

**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)	

**Reply Comments of the
Michigan Public Service Commission**

Introduction

The Michigan Public Service Commission (MPSC) offers the following reply comments in response to the comments filed on the Federal Communication Commission's (FCC) Notice of Proposed Rulemaking (NPRM) on procedural rules to govern the FCC's consideration of petitions for forbearance. This NPRM was a result of a specific petition submitted on September 19, 2007 by Covad Communications Group, NuVox Communications, XO Communications, LLC, Cavalier Telephone Corporation, and McLeodUSA Telecommunications Services, Inc. (collectively, Covad).

On March 7, 2008, comments where filed. Several state commissions from Missouri, Texas, California and Pennsylvania as well as the National Association of Regulatory Utility Commissioners (NARUC), the Members of the Mid-Atlantic Conference of Regulatory Utility Commissioners (MACRUC States) and National Association of State Utility Consumer Advocates (NASUCA), among others, stated their support for a procedural reform of the present

forbearance process. In addition, various industry providers such as Nextel Corp., EarthLink, Inc., New Edge Networks, Time Warner Telecom, Inc., One Communications Corp and Cbeyond, Inc. (collectively, Time Warner), Comcast Corp., to name a few, also filed comments in support of some type of reform in order to improve the forbearance process. In contrast, Qwest Communications International, Inc. (Qwest), AT&T, Inc. (AT&T), Verizon Communications, Inc. (Verizon) and Frontier Communications (Frontier) filed comments expressing their opposition to any kind of forbearance reform that would, as parties claim, delay and create procedural impediments.

Discussion

The MPSC agrees, in general, that new procedural rules are needed. It is obvious from the petitioners and from the parties who have commented on this case that some adjustments may be necessary for the forbearance process to function in a transparent equal manner. The MPSC will not discuss here the legal matters raised by the parties opposing the petitioners request as the FCC has ample background in ruling within its jurisdiction. The MPSC will, however, comment on various issues addressed by the parties such as the forbearance petitioner having the burden of proof in a “complete as file” forbearance petition, the notice and comment rulemaking time frame, and the scope of protective orders as well as the accessibility of proprietary information.

I. Burden of Proof in a “Complete as File” Forbearance Petition

The MPSC agrees with AT&T that the statute is clear: the FCC “shall forbear from applying any regulation or any provision (...) if

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.”¹

These three prongs must be met. It is in the forbearance petitioner’s best interest to prove that all three prongs have been satisfied. The MPSC, again, agrees with AT&T that “carriers have every incentive to make their cases as strongly as possible, and with as much supporting information as possible, so that the Commission has a basis to make the determinations necessary to support their requested relief” (AT&T’s comments at 9). Furthermore, AT&T states that it “has no objection to the CLECs’ proposal that the Commission adopt rules that require a petitioner to explain in its petition why the requested relief satisfies each of the three forbearance factors” (AT&T’s comments at 16). The MACRUC States, Missouri, NASUCA, Time Warner and several other parties are also in agreement that the forbearance petition should contain all factual and legal support. Moreover, the initial filing should contain all evidence in support of its forbearance petition without filing additional information at a later time unless the statutory clock is restarted. In light of the comments filed, the MPSC strongly believes there is enough support for the FCC to adopt a “complete as file” requirement for forbearance petitions where the petitioner carries the burden of proof. This measure would, in addition, expedite the forbearance process as it would give the petitioner an incentive to be accurate in its initial petition.

In addition, the MPSC agrees with Verizon that the FCC “should conduct an initial screening of forbearance petitions to ensure that each petition actually seeks forbearance from existing regulations that apply to the petitioner” (Verizon’s comments at 17). The MPSC, however, disagrees with Verizon in that the FCC should collect third party data. The MPSC reiterates that the forbearance petitioner should provide to the FCC all evidence, including third

¹ 47 U.S.C. § 160(a) (emphasis added).

party public data, in support of its petition. Neither the FCC nor the states should be in a fact finding position as it is the forbearance petitioner's interest to provide all adequate information pertaining to its case.

II. Notice and Comment Rulemaking Time Frame

Regarding the notice and comment rulemaking time frame, parties have divergent views on this particular issue. Qwest and AT&T strongly oppose the petitioners' proposal "that the Commission specify standard timelines for a Commission initial review of petitions and for the filing of motions to dismiss, that the Commission be required to obtain the input of states in connection with each petition on a standard time table and before any further action is taken on a forbearance request, and that the Commission set special rules governing the filing and service of *ex partes* in forbearance proceedings" (Qwest's comments at 15). AT&T's sole proposal regarding this issue is a new rule prohibiting last minute *ex partes* within the last 14 days of the statutory deadline. While Time Warner and the states support the petitioners' recommendation that the FCC require forbearance petitions be subject to the Administrative Procedure Act (APA) notice and comment rulemaking procedures.

The MPSC is cognizant of the rapidly changing telecommunications industry and the need for swift rulemakings in some cases. The MPSC, however, also recognizes that some of these swift rulemakings may be creating a competitive advantage for those carriers. It appears that the time has come to perhaps level the playing field and request adequate notice and input from potential affected parties and states. The MPSC agrees with California in that a separate comment cycle for the states is not necessary. Verizon's proposal that "the Commission set and announce internal goals of (1) ruling on forbearance petitions within six months after filing and (2) extending the deadline for ruling on such petitions beyond one year only in extraordinary cases, with any extension orders explaining the particular factors that make a given petition extraordinary" may be an avenue the FCC should consider. The MPSC agrees with NARUC in

that the FCC should act promptly in this NPRM and ensure that states' participation is considered in the adoption of future forbearance procedures.

III. Scope of Protective Orders and Proprietary Information

All parties agree that protective orders are absolutely necessary. The issue at hand is whether the confidential documents should be made available in electronic format and whether those materials may be used in related proceedings. AT&T strongly opposes the availability of confidential data in electronically searchable format stating that copies of such material would be distributed all over the country without proper authorization; where Qwest does not oppose the inclusion in protective orders of a requirement that confidential materials be made available in electronically searchable format. Qwest, however, opposes "the inclusion of a protective order provision allowing that confidential or highly-confidential materials submitted in one forbearance petition may be used subject to the same restrictions in another Commission forbearance proceeding where the petitioning party seeks relief from the same rules and/or statutory provisions" (Qwest's comments at 17).

The MPSC, with its limited staff resources and travel budget, would support the inclusion in protective orders of a requirement that confidential documents be made available in electronically searchable format, at a minimum, in electronic format with appropriate safeguards in order to avoid unauthorized distribution of such materials.

Conclusion

The MPSC commends the FCC for its prompt action in this proceeding and for allowing The MPSC to file reply comments. The MPSC urges the FCC to adopt rules that would ensure "complete as file" forbearance petitions where the petitioner carries the burden of proof as well as an adjusted schedule which would allow states participation without hampering the telecommunications industry and improved accessibility to confidential materials.

Respectively Submitted,
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