

Resolution on Forbearance Procedures

WHEREAS, Pursuant to Section 10(a) of the Communications Act of 1934 (the Act), as amended, the Federal Communications Commission (FCC) is required to forbear from enforcing any regulation or provision of the Act if it reaches a determination that three broad criteria are satisfied, including consistency with the public interest, protection of consumers, and a finding that the requested forbearance would not result in unreasonable discrimination and unjust and unreasonable rates or terms; *and*

WHEREAS, A statutory timeline of 12 months (which the Commission may extend to 15 months), is given for final action by the FCC; *and*

WHEREAS, If action on a petition is not taken by the FCC prior to expiration of the statutory period, the forbearance requested by the petitioner is deemed granted and becomes effective; *and*

WHEREAS, Such a broad grant of authority to waive application of statutory provisions duly passed by Congress and signed by the President, and regulations approved by order of the FCC, under the above broad criteria and an abbreviated timeline for final action, is quite unusual when considering the normal procedures and regulations governing independent federal agency actions; *and*

WHEREAS, Many incumbent telecommunications carriers have recently submitted a plethora of petitions seeking broad relief from important provisions of the Act and FCC regulations, such as the unbundling requirements of Section 251, and the obligation to provide information under the ARMIS system; *and*

WHEREAS, Many States have the obligation to enforce various provisions of the Act and FCC regulations that, among other objectives, seek to promote wholesale competition and protect telecommunications users, and to a significant extent, rely on the continued enforcement of provisions of the Act in order to achieve their respective State policy objectives; *and*

WHEREAS, The States are uniquely equipped to provide detailed, market-specific data regarding the state of competition that the FCC must consider in conducting its forbearance analysis; *and*

WHEREAS, The Notice of Proposed Rulemaking (NPRM) in WC Docket No. 07-267, released by the FCC on November 30, 2007, identifies possible areas of improvement in the procedures by which the Commission examines such petitions for relief under Section 10(a), including:

- a) the absence of a “complete-as-filed” requirement;
- b) the lack of discipline and guidelines on the filing of ex-parte comments by the Petitioner, often resulting in substantial evidence filed late in the process, and the concurrent diminution of due process rights for other interested persons and constituencies;
- c) the lack of access by each qualified interested person, subject to appropriate protective orders, to confidential and highly confidential information; and

- d) the lack of access by State commissions, subject to appropriate protective orders, to such confidential and highly confidential information so that they have sufficient data in order to file detailed and timely comments with the FCC; *and*

WHEREAS, Several members of Congress have introduced bills to amend Section 10 of the Act, including bills to eliminate the “deemed granted” section of the statute (H.R. 3914 and S. 2469), while preserving the ability of the Commission to continue to use the Section 10 process when appropriate; *and*

WHEREAS, The FCC, in establishing an expedited comment cycle for the NPRM, has stated: “We acknowledge that the pendency of numerous forbearance petitions creates an urgency to consider adoption of procedural rules, and we therefore are seeking comment on a relatively short pleading cycle;” *now, therefore, be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its 2008 Winter Meetings in Washington, D.C., commends the FCC for initiating this rulemaking and urges the Commission to act on an expedited basis to adopt improvements to the procedural rules governing forbearance petitions; *and be it further*

RESOLVED, That the FCC adopt a strict “complete-as-filed” requirement for Forbearance Petitions similar to Section 271 requirements and also adopt policies to ensure that qualified persons, including State commissions, subject to protective orders, have timely access to confidential and highly confidential information so they can have sufficient data to file detailed and timely comments with the FCC; *and be it further*

RESOLVED, That NARUC is concerned about the rapid increase in forbearance petitions by incumbent carriers which has created a significant burden on State commissions and interested parties to examine these petitions thoroughly and to provide detailed input to the FCC in a timely manner; *and be it further*

RESOLVED, That NARUC expresses its support of bills in Congress to eliminate the “deemed granted” provision in the statute specifically, H.R. 3914 and S. 2469, and urges prompt action; *and be it further*

RESOLVED, In order to create greater certainty and stability within the telecommunications industry, NARUC urges the Commission to act promptly on this NPRM before additional forbearance petitions are filed and to adopt formal procedures to govern the conduct of forbearance proceedings, including procedures to ensure full participation by affected States; *and be it further*

RESOLVED, That NARUC General Counsel be directed to take any appropriate actions to further the intent of this resolution.

*Sponsored by the Committee on Telecommunications
Adopted by the Board of Directors February 20, 2008*