

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Amendment of Procedural Rules)	EB Docket No. 17-245
Governing Formal Complaint)	
Proceedings Delegated to the)	
Enforcement Bureau)	
)	

**REPLY COMMENTS OF
ITTA – THE VOICE OF AMERICA’S BROADBAND PROVIDERS**

ITTA – The Voice of America’s Broadband Providers (ITTA) hereby submits its reply to comments filed in response to the Commission’s Notice of Proposed Rulemaking seeking comment on streamlining the procedural rules for certain formal complaint proceedings delegated to the Enforcement Bureau.¹

I. THE COMMISSION SHOULD ADOPT A SHOT CLOCK FOR RESOLUTION OF FORMAL COMPLAINTS FILED PURSUANT TO SECTION 208(a) OF THE ACT

The *NPRM* seeks comment on whether the Commission should adopt “shot clocks” for formal complaint proceedings.² No commenter opposes adoption of a shot clock for formal complaint proceedings arising under Section 208(a) of the Communications Act of 1934, as amended (Act).³ ITTA agrees with CenturyLink that a shot clock akin to that applicable to

¹ *Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, Notice of Proposed Rulemaking, 32 FCC Rcd 7155 (2017) (*NPRM*).

² *See id.* at 7160, para. 19.

³ *See* 47 U.S.C. § 208(a); *see also* NCTA Comments at 4, Verizon Comments at 2-3 (both supporting shot clocks for Section 208(a) formal complaints). Under Section 208(b) of the Act, tariff investigation complaints are subject to a five-month shot clock. *See NPRM*, 32 FCC Rcd at 7160, para. 19 (citing 47 U.S.C. § 208(b)(1)).

forbearance petitions filed under Section 10 of the Act makes sense.⁴ A shot clock of that duration would best balance benefits of timing certainty and reasonable dispatch with the need for the Commission to amass, and thoughtfully consider, a full record on which to base a decision.

ITTA also agrees that the shot clock should be triggered by the filing of a complaint.⁵ A shot clock timeline akin to the forbearance petition timeline would also help to ensure that there is adequate time for Commission evaluation of the pleadings and evidence in cases where discovery and briefing take longer than usual.⁶

Regardless of the duration of time the Commission affords a shot clock, ITTA concurs that adopting one would enhance the formal complaint process. A shot clock will provide incentives for settlement and give the parties certainty regarding timely and efficient resolution of the complaint by the Commission,⁷ as well as “serve as a valuable case administration tool that would promote work by all the parties involved to resolve complaint proceedings in an expeditious manner.”⁸ It will also eliminate the disincentive, caused by lengthy complaint resolution intervals, for parties to bring legitimate complaints, which can also embolden certain companies to perpetuate unjust and unreasonable practices.⁹

⁴ 47 U.S.C. § 160; *see* CenturyLink Comments at 2.

⁵ *See* NCTA Comments at 4; Verizon Comments at 3; CenturyLink Comments at 2.

⁶ *Cf.* EEI Comments at 6 (proposing a 180-day shot clock for pole attachment complaints, but specifying that the shot clock should be triggered once both parties have fully briefed their cases, in part to avoid a rush to meet the clock in cases where discovery and briefing go long and exhaust most of the 180-day clock).

⁷ *See* Verizon Comments at 2; Electric Utilities Comments at 8 (advocating a shot clock for pole attachment complaints). *See also* *NPRM*, 32 FCC Rcd at 7155, para. 2 (Commission’s goal of “promptly and efficiently address[ing] alleged violations of the Act and the Commission’s rules and orders”).

⁸ CenturyLink Comments at 2.

⁹ *See* Verizon Comments at 2.

II. PARTIES SHOULD NOT BE REQUIRED TO ADDRESS DAMAGES IN THEIR INITIAL COMPLAINT FILING

CenturyLink keenly observes that the *NPRM*'s proposed new Section 1.723 of the Commission's rules, without explanation in the body of the *NPRM*, appears to impose damages-related pleading/filing requirements in the initial formal complaint filing even where damages will be left for resolution in a separate, subsequent proceeding, as is currently permitted and generally customary in the Commission's Section 208 formal complaint processes, and the option for which new Section 1.723 would maintain.¹⁰ As CenturyLink describes, permissive bifurcation of formal complaint proceedings is an extremely valuable tool that enables both the parties to the proceeding and the Commission and its staff to focus their efforts and resources on the merits aspects of a case before expending resources related to the damages aspects of the case which, depending on the resolution of the merits, may render consideration of damages unnecessary.¹¹ Therefore, requiring a damages-related pleading/filing up-front may be inefficient and add unnecessary costs for the parties.¹² In addition, it may have a chilling effect on either the Commission or the parties to the complaint invoking the bifurcation process, as one of the primary advantages of that process is to avoid unnecessary efforts both on the part of the parties to the complaint and the Commission. Given that the *NPRM* – rightfully, in ITTA's view – proposes to retain the bifurcation process,¹³ it does not make sense for the Commission, at the same time, to discourage its utilization.

¹⁰ See CenturyLink Comments at 3-4; *NPRM*, 32 FCC Rcd at 7166-67, Appx. (proposed 47 CFR § 1.723 (b), (c)).

¹¹ See CenturyLink Comments at 3.

¹² See *id.* at 4. While an argument could be made that it is more efficient to state all claims – including damages – up-front, the reality is that it is less so. The bifurcation process facilitates narrowing of the issues and, in many cases, settlement. In the process, the substantive claims for which damages would initially be asserted are narrowed, if not eliminated altogether.

¹³ See *NPRM*, 32 FCC Rcd at 7167, Appx. (proposed new Section 1.723(c)).

For all of the foregoing reasons, ITTA supports CenturyLink's call for the Commission to modify proposed Section 1.723 as to Section 208 complaints so that, when bifurcation of a proceeding occurs and damages are determined in a separate, subsequent proceeding, damages-related pleading/filing requirements only apply to the subsequent damages proceeding.¹⁴

III. CONCLUSION

The mid-size and smaller carriers that comprise ITTA's membership particularly value the option of the Commission's formal complaint process, in lieu of more costly court litigation. ITTA welcomes the *NPRM*'s initiative to streamline and improve the efficiency of the Commission's formal complaint processes and promote their utilization by the public and the industry to address alleged violations of the Act and the Commission's rules and orders, which can be achieved through adoption of a shot clock. To ensure that these procedures do not paradoxically discourage the utilization of the formal complaint resource, the Commission also should refine new Section 1.723 to not require pleading related to damages in the initial formal complaint filing.

Respectfully submitted,

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¹⁴ See CenturyLink Comments at 4.