BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	**)**	
	)	
Report on FCC Process Reform	**)**	**GN Docket No. 14-25**
	)	

COMMENTS OF COMPTEL

COMPTEL, through undersigned counsel, hereby responds to the Commission's invitation to submit comments on the Report on FCC Process Reform and the proposed recommendations contained therein.[1] COMPTEL commends the Commission for undertaking this self-evaluation and commends the staff for making such thoughtful recommendations to facilitate reaching the goal of operating the agency "in the most effective, efficient and transparent way possible."

I. Increasing the Speed and Transparency of FCC Decision-making

One of the most important and publicly beneficial improvements that the Commission can make in reforming its processes is to ensure that new matters are promptly docketed, comments requested, decisions issued and matters resolved in a timely manner.[2] COMPTEL

---

[1] Public Notice, "FCC Seeks Public Comment on Report on Process Reform," GN Docket No. 14-25, DA 14-199 (rel. Feb. 14, 2014).

[2] There are far too many instances where the Commission unreasonably delays docketing and/or decision making, just a few examples of which are provided here. On December 12, 2013, COMPTEL filed a Petition for Forbearance with the Commission. More than three and one-half months into the one year deadline by which the Commission must act, the Commission has not assigned a docket number to the Petition, let alone issued a Public Notice requesting comments, contrary to Section 1.55 of the Commission's rules which provides that the Commission will issue a Public Notice establishing deadlines for filing comments "when it receives a properly filed petition for forbearance." On November 9, 2009, COMPTEL and

wholeheartedly supports the Report's recommendations on promptly routing new matters filed with the Commission to the appropriate Bureau or Office, having that Bureau or Office perform an initial intake analysis, and creating timelines for the disposition of the new matters.[3] In particular, COMPTEL supports the suggestion that Petitions for Rulemaking and Petitions for Declaratory Ruling be put out for comment immediately upon receipt or dismissed on an expedited basis if procedurally unsound.[4]

COMPTEL is also in favor of the Commission establishing a six-month deadline for acting on Petitions for Reconsideration. Rather than deem a Petition denied if the Commission fails to act within 180 days as the Report recommends,[5] the Petition should be deemed *granted* if the Commission fails to act. To do otherwise is more likely to lead to maintenance of the *status quo*, rather than any improvement in the Commission's processes. As things stand, Petitions for Reconsideration often sit far too long with no action by the Commission even in proceedings that the Commission has identified as priorities, such as universal service reform.[6] While a "deemed

---

others filed a Petition for Expedited Rulemaking to Adopt Rules Pertaining to the Provision by Regional Bell Operating Companies of Certain Network Elements Pursuant to 47 U.S.C. §271(c)(2)(B) of the Act, WC Docket No. 09-222. The official pleading cycle closed with the filing of Reply Comments on February 12, 2010. Over four years later, the Commission has yet to take any action. On November 16, 2009, Cbeyond filed a Petition for Expedited Rulemaking To Require Unbundling of Hybrid, FTTH and FTTC Loops Pursuant to 47 U.S.C. §251(c)(3) of the Act, WC Docket No. 09-223. The official pleading cycle closed with the filing of Reply Comments on February 22, 2010. Again, over four years have passed with no action by the Commission.

3 Report at 6-7.

4 *Id.* at 7.

5 *Id.*

6 For example, Petitions for Reconsideration of the Lifeline Reform decision, *In the Matter of Lifeline and Link Up Reform and Modernization,* WC Docket No. 11-42 *et al*., Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012), have been pending for two years with no action. *See e.g.,* Petition for Reconsideration and Clarification of

denied" default where the Commission fails to act may trigger a Petitioner's right to seek judicial review, which would be an improvement, it would not necessarily provide any incentive for the Commission to decide the merits of, or otherwise take action on, the Petition. Rendering the Petition deemed granted in the absence of Commission action within a specified timeframe would give the Commission an additional incentive to accelerate the speed of its decision-making processes.

Consistent with its statutory obligations relating to Forbearance Petitions,[7] the Commission should act on such petitions within one year from the filing date and extend the period for an additional 90 days only in extraordinary cases. Under the processes followed today, the Commission routinely grants itself the 90 day extension so that compliance with the one year statutory deadline is the exception rather than the rule. As the Report appropriately recognizes, "[t]imelines are only useful if properly adhered to," and Bureaus and Offices must be held accountable for a failure to meet timelines.[8] Posting the timelines on the Commission's website, as is done for merger transactions, would increase accountability and would allow members of the public to quickly determine when to expect a decision.

In order to promote transparency, the Commission should adopt the staff's recommendation that information on the status of all open dockets, Petitions, and Applications, including ones not yet docketed, be made publicly available and searchable.[9] Creating a

---

the United States Telecom Association filed April 2, 2012; Petition for Partial Reconsideration of the American Public Communications Council filed April 2, 2012; Petition for Reconsideration of Sprint Nextel Corporation filed April 2, 2012; TracFone Wireless, Inc. Petition for Reconsideration and Clarification filed April 2, 2012.

7 47 U.S.C. §160.

8 Report at 8.

9 *Id.* at 8-9.

centralized list of all proceedings, whether docketed or not, will give both the Commission and the public far greater insight into the workings of the agency than exists today. Any such list should be searchable by docket number, party name and subject matter and should include the name of the Bureau or Office to which the proceeding is assigned and the number of days since the Petition or Application, including Applications for Review, was filed. Creating a searchable list of all matters pending before the Commission will allow the Commission to more easily and efficiently assess its progress in addressing issues brought to it for resolution and will provide a resource for the public and Congress to track the Commission's progress.

II. Increasing Transparency of FOIA Review Process

COMPTEL enthusiastically supports the staff's recommendation to post logs that would allow Freedom of Information Act ("FOIA") requesters and the public to determine the status of pending FOIA requests.[10] Congress has provided very specific deadlines by which agencies are required to respond to FOIA requests and to decide appeals of adverse decisions. 5 U.S.C. §552(a)(6)(A). Creating a means by which requesters and the public can monitor the status of requests would introduce much needed transparency to the Commission's FOIA review process.

COMPTEL also supports the staff's recommendation that all FOIA-related documents, from the request, to fee estimates, to the initial decision, to the decision on appeal, to all documents released in response to the request, should be posted on the Commission's website. FOIA was enacted in order "to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *Rose v. Dep't of the Air Force*, 495 F. 2d 261, 263 (2d Cir. 1974), *aff'd. sub nom. Dep't of the Air Force v. Rose,* 325 U.S. 352 (1976). The surest was to promote accomplishment of these objectives is for the Commission to make access to FOIA

[10] Report at 10-11.

requests, the decisions thereon and the documents released pursuant thereto readily accessible to all members of the public.

III. Streamlining the Review Process

COMPTEL takes no position on the staff's recommendations for reevaluating the Commission's internal processes for the drafting and review of decisional items.[11] COMPTEL fully supports, however, the staff's recommendations on steps the Commission should take to reduce and eventually eliminate the backlog of items currently awaiting action and to enhance the tracking of newly-filed items to ensure timely processing.[12] To the extent that the Commission adopts the staff's recommendation that certain categories of requests, including Applications for Review, be resolved by allowing them to be deemed granted or deemed denied after a certain period of time with no Commission action,[13] COMPTEL submits that the default position should always be deemed granted, rather than deemed denied.

As noted earlier, a rule that would allow a petitioning party's request for relief, no matter how meritorious, to be deemed denied as a result of Commission inaction may do no more than perpetuate the *status quo*, rather than effectuate an improvement in the Commission's processes. It may also effectively nullify an individual's or an entity's statutory and/or regulatory right to petition the government for relief by allowing the Commission to strip that right away merely through inaction. An affected petitioner would have no way of knowing whether his petition or application for review had actually been reviewed by staff and determined to be procedurally or substantively defective or whether it had just not received any attention at all. Moreover, a

---

11 Report at 12-15.

12 *Id.* at 16-18.

13 *Id.* at 17.

deemed denied rule may have the unintended consequence of encouraging Commission inaction as opposed to promoting a thorough in-take analysis of items when they are filed and the creation of timelines for disposition. If the Commission does implement a process for disposing of items on a deemed granted or deemed denied basis when the Commission fails to timely act, it must immediately publish notice of such dispositions and their effective dates to ensure that parties have access to the information they need to perfect a timely appeal.

IV. Improving the Commission's Policy and Rulemaking Process

The staff has suggested that the Commission consider taking advantage of the input of multi-stakeholder groups to help inform the development of policy and rules.[14] There is no doubt that any decision making process cannot help but benefit through being informed by the views of all parties and industry segments that may be affected by any rule or policy under consideration. COMPTEL encourages the Commission to explore the use of such groups.

The staff has also suggested that the Commission use a "negotiated rulemaking process in which a committee of stakeholders is established to narrow issues and develop proposals in advance of the formal rulemaking process."[15] While such a process theoretically could lead to more efficiency in the Commission's rulemaking proceedings, it can only work if the committee of stakeholders is truly representative of the interests of all potentially affected parties. In order to avoid excluding any interested parties from participation, the Commission would have to be meticulous in publicizing the formation of any such committee, inviting all interested parties to participate and seeking referrals to identify additional interested parties. To the extent that

---

14 Report at 36-39.

15 *Id.* at 39.

issues are narrowed (or broadened) through consensus, the committee members would have to be authorized by their constituencies to negotiate on their behalf, which may be easier said than done.

COMPTEL supports the staff's recommendation that the text of proposed rules should be included in Notices of Proposed Rulemaking ("NPRM") whenever possible, but disagrees with its suggestion that the Administrative Procedure Act does not impose such a requirement.[16] Section 553(b) of the Administrative Procedure Act, 5 U.S.C. §553(b), provides that NPRMs shall include "either the terms or the substance of the proposed rule." In order to provide focused and relevant input, as well as to offer potential refinements where necessary, commenters must have notice of the proposed text or the substance of the proposed text that the Commission is considering adopting.

COMPTEL greatly appreciates the Report's reminder to staff that policies intended to prohibit or require certain conduct must be expressed in rules:

> Staff should also be mindful that all policies intended to prohibit or require certain conduct should be expressed in rules, that all prohibitions and requirements contained in the rules should be stated authoritatively and unambiguously, and that the decisional documents should focus on explaining and justifying the final rules.[17]

Parties that are subject to Commission prohibitions or requirements must be able to find those prohibitions and requirements in the rules themselves as opposed to being forced to comb through the text of an order or footnotes in an order for uncodified statements of policy that purport to regulate their behavior but appear nowhere in the Commission's rules.

---

16 *Id.* at 41.

17 *Id.*

The Commission's uncodified policy that purports to prohibit interstate telecommunications carriers from passing their telecommunications relay service ("TRS") contributions through to their end users as separate line items is a perfect example of what should not be done in the regulatory context. The Americans With Disabilities Act requires interstate TRS costs to be recovered from subscribers to interstate services, and does not prohibit service providers from recovering those costs through separate line items on subscriber bills.[18] Nonetheless, the Commission has stated in various orders and in the footnotes of orders that carriers "are not permitted to recover," or are "prohibited" from recovering, interstate TRS costs as specifically identified line item charges on customer bills.[19] This TRS line item prohibition,

---

18 47 U.S.C. § 225(d)(3)(B). The Commission has previously acknowledged that the ADA does not address how TRS costs are to be recovered from subscribers. *In the Matter of Structure and Practices of the Video Relay Services Program,* 26 FCC Rcd 17367 at ¶145 (2011).

19 *See e.g., In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990,* Report and Request for Comments, 6 FCC Rcd 4657 at ¶34 (1991) ("Moreover, in order to provide universal telephone service to TRS users as mandated by the ADA, carriers are *required* to recover interstate TRS costs as part of the cost of interstate telephone service and *not as a specifically identified charge on subscribers' lines*."); *In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990,* Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802 at ¶22 (1993) ("In order to provide telephone service to TRS users as mandated by the ADA, carriers are *required* to recover interstate TRS costs as part of the cost of interstate services and *not as a specifically identified charge on end user's lines*."); *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475 at n. 33 (2004) ("We take this opportunity to reiterate that carriers obligated to contribute to the Interstate TRS Fund (*e.g.*, carriers providing interstate telecommunications services) *may not specifically identify a charge on their consumers' bill as one for relay services*."); *In the Matter of Truth-in-Billing and Billing Format*, CC Docket No. 98-170, Second Report and Order, Declaratory Ruling, And Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448 at n. 64 ("[T]his Commission has *prohibited line items for interstate Telephone Relay Service* (TRS) costs.") and n. 86 (noting the Commission's "prior conclusion in the TRS context that carriers *may not recover interstate TRS costs as a specifically identified line item*.") *vacated on other grounds sub nom. National Association of State Utility Consumer Advocates v. FCC,* 457 F. 3d 1238 (11th Cir. 2006); *In the Matter of Universal Service*

however, appears nowhere in the Commission's rules. In addition to raising serious First Amendment concerns, the uncodified prohibition appears on its face to conflict with the Commission's Truth-in-Billing rules by precluding providers from truthfully informing their customers what they are required to pay each month to fund the TRS service that Congress has mandated they fund.[20] Indeed, it conflicts with the Commission's determination that "providing clear communication and disclosure of the nature of the service for which payment is expected is fundamental to a carrier's obligation of reasonable charges and practices."[21]

Because the Commission has never codified the TRS line item prohibition, explained or justified the statutory basis for the prohibition, or attempted to reconcile the prohibition with the Truth-in-Billing rules, interstate carriers are confronted with a conundrum: should they comply with the Truth-in-Billing rules and disclose to customers what they are expected to pay to fund TRS service through a line item on customer bills or should they comply with the TRS line item prohibition and keep their customers in the dark by incorporating the TRS contribution into their rates for interstate service with no disclosure? The fact that the Commission has chosen not to codify the prohibition also raises questions with respect to whether the prohibition would be enforceable when a carrier is otherwise in compliance with the Truth-in-Billing rules. The Commission should do all it can to eliminate such gray areas by adopting the staff's

---

Contribution Methodology, WC Docket No. 06-122, Further Notice of Proposed Rulemaking, FCC 12-46 at n. 617 ("We note that carriers *are not permitted to recover interstate TRS costs as part of a specifically identified charge on end users' lines*.") (Emphasis added).

[20] The TRS line item prohibition is the subject of COMPTEL's December 12, 2013 Petition for Forbearance (referenced in footnote 2) that the Commission has yet to docket or put on Public Notice.

[21] *In the Matter of Truth-in-Billing and Billing Format,* CC Docket No. 98-170, 14 FCC Rcd 7492 at ¶ 37 (1999).

recommendation and confirm that that all policies intended to require or prohibit specific conduct must be expressed authoritatively and unambiguously in rules, thereby ensuring that regulated entities have clear and proper notice of their legal obligations.

V. Review of USAC Decisions

The Report recommends that aggrieved parties be required to seek review of USAC decisions by USAC before bringing an appeal to the Commission as a means of reducing the number of appeals coming to the Commission.[22] Section 54.719(c) requires that petitions for review of decisions by the USAC Board of Directors must be brought before the Commission. A good number of appeals brought before the Commission are appeals of USAC final audit reports which are approved by the Board of Directors. The Report did not address these appeals.

Section 54.724 of the Commission's rules provides that the Wireline Competition Bureau or the Commission shall act within 90 days on Petitions for Review of USAC orders and may extend the period for up to 90 days. There are numerous Petitions for Review of USAC audit reports, many of which raise the same issue, that have been pending for longer than six months and often for years with no action by the Wireline Competition Bureau or the Commission.[23]

---

[22] *Id.* at 77.

[23] *See e.g.,* McLeod USA Telecommunications Services, Inc. Request for Review of Universal Service Administrator Decision filed in WC Docket No. 06-122 October 1, 2007; Madison River Request for Review of Decision of Universal Service Administrator filed in WC Docket No. 06-122 December 12, 2008; XO Communications Services, Inc. Request for Review of Decision of the Universal Service Administrator filed in WC Docket No. 06-122 December 29, 2010; Request for Review of PaeTec Communications, Inc. of Universal Service Administrator Decision filed in WC Docket No. 06-122 April 3, 2012; Puerto Rico Telephone Company Request for Review of Decision of the Universal Service Administrator filed in Docket No. 06-122 June 25, 2012; US Link's Request for Review of Universal Service Administrator Decision filed in WC Docket No. 06-122 September 30, 2013; DeltaCom, Inc.'s Request for Review of Universal Service Administrator Decision filed in WC Docket No. 06-122 September 30, 2013. All of these Petitions for Review challenge USAC's reclassification of intrastate private line revenues as interstate. *See also, In the Matter of Universal Service*

The Commission's failure to issue timely decisions is extremely prejudicial to those seeking review and leaves them in a state of regulatory limbo. USAC decisions have real financial impacts on USF contributors and recipients. To the extent the Commission's failure to act on requests for review implicitly allows USAC to proceed on disputed issues without Commission guidance, contributors and recipients suffer the unfortunate consequences.

The Commission's rules setting deadlines for the Commission or the Wireline Competition Bureau to act on Petitions for Review of USAC decisions are meaningless unless the Commission complies with the deadlines. Eliminating the backlog of petitions for review of USAC determinations that are long overdue for decision should be a priority for the Commission. And on a going forward basis, the Commission and the Wireline Competition Bureau should strictly comply with the time deadlines set forth in Section 54.724 of the rules. Creating a publicly available index of all pending Petitions for Review of USAC decisions and the dates they were filed would greatly enhance accountability and transparency.

The staff suggests that "low-dollar" USAC appeals and "those that are consistent with precedent" might be resolved more quickly "with fewer layers of review."[24] Reducing the number of managers that review draft decisions cannot help but speed up the process, but so would compliance with the 90 day deadline set forth in the Commission's rules. While the Report does not define what it means by "low-dollar" USAC appeals, COMPTEL submits that any presumption made with respect to the levels of review necessary to resolve an appeal should be based on the issue raised in the appeal rather than on the dollar amount involved. Even relatively "low-dollar" appeals may

---

Contribution Methodology, WC Docket No. 06-122, Order, DA 14-115 (released Jan. 31, 2014) (granting in part Grande Petition For Review of Universal Service Final Audit Report filed December 28, 2009 regarding classifications of revenues derived from "customer line charge" but relegating other issues raised to be resolved in a separate order).

[24] Report at 12.

raise important issues of industry-wide significance and should receive no less attention or consideration in the review process than higher dollar appeals.

Conclusion

COMPTEL wholeheartedly expresses its gratitude to the Commission and the staff that contributed to the Report for the thorough job done in identifying areas where performance could be better and for providing such thoughtful and positive recommendations for improving the manner in which the Commission does business in the future. COMPTEL respectfully requests that the Commission take action consistent with the recommendations made herein in order to promote and enhance the efficiency, timeliness and transparency of Commission processes.

Respectfully submitted,

/s/

Mary C. Albert
COMPTEL
1200 G Street N.W., Suite 350
Washington, D.C. 20005
(202) 296-6650
malbert@comptel.org

March 31, 2014