 (D.C. Cir. 2006) (using the *Chevron* framework to review the Commission’s forbearance analysis, under which the court “will uphold the FCC’s interpretation as long as it is reasonable, even if ‘there may be other reasonable, or even more reasonable views’” (*quoting AT&T Corp. v. FCC*, 220 F.3d 607, 621 (D.C. Cir. 2000)).

¹⁶ *USTelecom Forbearance PN*.

¹⁷ Several commenters made general arguments asserting that the Petition fails to make a prima facie case, lacks adequate information to provide a basis to analyze its impact on consumers, competition and the public interest, and is therefore not “complete as filed.” See, e.g., Reply Comments of Full Service Network LP at 2; Ad Hoc Telecommunications Users Committee Comments at 2-5. The Commission has defined “complete as filed” to mean that a petition must explicitly state the scope of the relief requested, address each prong of the statute as it applies to the rules or provisions from which the petitioner seeks relief, identify any other proceedings pending before the Commission where the petitioner speaks to the relevant issues, and comply with format requirements. *Petition To Establish Procedural Requirements To Govern Proceedings For Forbearance Under Section 10 Of The Communications Act Of 1934, As Amended*, Report and Order, 24 FCC Rcd 9543, 9553 (2009) (*Forbearance Procedures Order*). The USTelecom Petition on its face satisfies these criteria for the three category of rules addressed in this Order.

¹⁸ See Comptel Comments at 2-3; Broadview Comments at 2; Michigan PUC Reply Comments at 2-3.

carriers” to petition for forbearance from the application of any regulation affecting “that carrier or those carriers, or any service offered by that carrier or carriers.”¹⁹ We find that language ambiguous, and conclude that, to request relief under section 10(c), a petitioner need not be a “telecommunications carrier” itself if it represents a “class of telecommunications carriers,” as USTelecom does here.²⁰ We likewise find it reasonable to interpret section 10(c) to allow a petitioner to seek forbearance from regulations that apply both to the petitioner and to other entities where, as here it involves “any service offered by” the petitioner.²¹ The rules we address in this Order apply to services “offered by” the class of carriers represented by USTelecom; section 10(c) thus permits the forbearance to apply to telecommunications services offered by other carriers as well.

7. We conclude that our interpretation advances the goals underlying Congress’ adoption of section 10.²² There is a history of advocacy before the Commission by industry associations and similar industry organizations including in the analogous context of waiver requests,²³ and nothing in the language of section 10 persuades us that the efficiencies of such advocacy should be denied in the context of requests for forbearance under section 10(c). Further, the Commission has recognized section 10 as “an important tool to realize [the] goal” of “establish[ing] ‘a pro-competitive, deregulatory national policy framework’ designed to make available to all Americans advanced telecommunications and information technologies and services.”²⁴ Where the section 10 forbearance criteria are met based on factors common to an entire class, it would be less consistent with the goal of establishing a “a pro-competitive, deregulatory *national* policy framework” and would place a greater burden on both the industry and on agency resources to, for example, require individual carriers within a class that are not members of the organization or group that filed a section 10(c) forbearance petition granted by the Commission to subsequently file their own petitions seeking identical relief for identical reasons.²⁵ This conclusion also is consistent with the Commission’s practice in addressing forbearance petitions in the past.²⁶

¹⁹ 47 U.S.C. § 160(c).

²⁰ *Id.*; USTelecom Petition.

²¹ 47 U.S.C. § 160(c). Moreover, as commenters observe, the Commission has authority under section 10 to forbear from these regulations on its own motion, independent of the fact that USTelecom’s petition constitutes a petition for forbearance under section 10. *See also* Verizon Reply Comments at 18, USTelecom Reply Comments at 8.

²² *See, e.g., Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as Amended*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730, 20738, para. 13 (1996) (“Congress enacted Section 401 of the 1996 Act, adding Section 10 to the Communications Act” to give the Commission “express authority to eliminate unnecessary regulation and to carry out the pro-competitive, deregulatory objectives that it pursued in the *Competitive Carrier* proceeding for more than a decade.”); *AT&T v. FCC*, 452 F.3d 830, 832 (D.C. Cir. 2006) (“Critical to Congress’s deregulation strategy, the [1996] Act added section 10 to the Communications Act of 1934.”).

²³ *See, e.g.,* Amendment of Part 90 of the Commission’s Rules to Permit Terrestrial Trunked Radio (TETRA) Technology; Request by the TETRA Association for Waiver of Sections 90.209, 90.210 and 2.1043 of the Commission’s Rules, 26 FCC Rcd 6503, 6509, para. 17 (2011) (“There is ample precedent for granting a waiver to an association on behalf of its members.”).

²⁴ *2000 Biennial Regulatory Review*, IB Docket No. 00-202, Notice of Proposed Rule Making, 15 FCC Rcd 20008, 20010, para. 1 (2000) (quoting Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113 (1996)).

²⁵ Where circumstances differ among carriers in a manner that is material to the section 10 analysis, however, the Commission will consider those differences regardless of whether forbearance is requested individually by particular carriers or through a single petition seek relief for a class.

²⁶ We recognize that the Commission has not expressly reached this question in the past. *See Petition for Forbearance From E911 Accuracy Standards Imposed on Tier III Carriers for Locating Wireless Subscribers* (continued . . .)

B. Rules Addressed in this Order**1. Traffic Damage Claim Rules**

8. USTelecom seeks forbearance for all carriers from 47 C.F.R. § 64.1, which governs maintenance of files and payments for damage claims of a traffic nature.²⁷ USTelecom argues that the rule is outdated and duplicative, is not necessary to protect consumers, and that continued enforcement of the rule wastes the resources of both the Commission and affected carriers. It further notes that Commission staff has been recommending the removal of this rule for more than a decade, starting with the 2000 Biennial Review Staff Report, finding it to be outdated and duplicative of the requirements of other federal agencies.²⁸

9. Adopted in 1936 by an order of the Commission's Telegraph Division, section 64.1 was originally intended to address issues with claims against telegraph carriers arising from errors in, or delayed delivery or non-delivery of, messages and money orders.²⁹ Today, telegraph service is obsolete,³⁰ while advances in technology such as voicemail, texting, smartphones, and digital payment options are

(Continued from previous page) _____
Under Rule Section 20.18(h), 18 FCC Rcd 24648, 24648-49, para. 1 n.5 (2003). In practice, however, the Commission previously has granted petitions for forbearance from industry associations and similar groups. See, e.g., *Petition for Declaratory Ruling to Clarify 47 U.S.C. § 572 In the Context of Transactions Between Competitive Local Exchange Carriers and Cable Operators Conditional Petition for Forbearance from Section 652 of the Communications Act for Transactions Between Competitive Local Exchange Carriers and Cable Operators*, WC Docket No. 11-118, Order, 27 FCC Rcd 11532 (2012) (petition for forbearance from the application of section 652 of the Act); *Cellular Telecommunications Industry Association's Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations*, Memorandum Opinion and Order, 14 FCC Rcd 3092 (1999) (petition for forbearance from the deadline for implementing local number portability); *Federal Communications Bar Association's Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers and Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Services*, Memorandum Opinion and Order, 13 FCC Rcd 6293 (1998) (*FCBA Order*) (forbearing from enforcing the requirements of section 310(d) as they apply to *pro forma* assignments of licenses and transfers of control of all wireless telecommunications licensees); *Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services, et al.*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857 (1998) (granting in part and denying in part the portions of PCIA's forbearance petition not otherwise addressed in the *FCBA Order*). In addition, even beyond that context, the Commission previously has granted petitions for forbearance from individual carriers seeking forbearance on behalf of a broader class of which they are part. See, e.g., *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440, 16501, para. 125 n. 360 (2007) (interpreting AT&T's forbearance petition as seeking relief for all BOCs, and granting it as to equal access scripting requirements); *Hyperion Telecommunications, Inc. Petition Requesting Forbearance; Time Warner Communications Petition for Forbearance; Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 12 FCC Rcd 8596 (1997) (granting petitions for forbearance to enable permissive detariffing of interstate exchange access services by providers other than ILECs).

²⁷ USTelecom Petition at 63; see also 47 C.F.R. § 64.1.

²⁸ USTelecom Petition at 63.

²⁹ See *Telegraph Division Order No. 24*, 2 FCC 44 (1936).

³⁰ Western Union sent its last telegram on January 27, 2006. See Shelly Freierman, *Telegram Falls Silent Stop Era Ends Stop*, N.Y. TIMES, Feb. 6, 2006, available at <http://www.nytimes.com/2006/02/06/technology/06telegram.html>.

ubiquitous. And, as USTelecom notes, the Wireline Competition Bureau has been recommending deletion of this rule in the Biennial Review proceedings for some time, without objection from commenters.³¹ No commenters specifically addressed the traffic damage claims rule or supported its retention. We conclude that the rule merits forbearance under the standards set forth in section 10. As discussed below, we grant forbearance from this rule.

2. Rules Governing Extension of Unsecured Credit for Interstate and Foreign Communications Services to Candidates for Federal Office

10. USTelecom seeks forbearance for all relevant carriers from 47 C.F.R. §§ 64.801 and 64.804, which require certain carriers to file periodic reports with the Commission detailing the terms of any unsecured credit extended by the carrier to, or on behalf of, a candidate for federal office.³² Carriers must extend unsecured credit on substantially equal terms to all candidates or persons on the candidate's behalf.³³ USTelecom argues that, since these provisions were adopted, numerous laws have been enacted governing campaign finance, gifts to government officials or candidates, and credit arrangements that obviate the need for our rules. There were no objections or comments filed in the record regarding these rules or to contradict USTelecom's claims.

11. This reporting requirement was established pursuant to the Commission's authority under the Act and Section 401 of the Federal Election Campaign Act of 1971, and was intended to serve as a check on the implied contributions by carriers to candidates for Federal office.³⁴ The regulations were adopted in response to congressional concerns regarding substantial outstanding balances remaining on 1968 campaign accounts.³⁵ The FCC concluded that inadequate credit practices and procedures, laxity in the administration of the carriers' then-current credit practices and procedures, failure to monitor the candidates' accounts, delays in billing, and lack of appropriate collection efforts were among the major factors contributing to the unpaid balances accrued during the 1968 political campaign.³⁶

12. We agree with USTelecom that these rules have been superseded by other, more comprehensive laws, and that the Commission's rules are now unnecessary to protect the public interest. The Federal Election Campaign Act of 1971, however, requires the Commission to "maintain[] its own regulations with respect to the extension of credit, without security" by regulated entities.³⁷ We therefore grant the request to forbear from the requirements in subsection (g) of our rules, the reporting requirements, which appear to be the only requirements that impose any meaningful ongoing burden.³⁸

³¹ See, e.g., *Biennial Regulatory Review 2000 Staff Report* at 98, 15 FCC Rcd 21085, 21276 (2000) (*attached to Biennial Review 2000 Staff Report Released*, CC Docket No. 00-175, Public Notice, 15 FCC Rcd 21084 (2000)); *2004 Wireline Competition Bureau Biennial Regulatory Review*, Staff Report, WC Docket No. 04-179, 20 FCC Rcd 263, 311 (2005); *2006 Wireline Competition Bureau Biennial Regulatory Review*, Staff Report, WC Docket No. 06-157, 22 FCC Rcd 2803, 2853-54 (2007).

³² USTelecom Petition at 67; see also 47 C.F.R. §§ 64.801-64.804.

³³ 47 C.F.R. § 64.804(b).

³⁴ See *Common Carriers, Credit to Candidates to Federal Office*, Report and Order, 34 FCC 2d 768, 771 (1972) (citing "sections 4(i), 201(b), 202(a), 203, 218 and 219 of the Communications Act of 1934, as amended, and Section 401 of the Federal Election Campaign Act of 1971" as authority for the regulations).

³⁵ *Amendment of Part 64 of the Rules to Provide for Regulations Covering the Extension of Credit to Candidates for Federal Office*, Docket No. 19476, Notice of Proposed Rulemaking, 37 FR 5965, 5965-66 (1972).

³⁶ *Id.*

³⁷ 2 U.S.C. § 451. This section does not direct us to impose reporting requirements.

³⁸ Any remaining obligations in this rule are only triggered if a carrier extends unsecured credit for communications services to a candidate or person on behalf of a candidate for Federal office.

We continue to consider whether the Federal Election Campaign Act permits us to forbear from the remaining requirements.

3. Rules Governing Furnishing of Facilities to Foreign Governments for International Communications

13. USTelecom seeks forbearance for all carriers from 47 C.F.R. § 64.301, which requires that common carriers furnish communications services to a foreign government “upon reasonable demand” and to deny communications services to a foreign government, upon order of the Commission, when such government “fails or refuses” to provide communications services to the U.S. government.³⁹ USTelecom argues that the ability to ensure that the U.S. government has adequate access to communications services overseas is best addressed through contracts, consistent with applicable treaties and other federal laws, and that the provision is unnecessary to ensure that a carrier’s rates are just, reasonable, and nondiscriminatory.⁴⁰ Additionally, it contends that the ability of U.S. government officials to access communications abroad can reliably be achieved without Commission intervention, given changes in technology since the rule was originally enacted.⁴¹

14. According to the 2000 Biennial Review Staff Report, this rule helps to ensure that the U.S. government has access to communications services and facilities overseas, but the Commission rarely exercises this authority.⁴² The Staff Report further notes that the Commission last revised this rule in 1963, and would need to consult with the State Department before doing so again.⁴³ The State Department does not object to the Commission granting forbearance from this provision. There were no objections or comments filed in the record specifically addressing this portion of USTelecom’s petition. We conclude that the rule is outmoded and unnecessary and merits forbearance under the standards set forth in section 10. As discussed below, we grant forbearance from this rule.

C. Forbearance Analysis

15. We conclude that forbearance from application of certain rules, as discussed above, is warranted under the section 10 criteria. USTelecom’s arguments, along with Commission analysis, including Commission staff recommendations in *Biennial Review* orders, convince us that these rules are outdated; are not necessary to ensure that the charges, practices, classification, or regulations are just reasonable and not unjustly or unreasonably discriminatory; are no longer needed to protect consumers; and that continued enforcement would not serve the public interest. The rules have been overtaken by superseding events, such as newer rules, market forces, and technological advances. To the extent that the rules were designed to protect consumers (section 64.1) or carriers (section 64.301) or ensure fiscal prudence (section 64.804(g)), they have been adequately replaced by other provisions or changes in communications.

³⁹ USTelecom Petition at 69; *see also* 47 C.F.R. § 64.301.

⁴⁰ USTelecom Petition at 69.

⁴¹ USTelecom notes that the U.S. government has access to global satellite networks and other dedicated communications links that are outside the control of foreign governments, which obviates any need for Rule 64.301. *See* USTelecom Petition at 69-70.

⁴² *Biennial Regulatory Review 2000 Staff Report* at 101, 15 FCC Rcd 21085, 21279 (2000) (*attached to Biennial Review 2000 Staff Report Released*, CC Docket No. 00-175, Public Notice, 15 FCC Rcd 21084 (2000)).

⁴³ *Id.*

16. We conclude that forbearance is consistent with the public interest.⁴⁴ We find that forbearing from enforcing these rules will promote competitive market conditions, and promote competition among providers of telecommunications services.⁴⁵ These rules are obsolete and serve no public interest. Therefore, forbearing from the rules will lift unnecessary burdens from the carriers, which in turn will reduce their costs of providing service and ensure that competing providers face a level playing field. We therefore forbear from sections 64.1, 64.804(g), and 64.301.

IV. CONCLUSION

17. For the reasons stated herein, we find that, to the extent set forth above, the statutory requirements for forbearance pursuant to section 10 of the Act are met and that conditionally granting USTelecom forbearance from the legacy telecommunication regulations will further the statutory goals of eliminating requirements that are no longer necessary.⁴⁶

V. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED, pursuant to section 10(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 160(c), that USTelecom's petition for forbearance IS GRANTED IN PART, to the extent described above, and otherwise remains pending.

19. IT IS FURTHER ORDERED, pursuant to section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 160, and section 1.103(a) of the Commission's rules, 47 U.S.C. § 1.103(a), that this decision SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴⁴ 47 U.S.C. § 160(a)(3).

⁴⁵ 47 U.S.C. § 160(b).

⁴⁶ 47 U.S.C. § 160(a).

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: United States Telecom Association Petition for Forbearance Under 47 U.S.C. §160(c) from Enforcement of Certain Legacy Telecommunications Regulations, WC Docket No. 12-61

For years I have pushed the Commission to review its rules and weed out those that are unnecessary and outdated. Therefore, I am pleased to support this order which grants forbearance from the application of some extremely outdated and unnecessary rules – one actually dating back to the era of the telegraph.

While I had hoped that this order would have been more far-reaching, I am eager to continue working with my colleagues in a deregulatory manner as we consider the remainder of the requests set forth in USTelecom’s forbearance petition. Moreover, the Commission should take a more aggressive approach to repeal unnecessary and outdated regulations. Not only is clearing out unnecessary regulatory underbrush good public policy that ultimately helps grow the economy and empower consumers, but eliminating outdated rules is mandated by Congress as well. The FCC has an ample supply of legal tools to modernize its rules on its own motion.¹ We don’t need to wait for private parties to incur the expense and risk of filing forbearance petitions. For instance, as I have stated many times before, our biennial review process could be much more energetic and ambitious. Such is Congress’s expectation of us.

I look forward to continuing to work with Congress and my colleagues on encouraging the Commission to streamline its rulebook.

¹ For example, Sections 10, 11, 202(h) and 706 of the Telecommunications Act of 1996 each have a deregulatory bent.

**STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *United States Telecom Association Petition for Forbearance under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61.

When Congress passed the Telecommunications Act of 1996, one of the most important tools it gave the FCC was forbearance authority. This authority allows the Commission to set aside outdated laws and regulations that once may have made sense but have come to stymie the pro-competitive, deregulatory objectives of the Act.¹

Today we exercise this authority to grant relief from two-and-a-half of the seventeen sets of rules cited in US Telecom's petition for forbearance, which was filed a little more than one year ago. No one defended these rules or opposed forbearance from them. But they are not particularly onerous either. For instance, the fruit doesn't hang much lower than the seventy-seven year old requirement (first imposed by the FCC's Telegraph Division) involving telegraph carriers' delayed or undelivered messages and money orders, especially considering that FCC staff repeatedly has recommended its deletion—again, without any opposition—since the Clinton Administration.²

I'm pleased we're picking it, but other rules identified in the petition are ripe as well. For some of these rules, the petition for forbearance met with scant if any resistance. For others, the Commission already has concluded that forbearance is appropriate for the largest companies but has not yet done so with respect to smaller businesses. I hope we expeditiously consider the fourteen-and-a-half sets of rules that remain unaddressed by today's order. We should act soon to revise these and other regulations to fit the times.

¹ With this power came a responsibility: The FCC must act on a petition for forbearance within one year of its filing unless it "finds that an extension is necessary" to meet the requirements of the statute. 47 U.S.C. § 160(c). Unfortunately, the Commission has repeatedly allowed the extension exception to swallow the one-year rule. Given the senescence of many of these rules, the private sector burdens of compliance, and the general need for the agency to act with dispatch, I believe we should aim to complete (not commence) our analysis of forbearance petitions by the one-year deadline.

² See *Order*, para. 9 & note 31.