

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

In the Matter of
Authority to Issue Subpoenas

ORDER ON RECONSIDERATION

Adopted: November 27, 1995; Released: February 9, 1996

By the Commission:

I. INTRODUCTION

1. In this Order on Reconsideration, we address petitions filed by ICORE¹ and the Personal Communications Industry Association (PCIA)² seeking reconsideration of our order³ delegating certain investigative authority to the Chief, Common Carrier Bureau (Bureau).⁴ For the reasons set forth below, we deny both petitions. We do, however, on our own motion, add several modifications to the Bureau's delegated authority to issue subpoenas.

II. PETITIONS FOR RECONSIDERATION

2. In its petition, PCIA argues that the Commission should reconsider its delegation of subpoena authority to the Bureau and should instead issue a notice of proposed rulemaking to solicit comment on the proper scope of the delegation and to allow for an exploration of the concerns as well of the benefits of such a delegation.⁵ ICORE,⁶ in its petition, asserts that the delegation of subpoena authority to the Bureau is unconstitutional to the extent that it can be construed as applicable to the investigation of connecting carriers.⁷ ICORE contends that because the Commission itself does not have the authority to issue subpoenas to connecting carriers under Title II of the Communications Act of 1934, as amended,⁸ it should limit the scope of the subpoena power granted to the Bureau accordingly.

III. DISCUSSION

3. Neither PCIA's nor ICORE's arguments are meritorious. PCIA makes no persuasive argument to support its claim that we should have initiated a notice and comment rulemaking proceeding to consider the adoption of rules delegating subpoena authority to the Bureau. We emphasize again that our decision to amend Section 0.291 of the Commission's rules⁹ to grant the Bureau subpoena power pertains to agency organization, procedure, or practice. Consequently, the notice and comment requirement and the effective date provisions contained in Sections 553(b) and 553(d) of the Administrative Procedure Act¹⁰ do not apply.

4. Similarly, ICORE's argument that the Commission does not have the authority to issue subpoenas to connecting carriers and, therefore, should limit the Bureau's subpoena power accordingly is unavailing. Whether or not the Commission has the authority to issue subpoenas to connecting carriers is an issue we need not resolve in this proceeding. The *Subpoena Order* simply delegates to the Bureau subpoena authority properly exercised by the Commission. ICORE has provided no support for its contention that this delegation is beyond the scope of the Commission's authority or jurisdiction.

5. We have determined, however, that some modification to the Bureau's subpoena authority is appropriate. We recently issued, on our own motion, an order delegating similar authority to other bureaus within the Commission.¹¹ The delegation of authority in that order differed from the delegation contained in the *Subpoena Order* in three respects.¹² First, we delegated subpoena authority to the bureaus on the condition that before the issuance of a subpoena, each bureau would obtain the approval of the Office of General Counsel (OGC). In conformance with this order, and in keeping with our intent to make language in the delegations of authority to issue subpoenas of all bureaus conform to a requirement for prior approval by OGC, we will amend Section 0.291(j) to add additional language requiring OGC approval before a subpoena is issued.

6. Second, in *Amendment of Part 0*, we qualified the type of subpoena that may be authorized by the bureaus. Specifically, we stated that they are authorized to issue only "non-hearing related" subpoenas.¹³ The delegation of subpoena authority to the Bureau under Section 0.291(j) will be revised to include this qualification.

¹ See "Petition for Reconsideration of ICORE," filed January 26, 1995 (ICORE Petition).

² See "Petition for Reconsideration of the Personal Communications Industry Association," filed January 26, 1995 (PCIA Petition).

³ Authority to Issue Subpoenas, 10 FCC Rcd 707 (1994) (*Subpoena Order*).

⁴ See 47 C.F.R. § 0.291(j), which states:

The Chief of the Common Carrier Bureau or her/his designee is authorized to issue subpoenas for the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, schedules of charges, contracts, agreements, and any other records deemed relevant to the investigation of common carriers for any alleged violation or violations of Title II of the Communications Act of 1934, as amended.

⁵ PCIA Petition at 4.

⁶ ICORE is a privately-owned firm that specializes in research and analysis on behalf of (small and medium-sized independent telephone companies).

⁷ ICORE Petition at 1.

⁸ 47 U.S.C. §§ 201-229.

⁹ 47 C.F.R. § 0.291.

¹⁰ 5 U.S.C. § 553(b), (d).

¹¹ Amendment of Part 0 of the Commission's Rules to Reflect a Reorganization Establishing the Wireless Telecommunications Bureau and to Make Changes in the Delegated Authority of Other Bureaus, 10 FCC Rcd 12751, FCC 95-213 (released June 9, 1995) (*Amendment of Part 0*).

¹² The Commission gave new subpoena authority to the Cable Services, International, Mass Media, and Wireless Telecommunications Bureaus and modified the authority previously delegated to the Compliance and Information Bureau (formerly the Field Operations Bureau).

¹³ See *Amendment of Part 0* at paragraphs 3, 4, 6, and 12; Erratum to *Amendment of Part 0* hreleased August 11, 1995.

7. Third, instead of limiting the other bureaus' subpoena authority to investigations involving violations of particular sections or titles within the Act, we generally granted each of them a broad delegation of subpoena authority over matters within their jurisdiction.¹⁴ We will, therefore, modify the delegation of authority to the Common Carrier Bureau to be consistent in this regard.

IV. CONCLUSION AND ORDERING CLAUSES

8. For the reasons set forth herein, we deny the petitions for reconsideration submitted by PCIA and ICORE. We also make certain revisions to our delegation of subpoena authority to the Bureau. On our own motion, we amend Section 0.291(j) to require the Chief, Common Carrier Bureau to obtain the approval of OGC prior to the issuance of a subpoena, to qualify the type of subpoena that may be authorized, and to extend the delegation of the Bureau's subpoena authority.

9. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 405(a), that the Petitions for Reconsideration filed by PCIA and ICORE ARE DENIED.

10. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), and 154(j), that Section 0.291(j) of the Commission's rules, 47 C.F.R. § 0.291, IS AMENDED as indicated above and as set forth in the attached Appendix. This amendment of the Commission's rules is contained in Appendix A of this Order. The requirement of notice and comment rule making contained in 5 U.S.C. § 553(b) and the effective date provisions of 5 U.S.C. § 553(d) do not apply because this amendment concerns matters of agency organization, procedure, or practice. See 5 U.S.C. § 553(b)(A), (d).

11. IT IS FURTHER ORDERED that this revision to Section 0.291(j), as set forth in the Appendix, IS EFFECTIVE upon the date of publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

Title 47 of the Code of Federal Regulations, Part 0, is amended as follows:

Part 0

1. Authority for Part 0 of Title 47 of the Code of Federal Regulations continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.291(j) is amended to read as follows:

§ 0.291 Authority Delegated

(j) *Authority concerning the issuance of subpoenas.* The Chief of the Common Carrier Bureau or her/his designee is authorized to issue non-hearing related subpoenas for the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, schedules of charges, contracts, agreements, and any other records deemed relevant to the investigation of matters within the jurisdiction of the Common Carrier Bureau. Before issuing a subpoena, the Bureau shall obtain the approval of the Office of General Counsel.

¹⁴ See *id.*