

**Statement of Commissioner Harold W. Furchtgott-Roth
Concurring in Part**

Re: *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Information; Implementation of the Non-Accounting Safeguards Of Section 271 and 272 of the Communications Act of 1934, As Amended. CC Docket Nos. 96-45 and 96-149.*

I support today's Order to the extent that it provides the relief requested by the petitioners. I question, however, the approach that the Commission has taken with respect to certain of the forbearance petitions. While I concur in the result reached in today's Order, I would have preferred reaching it through action taken on these petitions.

I am troubled that the Commission has decided to provide regulatory relief through reconsideration and then use that proceeding as part of the justification for denying full regulatory forbearance as requested. The Commission has determined that the simplest method of dealing with these petitions is to deny the forbearance relief at issue while at the same time providing relief in a separate proceeding. In particular, I am troubled by the approach that the Commission has taken with respect to carriers' use of customer proprietary network information (CPNI) to market customer premises equipment (CPE) and information services. In this respect, I agree with the well-reasoned statement of my colleague, Commissioner Tristani, to the extent that she believes that the Commission's reading of section 222(c)(1)(B) of the Act is "contrary to the plain language of what the Commission previously found to be a 'clear and ambiguous' provision."¹ I only differ from Commissioner Tristani in that I would have reached the same conclusion as the Commission by granting the forbearance petitions on this issue.² I do not understand why the Commission chooses to reach this outcome through a strained interpretation of the statute when the same relief is warranted, and more justifiable, through the forbearance mechanism.

Finally, I write to repeat my position that it is the Commission that may, by the express terms of the statute, extend the initial one-year period for acting on a petition for forbearance by

¹ See Separate Statement of Commissioner Gloria Tristani, Dissenting in Part, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Information; Implementation of the Non-Accounting Safeguards Of Section 271 and 272 of the Communications Act of 1934, As Amended, CC Docket Nos. 96-45 and 96-149. I incorporate by reference Commissioner Tristani's persuasive position on the issue of the Commission's statutory interpretation of this section.

² In fact, I would have gone farther than the Commission in this respect. I would have supported forbearance from the statute for purposes of marketing Internet access services as well. The market for these services is competitive, and I am not convinced that the section 10 criteria are not satisfied with respect to these services.

an additional 90 days if it finds that an extension is necessary to meet the requirements of section 10. I regret that, in the present matter, it was the Bureau and not the Commission that issued the order extending the deadline. Contrary to previous occasions, however, the Common Carrier Bureau, in this instance, consulted with the Commission prior to extending the deadline. Although I continue to believe that the Commission is charged with adopting an order extending the section 10 deadline, I refrain from dissenting on this ground, because in this case, the Bureau received a signal from a majority of the "Commission" that an extension of time is warranted under these particular circumstances.

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