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

In the Matter of	)
	)
Section 257 Triennial Report to Congress	)
	)
Identifying and Eliminating	)
Market Entry Barriers	)
For Entrepreneurs and Other Small Businesses	)

REPORT

Adopted: December 31, 2003 **Released: February 12, 2004**

By the Commission: Commissioner Abernathy issuing a separate statement; Commissioner Martin approving in part, concurring in part, and issuing a separate statement; Commissioner Adelstein approving in part, dissenting in part, and issuing a separate statement; and Commissioner Copps dissenting and issuing a separate statement

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I. INTRODUCTION AND EXECUTIVE SUMMARY

1. We submit this Report (*2003 Report*) to Congress per its directions in Section 257 of the Communications Act of 1934, as amended (Communications Act).[1] As Congress articulated in Section 257, our mandate is:

> [T]o promote the policies and purposes of this [Communications] Act favoring a diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.[2]

To attain these goals, Congress directed us to identify and eliminate, through regulatory action, "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of

[1] 47 U.S.C. § 257. Congress added Section 257 to the Communications Act through the Telecommunications Act of 1996, Public Law No. 104-104, 110 Stat. 56 (1996) (Telecommunications Act of 1996).

[2] 47 U.S.C. § 257(b).

telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services."[3]

2. To gauge our progress, Congress requires us to submit, every three years, a Report that details our regulatory activity in these areas and that identifies statutory barriers to entry for entrepreneurs and other small businesses.[4] This *2003 Report* is our third submission pursuant to Section 257.[5]

3. The Commission proactively continues to meet its obligations under Section 257 of the Act. We refine our polices and regulations, on a dynamic basis, through, among other things, biennial regulatory reviews and administrative streamlining, to eliminate market entry barriers for entrepreneurs and small businesses. In addition, we meet with members of the small business community and other governmental entities, such as the Small Business Administration, to share information and to learn how we can act, consistent with the public interest, convenience, and necessity, to eliminate market entry barriers for entrepreneurs and small businesses. Through our web portal, which hosts approximately 20 million page views a month,[6] personal contacts, and hardcopy publications, we keep entrepreneurs and the small business community apprised of developments in the telecommunications field germane to their interests.

4. On the legislative front, where we find statutorily created market entry barriers for entrepreneurs and small businesses, we bring them to Congress' attention. Our Office of Legislative Affairs periodically submits proposals for Congress' consideration. In Section III of this 2003 Report, we provide a set of legislative proposals that, if enacted, will either eliminate or lower statutory barriers to market entry for entrepreneurs and small businesses.

5. In this *2003 Report*, we provide information from each Commission Bureau and Office that either conducts substantive rulemakings relevant to entrepreneurs and small businesses or that is directly engaged with the small business community. We report the activities as taking place during the last three years.

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[3] *Id*. § 257(a).

[4] Subsection (c) states: PERIODIC REVIEW.—Every 3 years following the completion of the proceeding required by subsection (a), the Commission shall review and report to Congress on—

> (1) any regulations prescribed to eliminate barriers within its jurisdiction that are identified under subsection (a) and that can be prescribed consistent with the public interest, convenience, and necessity; and
>
> (2) the statutory barriers identified under subsection (a) that the Commission recommends be eliminated consistent with the public interest, convenience, and necessity.

47 U.S.C. § 257(c).

[5] *See Section 257 Report to Congress*, 15 FCC Rcd 15,376 (2000) (*2000 Report*); *Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, 12 FCC Rcd 16,802 (1997) (*1997 Report*).

[6] In 2003, as evaluated by Brown University researchers, the Commission's website ranked 2nd among federal websites. The previous year, it ranked 1st, and in 2001 it ranked 3rd, which was up from the 4th place ranking Brown University researchers gave it in 2000. The researchers used such measures as online services, attention to privacy and security, disability access, foreign language translation, website personalization, and e-mail responsiveness to rate the various websites.

A. Consumer & Governmental Affairs Bureau

- Further streamlining and simplifying the consumer inquiry and complaint process by replacing the paper-based process with an online system from which carriers can access digital images of complaints and respond to the same electronically.

- Promoting deployment of telecommunications services among the nation's sovereign Native American tribes, often through small, tribally-owned and operated entities.

- Developing consumer policy concerning Commission-regulated entities, including common carrier, broadcast, wireless, satellite, and cable companies.

- Reviewing and developing consumer policy to ensure that persons with disabilities have access to telecommunications products and services.

B. Enforcement Bureau

- Mediated (informally) most formal complaints and pre-complaint disputes.

- Sharing jurisdiction with the states to resolve disputes arising from interconnection agreements.

- Investigating allegations of anticompetitive or discriminatory conduct by telecommunications carriers, which could result in barriers to market entry by small competitors.

- Issued more than 280 orders granting small cable television systems temporary waivers of the requirement to install Emergency Alert System (EAS) equipment and begin transmitting national EAS alerts and weekly and monthly EAS tests by October 1, 2002.

- Reduced numerous proposed monetary forfeitures on the basis of inability to pay.

C. International Bureau

- Continued streamlining of earth station licensing, including rulemakings not yet completed, of direct benefit to thousands of small businesses dependent on such stations.

- Completed additional streamlining of the international Section 214 process, thereby lowering costs, further eliminating delays in the authorization of entry, increasing the availability of capital by eliminating unnecessary limits on foreign investment, and reducing reporting burdens.

- Continued, through participation in International Telecommunication Union (ITU) activities, seeking ways to make more spectrum available for small businesses interested in innovative telecommunications enterprises.

- Continuing implementation of the International Bureau's consolidated licensing and application processing system (IBFS), which we designed to lower costs for applicants, and thereby lower barriers to entry for small business.

D. Media Bureau

- Developed transferability procedures to allow small businesses that qualify as eligible entities to acquire existing radio and television broadcast combinations that exceed the new multiple ownership limits in order to encourage new entry.

- Relaxed initial digital television (DTV) build-out requirements for smaller market broadcasters in view of financing concerns regarding construction of DTV facilities.

- Sought public comment on what additional steps may be needed to assist noncommercial stations in the transition to DTV transmission.

- Initiated a proceeding to establish rules, policies, and procedures for the digital conversion of Low Power Television (LPTV), Class A TV, TV translator, and TV booster stations.

- Expanded the electronic filing capability by adding additional forms through the Consolidated Database System (CDBS), thereby helping small entities to obtain Commission authorizations and approvals more independently and access information more readily.

E. The Office of Communications Business Opportunities

- Oversees and assists with Regulatory Flexibility Act (RFA) analyses and certifications for the 100 or more rulemaking items the Commission adopts each year.

- Between March 2002 and April 2003, trained 263 Commission staff members in RFA analyses.

- Partnered with the Small Business Administration (SBA) on November 6, 2003 to offer additional RFA training to Commission staff.

- Training Commission staff who engage in rulemakings to create and publish *Small Entity Compliance Guides*, which will help small businesses understand how our newly released rules apply to them.

- Conducts "ten-year review of rules" per RFA mandate (most recently published 2002 in the *Federal Register*).

- Works with the SBA's Office of Size Standards to adopt appropriate size standards to ensure that Commission initiatives accurately target small entity participation in the telecommunications sector.

- Submits reports for publication in the semi-annual Unified Agenda of Federal Regulatory and Deregulatory Actions (a General Services Administration publication). Our Fall 2003 Report listed and described 134 ongoing rulemakings, which provides information to the public regarding regulations under development.

- Maintains a database of approximately 3,000 small businesses to which it sends information regarding Commission actions, including new service opportunities.

F. The Office of Engineering and Technology

- Further streamlining and simplifying the authorization of equipment process, both domestically and internationally, and easing the regulatory burdens of import and export of regulated equipment.

- Promoting new and innovative services by entrepreneurs and small entities in the unlicensed spectrum market, including additional services that promote application of broadband access, wireless local area networks (WLAN), and several ultra-wideband (UWB) technologies.

- Developing policies to guide the Commission's future reallocation of spectrum and improved use of spectrum by a wider variety of users, including start-up, small equipment, and service providers.

- Conducting studies to support and promote new technologies.

G. Wireless Telecommunications Bureau

- Adopted rules to implement a framework for the development of secondary markets in spectrum usage rights.

- Sought comment on the effectiveness of the Commission's current regulatory tools in facilitating the delivery of spectrum-based services to rural areas, including the value of small business bidding credits in enhancing access to spectrum by entities seeking to serve rural areas, such as rural telecommunications companies.

- Adopted a provision that will increase the number of rural telephone cooperatives that are eligible for small business preferences in competitive bidding for licenses.

- Streamlined competitive bidding procedures by making conforming edits to service-specific competitive bidding rules and portions of the Part 1 general competitive bidding rules.

H. Wireline Competition Bureau

- Released an order that reviewed the state of competition in the customer premises equipment (CPE) and enhanced services markets and ultimately eliminated the CPE bundling restriction for all carriers.

- Adopted an order to clarify the status of customer proprietary network information (CPNI) and streamlined the notice requirements for carriers to obtain limited, one-time use of consumers' CPNI for the duration of an inbound or outbound call with the customer.

- Adopted rules to govern and streamline review of domestic section 214 transfer of control applications.

- Adopted new rules to streamline and privatize the standards development and approval process for terminal equipment (TE).

- Concluded that local exchange carriers (LECs) must provide competing directory assistance (DA) providers that qualify under section 251(b)(3) of the Telecommunications Act of 1996 with nondiscriminatory access to the LECs' local directory assistance databases, and must do so at nondiscriminatory and reasonable rates.

- Adopted rules to determine which equipment a competitive LEC may collocate at an incumbent LEC's premises.

- Required incumbent LECs, including those classified as small entities, to include their cross-connect offerings in their federal tariffs.

- Adopted rules with respect to the unbundling of network elements.

- Developed, adopted, and implemented a number of strategies to ensure that the numbering resources of the North American Numbering Plan (NANP) are used efficiently, and that all carriers have the numbering resources they need to compete.

- Reaffirmed that carriers need only deploy local number portability (LNP) in switches within the 100 largest metropolitan statistical areas (MSAs) for which another carrier has made a specific request for the provision of LNP.

- Adopted rules related to the revenue-based methodology for assessing and recovering contributions to the federal Universal Service mechanisms.

- Adopted rules to provide additional time for recipients under the Schools and Libraries Universal Service Support Mechanism (Support Mechanism) to implement contracts or agreements with service providers for non-recurring services.

- Revised rules to provide that unused funds from the Support Mechanism may be applied to stabilize the amount of contributions to the Universal Service fund for no more than the next three quarters, beginning with the third quarter of 2002.

- Streamlined the operation of the Support Mechanism .

- Modified the interstate access charge and Universal Service support system for incumbent LECs subject to rate-of-return regulation.

- Adopted rules to promote competition among payphone services.

- Adopted rules to establish a reporting program to collect basic information about the deployment of broadband services and the development of local telephone service competition.

- Addressed competitive LEC charges for interstate switched access services and the obligations of interexchange carriers (IXCs) to exchange access traffic with competitive LECs.

- Completed the steps to implement detariffing of the provision of interstate long distance services by non-dominant IXCs.

- Completed the second phase of a comprehensive, biennial review of the accounting and reporting rules prescribed for incumbent LECs.

II. REGULATORY ACTIONS

A. Consumer & Governmental Affairs Bureau

6. In the *2000 Report*, the Commission noted that it created the Consumer Information Bureau (CIB) in 1999 to address the difficulties of obtaining access to information regarding new communications services and related regulated matters. The Commission's creation of the CIB was a significant step towards ensuring the availability of information regarding new services and regulatory proceedings. The CIB, which was a consolidation of the Commission-wide consumer information functions, enhanced efficiencies in providing consumers a single point of contact for obtaining the information they need to make wise choices in a robust and competitive market environment.

7. In an effort to extend further these efforts to address consumer issues, the Commission approved a reorganization of the CIB into the Consumer & Governmental Affairs Bureau (CGB) on

March 25, 2002. In addition to continuing the CIB's functions, the new CGB includes the Consumer Inquiries & Complaints Division, the Consumer Affairs and Outreach Division, the Intergovernmental Affairs Office (IGA), the Policy Division, and the Disability Rights Office (DRO), each of which plays a role in ensuring that market entry barriers are eliminated for entrepreneurs and other small businesses engaged in providing telecommunications services.

1. Consumer Inquiries & Complaints Division

8. The CGB has two consumer information centers, one located in Gettysburg, Pennsylvania, and the other one in Washington, D.C. Both of these centers respond to inquiries on telecommunications issues by providing comprehensive information, and handle complaints received telephonically, over the Internet, via e-mail, facsimile, and by postal mail. The CGB is in the process of streamlining its informal complaint procedures to resolve informal complaints more efficiently, which will benefit consumers and the market.

9. The CGB handles over 1 million consumer contacts each year, including more than 300,000 pieces of correspondence, many of which become informal complaints against common carriers. The Consumer e-Complaint system (CeC) will replace the paper-based complaint process with a new procedure involving scanning and posting of digital images of complaints to a secure Commission website from which carriers can download them. Large and small carriers and consumers have responded favorably to this streamlined process.[7]

2. Intergovernmental Affairs Office

10. The IGA is the Commission's liaison with the nation's sovereign Native American tribes, and is involved with government-to-government discussions regarding the tribes' development of telecommunications services. To promote the development of telecommunications services in Indian Country, the CGB attends meetings organized by the tribes to discuss telecommunications access in their lands. These meetings have included, among others:

- National Congress of American Indians Mid-Year Session, Bismarck, North Dakota (June 2002)
- Confederated Tribes of the Chehalis, Oakville, Washington (July 2002)
- Tribal Technology Workshop, Temecula, California (August 2002) (sponsored by Cerritos College)

11. In addition, the CGB sponsored several programs, including a day-long program, "Telecommunications: The Foundation to Building and Sustaining Economic Development," at the National Summit on Emerging Tribal Economies, Phoenix, Arizona (September 2002). The CGB also hosted a meeting between the National Congress of American Indians (NCAI) Executives and Members of the NCAI Telecommunications Subcommittee, Washington, D.C. (February 2003), which FCC Chairman Michael K. Powell and Commissioners Abernathy, Copps, Martin, and Adelstein attended. At this meeting, FCC Bureau and Office Chiefs gave an overview of activities within their respective organizations.

12. Most recently, the CGB sponsored an Indian Telecommunications Initiative Workshop and Roundtable Discussion in Reno, Nevada (July 2003), which over 100 persons from 20 different tribes in the area attended. The discussion centered on infrastructure feasibility analysis, developing business strategies, financial programs (Universal Service programs and USDA Rural Utilities Services loans), successful tribal telecommunications business strategies, public safety, and homeland security issues.

[7] The CeC received a nomination for the 2003 Government Computer News Award.

13. The purpose of these many meetings, discussions, and workshops is to address the particular concerns of tribal and other providers of telecommunications services to Indian Country, most of which are small businesses. The gatherings provide important information to tribal leaders on telecommunications technologies, on private and public resources available to assist tribal nations, and on developing strategies to improve telecommunications services on reservations. Our goal is to develop ways in which barriers to entry and functioning of small telecommunications businesses in Indian Country can be avoided or overcome.

3. Policy Division

14. In the 2002 reorganization, the CGB added a Policy Division, which is dedicated to the creation and review of consumer-related policy. The Policy Division is responsible for the development of consumer policy concerning Commission-regulated entities, including common carrier, broadcast, wireless, satellite, and cable companies.

15. Through rulemakings and orders for which it has primary responsibility, and by commenting on rulemakings and orders originating in other Bureaus and Offices, the Policy Division ensures that consumer interests are considered in all Commission policy-making activities. The Policy Division's activities include issuing orders resolving complaints concerning unauthorized changes in telecommunications providers (slamming), conducting rulemakings on slamming and other consumer policy issues, including a rulemaking pursuant to the Telephone Consumer Protection Act of 1991 (*TCPA*),[8] which restricts unsolicited advertising using the telephone and facsimile machine, and tracking informal inquiries and complaints to identify trends that affect consumers.

4. Disability Rights Office

16. The DRO is very involved in the review and creation of consumer policy as it pertains to ensuring that persons with disabilities have access to telecommunications products and services. This increased role for the DRO ensures that issues affecting persons with disabilities receive proper attention and appropriate action.

17. The main issues the DRO handles are those related to telecommunications relay services (TRS) and Section 255 of the Telecommunications Act.[9] The DRO is responsible for the certification of the states' TRS programs and their compliance with the Commission's Rules. In addition to its own rulemaking efforts, the DRO also works with other Commission Bureaus and Offices on issues that affect persons with disabilities, such as closed captioning (Media Bureau) or hearing aid compatibility of wireless phones (Wireless Telecommunications Bureau).

18. The following is a discussion of the CGB's rulemaking proceedings as they relate to small businesses.

5. Telephone Consumer Protection Act

19. On July 3, 2003, the Commission released a *Report and Order*[10] revising the rules that it adopted in 1992 pursuant to the *TCPA*, which Congress passed in 1991. In the *TCPA*, Congress created a

[8] Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991) *codified at* 47 U.S.C. § 227. The *TCPA* amended Title II of the Communications Act, 47 U.S.C. § 201 *et seq*.

[9] 47 U.S.C. § 255.

[10] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14,014 (2003) (*Report and Order*).

balance between individual privacy and legitimate telemarketing practices. The Commission crafted its 1992 rules to achieve this balance.

20. In the past decade, the adoption of developing technologies allowed telemarketers to reach more persons by phone and facsimile. Their new marketing techniques, however, are causing concerns about consumers' privacy. Last year, the Commission revisited its 1992 rules to enhance privacy protections while avoiding unnecessary burdens on the telemarketing industry, consumers, and regulators.

21. The Commission released a *Notice of Proposed Rulemaking and Memorandum Opinion and Order* (*2002 Notice*) in September 2002,[11] seeking comment on whether it should revise its 1992 rules to carry out more effectively Congress' *TCPA* directives. In particular, the Commission sought comment on the use of automatic telephone dialing systems, artificial or prerecorded voice messages, and telephone facsimile machines. The Commission also sought comment on the effectiveness of company-specific Do-Not-Call lists and the possibility of establishing a national Do-Not-Call List, as well as the effect of the Commission's proposed policies and rules on small businesses.[12]

22. On March 11, 2003, President Bush signed into law the Do-Not-Call Implementation Act (*Do Not Call Act*),[13] which required the Commission to issue a final rule in the pending *2002 Notice* proceeding within 180 days of March 11, 2003, and to consult with the Federal Trade Commission (FTC) to ensure consistency with rules the FTC promulgated in 2002.

23. As detailed below, the Commission considered significant alternatives in developing the new rules.

6. National Do-Not-Call List

24. Although many businesses, including small businesses, objected to a national Do-Not-Call List, the Commission determined that a national Do-Not-Call List was necessary to carry out Congress' *TCPA* directives.[14] The Commission declined to exempt local solicitations and small businesses from the national Do-Not-Call List, because doing so would undermine the effectiveness of the national Do-Not-Call rules in protecting consumer privacy.[15]

25. In addition, the Commission declined to permit businesses to register their numbers on the national Do-Not-Call List because the *TCPA* expressly contemplates a national Do-Not-Call database for residential telephone subscribers. Businesses may, nevertheless, request that their numbers be added to a specific company's Do-Not-Call list.

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[11] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 17 FCC Rcd 17,459 (2002) (*2002 Notice*).

[12] On July 25, 2003, the American Teleservices Association requested judicial review and a stay of the new rules with the U.S. 10th Circuit Court of Appeals. The court denied the stay request on September 26, 2003; the petition for review is pending.

[13] Do-Not-Call Implementation Act, Pub. L. No. 108-10, 117 Stat. 557 (2003), *to be codified at* 15 U.S.C. § 1601.

[14] We note that political and religious speech calls are not precluded by the national Do-Not-Call List. *Report and Order*, 18 FCC Rcd at 14,039, para. 37.

[15] *Id.* at 14,043-44.

26. To minimize the cost to small businesses of purchasing the national Do-Not-Call List, the Commission considered an alternative and determined that businesses may obtain five area codes free-of-charge. Because many small businesses telemarket within a local area, providing them with five area codes at no cost should help reduce or eliminate the costs of purchasing the national Do-Not-Call List. Furthermore, small businesses can gain access to the national Do-Not-Call List in an efficient, cost-effective manner via the Internet.

27. To reduce the potential for confusion by both consumers and businesses alike, the Commission declined to create a specific exemption from the Do-Not-Call List for small businesses. The exemptions adopted, for calls made to consumers with whom a seller has an "established business relationship"[16] and to those who furnish express agreement to be called, provide small businesses with a reasonable opportunity to conduct their business.

28. The Commission also considered modifying, for small businesses, the time frames for (1) processing consumers' Do-Not-Call requests; (2) retaining consumer Do-Not-Call records; and (3) comparing company calling lists to the national Do-Not-Call List. In doing so, the Commission recognized the limitations on small businesses of processing requests in a timely manner. Therefore, large and small businesses have up to thirty days from the date of request to honor Do-Not-Call requests.

29. The Commission also determined to reduce the retention period of Do-Not-Call records from ten years to five years. This modification should benefit businesses that are concerned about telephone numbers that change hands over time. Finally, the Commission considered allowing small businesses additional time to compare their customer call lists to the national Do-Not-Call database, but the Commission chose to require all businesses to compare their calling lists to the national Do-Not-Call List registry every ninety days.

7. Call Abandonment

30. In the *2002 Notice,* the Commission requested information on the use of predictive dialers and the harms that result when predictive dialers abandon calls. The Commission determined that a 3% maximum rate on abandoned calls balances the interests of businesses that derive economic benefits from predictive dialers and consumers who find calls delivered by predictive dialers intrusive. The Commission believes that this 3% rate will also benefit small businesses that are affected by interruptions from hang-ups and "dead air" calls.

31. We measure the 3% rate over a thirty day period, rather than on a per-day basis. We believe that measuring the 3% rate over a longer period will reduce the overall number of abandoned calls, yet permit telemarketers to manage individual calling campaigns effectively. The 3% rate will also

[16] The Commission modified the current definition of "established business relationship" to limit its duration to eighteen months from any purchase or transaction and three months from any inquiry or application. These timeframes strike an appropriate balance between industry practices and consumer privacy interests. The Commission defined an "established business relationship as:

> a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three (3) months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

Id. at 14,079.

permit telemarketers to comply more easily with the recordkeeping requirements associated with the use of predictive dialers.

8. Unsolicited Facsimile Advertising

32. The record revealed that facsimile advertising can both benefit and harm small businesses with limited resources. The Commission reversed its prior conclusion that an established business relationship provides companies with the necessary express permission to send facsimiles to their customers. Under the amended rules, a business may advertise by facsimile only with the prior, written *express* permission of the facsimile recipient. Businesses may obtain such written permission through direct mail, websites, or during interaction with customers in their stores. These alternatives will benefit small businesses and consumers who are inundated with unwanted facsimile advertisements. On August 18, 2003, the Commission, upon its own motion, extended the effective date to January 1, 2005 for facsimile advertisers to comply with the consent requirements.[17]

9. Website or Toll-Free Number to Access Company-Specific Lists and to Confirm Requests

33. Finally, the Commission declined to require businesses to provide a website or toll-free number for consumers to request placement on company-specific Do-Not-Call lists or to respond affirmatively to Do-Not-Call requests or otherwise provide some means of confirmation for consumers to ascertain whether a company added their names to its Do-Not-Call list, because those requirements would be costly to small businesses. This action should reduce both the potential cost and resource burdens of maintaining company-specific lists for small businesses that engage in telemarketing.

10. Slamming

34. On August 15, 2000, the Commission released its *Third Report and Order and Second Order on Reconsideration* (*Third Report and Order*),[18] in which it adopted rules proposed in the *Second Report and Order and Further Notice of Proposed Rulemaking* (*Section 258 Order*)[19] to implement Section 258 of the Communications Act as amended by the Telecommunications Act of 1996.[20]

35. Section 258 of the Communications Act prohibits any telecommunications carrier from submitting or executing an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service, a practice known as "slamming." The rules the Commission adopted in the *Section 258 Order* improved the carrier change process for consumers and carriers, and made it more difficult for unscrupulous carriers to perpetrate slams.

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[17] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Order on Reconsideration, 2003 WL 21961003 (2003).

[18] *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15,996 (2000) (*Third Report and Order*).

[19] *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order), stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999) (*Stay Order*), *motion to dissolve stay granted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000) (*Order Lifting Stay*).

[20] 47 U.S.C. § 258(a); Telecommunications Act of 1996.

36. In the *Section 258 Order*, the Commission established a comprehensive framework designed to close loopholes that carriers use to slam consumers and to bolster certain aspects of our slamming rules to increase their deterrent effect. The Commission also broadened the scope of the slamming rules to encompass all carriers and imposed more rigorous verification measures.

37. In the *First Reconsideration Order*,[21] the Commission amended certain aspects of the slamming liability rules, granting in part petitions for reconsideration of the *Section 258 Order*. Although the petitions raised a broad range of issues relating to the slamming rules, the *First Reconsideration Order* addressed only those issues relating to the Commission's slamming liability rules, which the U.S. D.C. Circuit Court of Appeals stayed.

38. When the Commission released the *Section 258 Order*, it recognized that additional revisions to the slamming rules could further improve the preferred carrier (PC) change process and prevent unauthorized changes. Thus, concurrent with the release of the *Section 258 Order*, the Commission issued a *Further Notice of Proposed Rulemaking* (*Further Notice*) and sought comment on the following proposals: (1) permitting the authorization and verification of PC changes over the Internet; (2) requiring resellers to obtain their own carrier identification codes (CICs), or, in the alternative, some type of pseudo-CIC that would provide underlying facilities-based carriers and subscribers of resellers with a way to identify the service provider; (3) modifying the independent third-party verification method; (4) defining the term "subscriber" for purposes of authorizing PC changes; (5) requiring carriers to submit reports on the number of slamming complaints they receive; (6) creating a registration requirement for all providers of interstate telecommunications services; and (7) requiring unauthorized carriers to remit to authorized carriers certain amounts in addition to the amount paid by slammed subscribers.

39. On June 30, 2000, President Bush signed into law the Electronic Signatures in Global and National Commerce Act (*E-Sign Act*),[22] which was relevant to the slamming rules and to some of the issues pending in this proceeding. Particularly affected was our proposal in the *Further Notice* to allow the authorization and verification of PC changes using the Internet. With certain exceptions, not relevant here, the provisions of the *E-Sign Act* took effect on October 1, 2000.

40. In the *Third Report and Order*, the Commission adopted a number of the proposals discussed in the *Further Notice*, and addressed the remaining issues raised on reconsideration of the *Section 258 Order*. Specifically, the Commission amended the current carrier change authorization and verification rules to permit the use of Internet letters of agency (LOA) in a manner consistent with the new *E-Sign Act*, directed the North American Numbering Plan Administration (NANPA) to eliminate the requirement that carriers purchase Feature Group D access in order to obtain a CIC, provided further guidance on independent third-party verification, defined the term "subscriber," required each carrier to submit a bi-annual report on the number of slamming complaints it receives, and expanded the existing registration requirement on carriers providing interstate telecommunications service to include additional facts that will assist our enforcement efforts.

41. This *Third Report and Order* also contained a *Second Order on Reconsideration* (*Reconsideration*), upholding the rules governing the submission of PC freeze orders, the handling of PC

[21] *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, First Order on Reconsideration, 15 FCC Rcd 8158 (2000) (*First Reconsideration Order*).

[22] *See Electronic Signatures in Global and National Commerce Act,* S. 761, 106th Cong., 2nd Sess. (signed into law June 30, 2000).

change requests and freeze orders in the same transaction, and the automated submission and administration of freeze orders and changes. In addition, the Commission reaffirmed its decision not to preempt state regulations governing verification procedures for PC change requests that are consistent with the provisions of Section 258.

42. The clarifications and minor modifications the Commission made to its slamming rules in the *Reconsideration* will benefit all carriers, including small carriers, by providing certainty and guidance in the PC change process. For instance, the Commission declined to adopt a thirty day period during which an LOA confirming a carrier change request is considered valid because it does not provide enough flexibility for submitting carriers. Instead, the Commission adopted a sixty day limit as a reasonable time frame, which will provide flexibility but will also avoid consumer confusion that may be produced by an indefinite time period. We do not expect that the sixty day time limit will have any significant economic impact.

43. On February 16, 2001, the Commission released an *Order* amending and clarifying, on its own motion, certain aspects of the reporting and registration requirements it adopted in the *Third Report and Order*. For example, these actions include the requirement that carriers providing telephone exchange service or telephone toll service or both submit semiannual slamming complaint reports. In addition, the *Order* provides further clarification and modification with regard to the carriers to which the registration requirement applies and the information that such carriers must provide.

44. We anticipate that these clarifications and amendments will eliminate or minimize any possible confusion for all affected carriers, including small entity carriers. Without these changes, carriers might have been unclear as to whether they had a duty to comply with the reporting and registration requirements.

11. Informal Complaints

45. On February 28, 2002, the Commission released a *Notice of Proposed Rulemaking* (*NPRM)*, in which it sought comment on a proposal to create a consumer complaint process patterned after our Section 208 informal complaint rules, and to extend this process to all entities we regulate.[23] Currently, the informal complaint rules apply only to complaints against common carriers. The Commission, in the *NPRM*, noted that we handle informal complaints against regulated entities other than common carriers in a less structured manner, which results in a lack of predictability for consumers in filing complaints and for industry in receiving and responding to complaints. Our stated goal of this proceeding is to establish, to the maximum extent possible, a consistent procedure for the handling of all informal consumer complaints. We did not, however, propose to limit or otherwise alter any remedies and procedural options in areas in which we already established specific informal complaint procedures.

46. The Commission also sought comment on whether the streamlining proposals, if adopted, would impose an unnecessary burden on small regulated entities, as defined by the Regulatory Flexibility Act (RFA).[24] For example, in the *NPRM*, the Commission asked whether it should extend the time for small entities to respond to complaints to avoid taxing their limited time and financial resources. The

[23] *Establishment of Rules Governing Procedures to Be Followed When Informal Complaints Are Filed by Consumers Against Entities Regulated by the Commission,* Notice of Proposed Rulemaking, *Amendment of Subpart E of Chapter 1 of the Commission's Rules Governing Procedures to Be Followed When Informal Complaints Are Filed Against Common Carriers, and 2000 Biennial Regulatory Review*, Memorandum Opinion and Order, 17 FCC Rcd 3919 (2002) (*NPRM)*.

[24] Regulatory Flexibility Act of 1980, *as amended*, 5 U.S.C. §§ 601-612.

Commission requested commenters to make specific suggestions regarding how the proposals described in the *NPRM* might be adjusted in the case of small regulated entities.

12. Telecommunications Relay Service

47. Title IV of the Americans with Disabilities Act (*ADA*), which is codified at Section 225 of the Communications Act,[25] mandates that the Commission ensure that interstate and intrastate TRS are available, to the extent possible and in the most efficient manner, to individuals in the U.S. with hearing and speech disabilities.

48. Title IV aims to further Congress' goal of Universal Service by providing, to individuals with hearing or speech disabilities, telephone services that are functionally equivalent to those available to individuals without such disabilities. Since the establishment of this mandate, the Commission took numerous steps to increase the availability of TRS, and to ensure that TRS users have access to the same services available to all telephone service users.[26]

a. Memorandum Opinion and Order and FNPRM

49. On November 9, 2000, the Interstate TRS Advisory Council and the TRS Fund Administrator (Advisory Council and Fund Administrator, respectively) proposed guidelines for interstate cost recovery for traditional TRS, speech-to-speech relay (STS), and video relay services (VRS).

50. They filed recommendations in response to the March 6, 2000 *Improved TRS Order*,[27] which required the Advisory Council and the Fund Administrator to develop cost recovery guidelines for these services. On April 6, 2001, Hamilton Telephone Company (Hamilton) filed a request for clarification of the scope of the VRS rules and for a two year waiver of certain provisions relating to VRS contained in the *Improved TRS Order*.[28]

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[25] 47 U.S.C. § 225 *et seq*.

[26] *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Order, 8 FCC Rcd 8385 (1993) (*1993 Suspension Order*); *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Order, 10 FCC Rcd 12,775 (1995) (*1995 Interim Suspension Order*); *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Memorandum Opinion and Order, 10 FCC Rcd 10,927 (1995) (*Alternative Plan Order*). The Commission extended the suspension seven times, with the most recent extension expiring on May 26, 2001. The Commission, later suspended the rules pending the adoption of final rules. *See 1993 Suspension Order*, 8 FCC Rcd 8385; *1995 Interim Suspension Order*, 10 FCC Rcd 12,775; *Alternative Plan Order*, 10 FCC Rcd 10,927; *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Order, 12 FCC Rcd 12,196 (1997) (*1997 Suspension Order*); *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Order, 13 FCC Rcd 15,453 (1998) (*1998 Suspension Order*); *Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, Order, 15 FCC Rcd 6675 (1999) (*1999 Suspension Order*); *Telecommunications Relay Services, and the Americans with Disabilities Act of 1990,* Order, 15 FCC Rcd 15,823 (2000) (*2000 Suspension Order*); *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Second Further Notice of Proposed Rulemaking, 16 FCC Rcd 5803 (2001) (*Coin Sent-Paid Second Further Notice*).

[27] *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140 (2000) (*Improved TRS Order*); Order on Reconsideration, 16 FCC Rcd 4054 (2000).

[28] Hamilton Telephone Company, *Request for Clarification and Temporary Waivers* (filed Apr. 6, 2001).

51. On December 21, 2001, the Commission released a *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* (*MO&O* and *FNPRM*) addressing Hamilton's request for clarification.[29] Therein, the Commission concluded that the cost recovery guidelines adopted in the *MO&O* and *FNPRM* would have no adverse economic impact on small entities because it designed the rules to allow all providers, including small entities, to be accurately reimbursed. Given that the Advisory Council, which suggested guidelines for the proposed rules, consists of members of state regulatory bodies, relay users, members of the disabilities community, large and small TRS providers, and large and small TRS contributors, the cost recovery measures adopted in the *MO&O* resulted from industry and small business input.

52. The Commission considered certain alternatives and found the measures adopted in its proceeding to be the most appropriate. For example, for Spanish language relay, the Commission considered the alternative of requiring that the costs be collected separately and tested to determine whether they are significantly different from English relay costs. After analyzing the issues, the Commission concluded that Spanish and English relay costs were sufficiently similar to calculate reimbursement based on completed conversation minutes for both Spanish and English relay.

53. In addition, because of the unique characteristic of the developing VRS market, the Commission declined to adopt permanently the alternatives suggested by the Advisory Council and the Fund Administrator, i.e., the recommendation to use the same methodology for rate development in place today for traditional TRS interstate cost recovery for the development of a VRS reimbursement rate. The Commission also declined to develop, as an alternative, a VRS reimbursement rate based on completed conversation minutes of use at a national average reimbursement rate. The Commission sought additional comments on these issues.

54. The *MO&O* directs the Fund Administrator to adopt an interim VRS cost recovery rate using the average per minute compensation methodology used for traditional TRS. Use of an interim methodology will allow the Commission additional time to consider further VRS cost recovery and evaluate the comments anticipated on these recommendations in response to the *Further Notice.* Thus, while we considered significant alternatives, the Commission believes that the actions it took in the *MO&O* are in the best interests of all entities, including small businesses.

b. Declaratory Ruling and Second FNPRM

55. On April 22, 2002, the Commission released a *Declaratory Ruling and Second FNPRM* (*Declaratory Ruling*)[30] addressing a Petition for Clarification (Petition) filed by WorldCom, Inc. (WorldCom) on December 22, 2000.[31] In its Petition, WorldCom requested that the Commission clarify that IP Relay is eligible for reimbursement from the interstate TRS Fund.

56. The Commission concluded that IP Relay falls within the statutory definition of TRS and that providers of such services are eligible to recover their costs in accordance with Section 225 of the Act. As a result of the WorldCom Petition and comments, the Commission issued the *Declaratory Ruling*

[29] *Telecommunications Services for Individuals with Hearing and Speech Disabilities*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 22,948 (2001).

[30] *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779 (2002).

[31] WorldCom, Petition for Clarification, *Telecommunications Services for Individuals with Hearing and Speech Disabilities* (filed Dec. 22, 2000).

to allow WorldCom to recover its costs.

57. This item imposes a regulatory burden on the interstate Fund Administrator, requiring it to pay qualified providers of IP TRS for their costs associated with TRS. The interstate TRS Fund is a not-for-profit organization, and therefore is a "small organization," defined as "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[32]

58. Because the interstate TRS Fund is the only entity affected by the *Declaratory Ruling*, the Commission concluded that a "substantial number" of small entities will not be affected by the *Declaratory Ruling*. Therefore, the requirements of the *Declaratory Ruling* will not have a significant economic impact on a substantial number of small entities.

c. Fifth Report and Order

59. On October 25, 2002, the Commission released its *Fifth Report and Order on TRS*[33] (*Fifth Report and Order on TRS*), in which it concluded that carriers need not provide coin sent-paid TRS calls from payphones, because it was infeasible to provide coin sent-paid relay service through payphones at that time, and because coin sent-paid functionality was not necessary to achieve functional equivalence.

60. The *ADA* requires the Commission to establish functional requirements, guidelines, and operational procedures for TRS, and to establish minimum standards for carriers' provisioning of TRS. To achieve functional equivalence to telephone services available to voice users, Congress directed, among other things, that the Commission prohibit TRS providers from "failing to fulfill the obligations of common carriers by refusing calls."[34] In the *First Report and Order on TRS*,[35] the Commission interpreted this *ADA* mandate to require TRS providers to handle "any type of call" normally provided by common carriers, such as coin sent-paid calls (i.e., calls made by depositing coins in a coin-operated public payphone).

61. Subsequent concerns about the technical difficulties associated with handling coin sent-paid calls through TRS centers, however, resulted in the Commission repeatedly suspending the mandate for TRS providers to handle these types of calls. For example, because no current technological solution to the coin sent-paid issue appears feasible at this time, the *Fifth Report and Order on TRS* eliminated the coin sent-paid requirement and encouraged specific outreach and education programs to inform TRS users of their options when placing calls from payphones.

62. As discussed below, no steps are needed to minimize the economic impact of the *Fifth Report and Order on TRS* on small businesses nor is it necessary to consider alternatives to minimize the economic impact on small businesses. First, the requirements in the *Fifth Report and Order on TRS* will have minimal impact on small entities because the requirements pertain to actions already being

[32] According to *Independent Sector*, The New Nonprofit Almanac & Desk Reference (2002), nationwide there are approximately 1.6 million small organizations in the U.S.

[33] *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Fifth Report and Order, 17 FCC Rcd 21,233 (2002) (*Fifth Report and Order on TRS*).

[34] 47 U.S.C. §225(d)(1)(E).

[35] *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act*, First Report and Order, 6 FCC Rcd 4657 (1991).

undertaken under the *Alternative Plan*,[36] including the provision of free local calling from payphones and the submission of a one-time report to the Commission twelve months after final rules are adopted in this proceeding, detailing the steps taken to comply with the consumer education recommendations contained in the *Fifth Report and Order on TRS*.

63. Second, although the *Fifth Report and Order on TRS* recommends an extensive consumer outreach program, the program is only recommended, not required. Consequently, the Commission concluded that its action should not adversely affect any small entities. On the other hand, the recommendations aid all affected entities, including small businesses, as states and carriers consider such costs when entering into their contracts and determining their general overhead expenses.

13. Wireless Communications and Public Safety Act of 1999

64. On December 11, 2001, the Commission released its *Fifth Report and Order and Memorandum Opinion and Order on Reconsideration*[37] (*Order*) taking further steps to implement provisions of the Wireless Communications and Public Safety Act of 1999 (*911 Act*),[38] which Congress enacted to promote public safety through the deployment of a seamless, nationwide emergency communications infrastructure that includes wireless communications services.

65. In the *Order*, the Commission adopted a (1) maximum period, generally ending nine months after the release of the *Order,* for carriers to transition to routing 911 calls to a public safety answering point (PSAP) in areas where one has been designated or, in areas where a PSAP has not yet been designated, either to an existing statewide established default point, if one exists, or, if not, to an appropriate local emergency authority; (2) addressed steps the Commission would take to encourage and support states in their efforts to develop and implement end-to-end emergency communications infrastructure and programs for the improved delivery of emergency services to the public; and, (3) clarified that VHF Public Coast Station licensees are not required to use 911 dialing for accessing emergency services to the extent that they are providing maritime services.

66. The Commission did not establish less stringent requirements for small entities in this proceeding because the critical public safety issues of concern and because of legislative mandate. The results of delayed or insufficient response to wireless 911 calls can be equally fatal whether the carrier involved is a large or small entity.

67. When given alternatives that do not compromise the public safety goals of the *911 Act*, but offer all entities the flexibility to carry out their responsibilities in a way that is tailored to their individual locality and respective needs, the Commission chose the more flexible option. For example, in

[36] *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Memorandum Opinion and Order, 10 FCC Rcd 10,927 (1995) (*Alternative Plan Order*). In 1993, an industry team was created to resolve the technical problems associated with handling coin sent-paid relay calls. Industry proposed the Alternative Plan to enable individuals to make relay calls from payphones using payment methods other than coins. In the *Alternative Plan Order*, the Commission concluded that providing coin sent-paid relay service was not technically feasible at that time but that the technology proposed by industry would have serious drawbacks. Based on its findings, the Commission suspended the TRS coin sent-paid requirement until August 26, 1997, and adopted the Alternative Plan for the two year interim period.

[37] *Implementation of 911 Act*, Fifth Report and Order, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 22,264 (2001) (*Order*).

[38] Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, enacted Oct. 26, 1999, 113 Stat. 1286, amending the Communications Act, §§ 222, 251 (*911 Act*).

areas where there is neither a PSAP nor a statewide default answering point, many of which are served by small carriers or are governed by small entities, an existing local law enforcement agency, such as a county sheriff, could serve as the local emergency authority.

68. Similarly, the Commission recognized the need for a transition period, noting the fluid nature of technology, and provided a flexible transition period that will allow both large and small carriers time to complete the technological updates and coordination that may be necessary to provide 911 services, and to educate the public regarding 911 services.

69. Also, in establishing a flexible transition period, the Commission recognized that individual service areas face different technical and operational measures. The Commission thus provided, for example, different timetables for operation depending on whether a designated PSAP is in place.

70. The Commission, faced with a legislative mandate to monitor the progress of carriers in the transition to 911,[39] adopted a requirement for carriers to file transition reports on a limited basis. The adopted requirement states that only those carriers providing service in areas where 911 is not in use as the emergency number on the date of enactment of the *911 Act* file two reports.[40]

71. The filing of the reports is limited to those counties where there is no 911 service, those counties that are in the process of implementing 911, and those counties that have basic 911 service only in some parts. The first report was due on March 11, 2002, three months after the December 11, 2001 release of the *Order*. Further, the Commission ordered that the second report must be filed with the Commission within fifteen calendar days after the end of a carrier's transition period. Although the actual regulation is less burdensome overall on all carriers, it is likely that those entities that do not yet offer 911 service would be small entities as defined by the Small Business Administration (SBA). Hence, it is likely that such a filing requirement may impact rural and small carriers.

72. The Commission recognizes that the burden for making progress towards 911 implementation will fall, during the transition period, mainly on small and rural entities because they are most likely to have the most progress to make in implementing 911. In establishing the limited transition report requirement, the Commission suggested carriers might, at their option, consolidate reporting and eliminate redundant reports by filing the two transition reports collectively, thus saving time and money.[41] The Commission intends that the transition reports will provide it with information leading to solutions to the unique problems faced by small entities in the implementation of 911 service. In addition, the Commission hopes the reporting process will generate a cooperative dialogue regarding how entities with similar problems can resolve such issues.

B. Enforcement Bureau

73. Since its inception in 1999, the Enforcement Bureau took a number of steps to reduce barriers to entry for small businesses. The Enforcement Bureau made it easier and less costly for small businesses to bring anti-competitive behavior to the Commission's attention, and to resolve disputes with other carriers. The Commission took strong enforcement action to deter illegal, anti-competitive behavior

[39] *Id*. (requiring the Commission to ensure an expeditious transition to 911).

[40] *Order*, 16 FCC Rcd at 22,281, para. 43.

[41] *Id*. at 22,282, para. 45.

on the part of the largest carriers. And, when small businesses themselves are the targets of enforcement actions, the Commission tailors its enforcement actions to their size.

1. Complaint Mediation

74. To expedite problem solving among common carrier industry participants, the Enforcement Bureau's Market Disputes Resolution Division engages in informal mediation of most formal complaints and pre-complaint disputes. This type of alternative dispute resolution facilitates private resolution, obviating the need for costly litigation. This also frees Commission resources for unresolved disputes that result in formal complaints, and, therefore, reduces the average amount of time it takes the Commission to decide those complaints. The Enforcement Bureau mediated over sixty disputes in 2002 and successfully resolved almost two-thirds of those disputes.

2. Interconnection Agreements

75. The Commission recently decided two complaint cases filed with the Market Disputes Resolution Division affirming that the Commission has jurisdiction (shared with states) to resolve disputes arising from interconnection agreements.[42] Procedurally, these actions confirm that rivals of the largest telephone companies may use the Commission as an additional forum to resolve interconnection agreement disputes.[43] Substantively, in both cases the competitive local exchange carrier (LEC) prevailed on at least some of its claims that the large incumbent LECs were engaging in anti-competitive behavior.[44]

3. Investigations

76. The Enforcement Bureau's Investigations and Hearings Division investigates allegations of anticompetitive or discriminatory conduct by telecommunications carriers, which could result in barriers to market entry by small competitors. We design these investigations to identify, correct, and deter violations of the Communications Act and the Commission's Rules through monetary forfeitures and other enforcement tools. The investigations also enable the Enforcement Bureau to spot significant industry problems and identify bad actors, without the filing of formal complaints. In one area of particular interest, the Investigations and Hearings Division initiated a Section 271 compliance review program.[45] Competing carriers can view on the Commission's website the engagement letters that describe the program, identify the areas of interest in the review, and identify the attorney-auditor team responsible for the compliance review.[46]

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[42] *Core Communications, Inc. and Z-Tel Communications, Inc. v. SBC Communications, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 7568 (2003) (*Core and Z-Tel v. SBC*), *petition for recon. pending*; *Core Communications, Inc. v. Verizon Maryland Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 7962 (2003) (*Core v. Verizon*), *petition for recon. pending*.

[43] *See Core and Z-Tel v. SBC*, 18 FCC Rcd at 7574, para. 13; *Core v. Verizon*, 18 FCC Rcd at 7971, para. 22.

[44] *See Core and Z-Tel v. SBC*, 18 FCC Rcd at 7576, para. 20; *Core v. Verizon*, 18 FCC Rcd at 7975-76, paras. 31-33.

[45] *See* 47 U.S.C. § 271.

[46] *See* http://www.fcc.gov/eb/LoTelComp/271.html.

77. The Investigations and Hearings Division's recent work resulted in three separate consent decrees with former Bell Operating Companies (BOCs) totaling $13.6 million.[47] Each consent decree resolved investigations into whether the companies got a jump start on competitors in the long distance market in their former Bell regions. The Commission also recently imposed a $6 million forfeiture in a fourth enforcement action.[48] The Commission found in that case that SBC unlawfully denied competitors access to the shared transport unbundled network element in SBC's former Ameritech states.[49]

4. Small Cable System Waivers

78. The Enforcement Bureau, through its Spectrum Enforcement Division, issued more than 280 orders granting small cable television systems temporary waivers of the requirement in Section 11.11(a) of the Commission's Rules that cable systems serving fewer than 10,000 subscribers from a headend install Emergency Alert System (EAS) equipment and begin transmitting national EAS alerts and weekly and monthly EAS tests by October 1, 2002. The Enforcement Bureau granted the temporary waivers, which range from twelve to thirty months, based on a showing that the cost of installing EAS equipment would impose a financial hardship on the small cable systems. Most of the systems that received waivers serve fewer than 500 subscribers per headend.

5. Forfeitures

79. Finally, in determining the amount of monetary forfeitures to impose on small businesses, the Commission applies section 503(b)(2)(D) of the Act, which requires the Commission to consider a target's ability to pay.[50] The Commission reduced proposed forfeitures on this basis in numerous cases. This analysis includes applications, as necessary, of Section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which requires, *inter alia*, that federal agencies establish a "policy or program . . . to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity."[51] Since October 1, 2002, when the Commission began tracking its enforcement actions against small entities, the Enforcement Bureau issued nine *Notices of Apparent Liability* to companies claiming small entity status.

[47] *See Qwest Communications Int'l, Inc.*, Order, 18 FCC Rcd 10,299 (2003) ($6.5 million consent decree in which Qwest admitted to provisioning long distance services in its local service region before receiving Commission authorization); *Verizon Telephone Companies*, Order, 18 FCC Rcd. 3492 (2003) ($5.7 million consent decree in which Verizon admitted to marketing long distance services in its local service region before receiving Commission authorization); *BellSouth Corp.*, Order, File Nos. EB-02-IH-0683 and EB-02-IH-0805, 2003 WL 21664691 (rel. July 17, 2003) ($1.4 million consent decree resolving two investigations into whether BellSouth provisioned and marketed long distance services before receiving Commission authorization, and related non-discrimination and separate affiliate requirements).

[48] *See SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 19,923 (2003), *petition for review pending sub nom. SBC Communications, Inc. v. FCC*, No. 03-1147 (D.C. Cir. filed May 23, 2003).

[49] *See id*.

[50] 47 U.S.C. § 503(b)(2)(D); *see The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17,087, 17,101, para. 27 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (*Policy Statement*); 47 C.F.R. § 1.80(b)(4), Note to (b)(4).

[51] Pub. L. No. 104-121, 110 Stat. 847 (1996); *see Policy Statement*, 12 FCC Rcd at 17,109, paras 51-52.

C. International Bureau

80. The International Bureau is taking action in several areas to continue removing barriers to entry for small businesses. First, continued streamlining of earth station licensing, including rulemakings not yet completed, directly benefit the thousands of small businesses dependent on such stations. Second, additional streamlining of the international Section 214 process lowers costs and further eliminates delays in the authorization of entry, increases the availability of capital by eliminating unnecessary limits on foreign investment, and reduces reporting burdens. Third, through participation in International Telecommunication Union (ITU) activities, the Commission engages proactively with other countries to make spectrum available for small businesses interested in innovative telecommunications enterprises. The Commission achieves this through the pursuit of new allocations as well as technical and regulatory solutions that promote efficient spectrum use. Fourth, the International Bureau's consolidated licensing and application processing system is designed to lower costs for applicants, and thereby lower barriers to entry for small businesses. This system also provides easier availability of data for small businesses. Fifth, the International Bureau's initiatives on detariffing and international settlements policy (ISP) led to significant reductions in regulatory burdens for many small businesses, increased the competitiveness of the market, and facilitated lower international communications costs for all users, including small businesses. Sixth, the International Bureau continues to streamline and reform the procedures for obtaining satellite and submarine cable landing licenses. Finally, the International Bureau continues to revise outdated reporting requirements to reduce reporting burdens where possible.

1. Streamlining Earth Station Licensing

81. Thousands of small businesses in the U.S. use "earth stations," which are antennas that pass information back and forth to satellites. In December 2000, the Commission released a *Notice of Proposed Rulemaking* and began a proceeding that will, when completed, facilitate more routine licensing of earth stations, thereby expediting the provision of satellite services to the public without increasing the risk of harmful interference to existing earth stations, space stations, or terrestrial wireless operators.[52]

82. In September 2002, the Commission adopted a *Further Notice of Proposed Rulemaking* in the same proceeding to consider additional proposals advanced by industry members for streamlining the earth station licensing rules.[53] The proposals are now pending further Commission action. Among other actions, the proposals include:

- Relaxing power and power density requirements, and allowing some temporary fixed earth stations to begin operation sooner;
- Streamlining the very small aperture terminal (VSAT) rules; and
- Adopting a simplified license application form for "routine" earth stations.

83. Building upon initiatives undertaken during the 2000 Biennial Regulatory Review period, the International Bureau extended its auto-grant earth station licensing program to routine earth station

[52] *2000 Biennial Regulatory Review—Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Notice of Proposed Rulemaking, 15 FCC Rcd 25,128 (2000) (*Part 25 Earth Station Streamlining NPRM*).

[53] *2000 Biennial Regulatory Review—Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Further Notice of Proposed Rulemaking, 17 FCC Rcd 18,585 (2002) (*Part 25 Earth Station Streamlining Further NPRM*).

applications proposing to use the C-band fixed-satellite service frequencies (3700-4200 MHz/5925-6425 MHz) to communicate with all satellites authorized to provide service to the U.S.[54]

84. As part of the 2000 Biennial Regulatory Review process, the Commission instituted a rulemaking proceeding to consider whether to increase the proportion of earth station applications that can be considered on a routine basis.[55] In addition, the Commission invited comment on two proposals for streamlining the procedures for non-routine earth station applications considered on a case-by-case basis. One procedure would allow the Commission to require the applicant proposing a small antenna to operate at a lower power level, to compensate for the use of the smaller antenna diameter.[56] The second procedure would allow applicants to submit affidavits from operators of satellites potentially affected by the proposed non-routine earth station, showing that the operation of the non-routine earth station had been coordinated with other affected satellite systems.[57] The Commission is also considering a number of other streamlining measures, such as allowing routine Ku-band temporary-fixed earth stations to begin operations immediately upon placement of the application on *Public Notice*, rather than waiting for license grant.[58] The Commission issued the *Further Notice of Proposed Rulemaking* to consider additional proposals advanced by the satellite industry. These industry proposals include revisions to the Part 25 technical requirements that would enable the Commission to consider more earth station applications on a routine basis.[59] These proposed changes to the Commission Rules, if adopted, would lead to further streamlining of the Commission's procedures benefiting all applicants, especially small businesses.

2. Streamlining 214 Procedures

85. The Commission implemented numerous streamlining procedures to reduce administrative regulatory barriers to entry into the U.S. international telecommunications service market, many of which benefit small businesses. As early as 1985, the Commission began a process of streamlining its Section 214 international telecommunications licensing procedures.[60] In 1996, the Commission streamlined the application process for certain categories of international Section 214 authorizations by creating an expedited process for global, facilities-based Section 214 applications.[61] In 1999, the Commission continued its efforts to reduce possible barriers to entry by increasing the number of applications to provide international service eligible for streamlined processing.[62] The Commission

[54] *See Commission Launches C-Band Earth Station Streamlining Initiative,* Public Notice, 15 FCC Rcd 24,075 (2000).

[55] *See Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd 25,128.

[56] *Id.* at 25,135-36, paras. 15-19.

[57] *Id.* at 25,136-37, paras. 20-24.

[58] *Id.* at 25,143, para. 42.

[59] *Part 25 Earth Station Streamlining Further NPRM*, 17 FCC Rcd 18,587-88, paras. 25-28.

[60] 47 U.S.C. § 214; *see International Competitive Carrier Policies*, Report and Order, 102 FCC2d 812 (1985), *recon. denied* 60 RR2d 1435 (1986); *modified*, *Regulation of International Common Carrier Services*, Report and Order, 7 FCC Rcd 7331 (1992).

[61] *See Streamlining the International Section 214 Authorization Process and Tariff Requirements*, Report and Order, 11 FCC Rcd 12,884 (1996).

[62] *Id.*; *see 1998 Biennial Regulatory Review-Review of International Common Carrier Regulations*, Report and Order, 14 FCC Rcd 4909 (1999).

also sought to increase foreign investment in U.S. international telecommunications by streamlining the application process for companies affiliated with foreign carriers following a finding that such investment furthers the public interest,[63] and by reducing regulatory and reporting requirements on companies doing business with foreign carriers. These deregulatory efforts significantly reduce barriers to entry for small businesses seeking to attract foreign capital or to provide U.S. international telecommunications services.

86. In 2002, as part of the 2000 Biennial Regulatory Review process, the Commission took steps further to remove unnecessary burdens on international carriers. In the *International 2000 Biennial Review Order*, the Commission revised the rules for *pro forma* transfers and assignments of international Section 214 authorizations to give carriers greater flexibility in structuring transactions.[64] These changes assist all carriers, including small businesses, by making the rules more consistent with those procedures used for other service authorizations, particularly for the Commercial Mobile Radio Service (CMRS).[65]

3. Spectrum

87. Wireless mobile telecommunications in the U.S., aided by the on-going joint efforts of industry and government, are developing into global systems. Higher capacity systems, with enhanced and more flexible service capabilities, continue to develop. Demand for these devices continues to escalate, and when coupled with the growing attractiveness of new high performance features, spectrum becomes an even more precious commodity. The Commission is part of an effort to make more spectrum available for new wireless services. Internationally, within the schedule of ITU activities, the Commission works with other agencies to find additional spectrum for licensed and unlicensed, domestic and global wireless services. Additional spectrum utilization opportunities can arise either through efficiencies brought about by further advances in technology, i.e., by compressing existing user requirements into less bandwidth, or by the allocation of additional spectrum via domestic or global allocation processes. The International Bureau is coordinating many activities using both approaches.

88. The Commission works closely with terrestrial and satellite wireless industry representatives preparing and attending ITU, the World Radiocommunication Conference (WRC) and study groups in the radio communication, telecommunication, and development sectors. Here, experience proves that advances in technology and standardization will ultimately lead to significant growth in small business opportunities, including export, whether it is in equipment design and manufacture, new software development, creative applications of existing intellectual property, or the provision of new services. The International Bureau is fully committed to making every effort to optimize spectrum utility to facilitate the entry of new users, including small businesses, and to promote new and innovative uses. For example, the WRC made spectrum allocations and decisions regarding various new satellite and terrestrial wireless services, including Wi-Fi, which allows wireless communication within short-ranges, and broadband-in-flight, which provides high-speed Internet access to airline passengers.

89. The importance of spectrum to small new firms is illustrated by the agreement reached in mid-2000, after two years of negotiations, between the U.S. and Mexico delineating provisions for the coordination and use of frequencies by Satellite Digital Audio Radio Services (DARS) and terrestrial services including the Wireless Communications Services (WCS) in the border area. The agreement is a

[63] *See Market Entry and Regulation of Foreign-affiliated Entities*, Report and Order, 11 FCC Rcd 3873, 3881 (1995).

[64] *2000 Biennial Regulatory Review: Amendment of Parts 43 and 63 of the Commission's Rules*, IB Docket 00-231, Report and Order, 17 FCC Rcd 11,416 (2002) (*International 2000 Biennial Regulatory Review Order*) *review pending sub nom. Cellco Partnership et al. v. FCC*, case nos. 02-1262, 02-1268 (D.C. Cir).

[65] *International 2000 Biennial Regulatory Review Order,* 17 FCC Rcd at 11,418, para. 4.

major benefit for the small businesses seeking to develop DARS service as it establishes long-term stability for DARS, WCS, and other terrestrial systems operating in the border area. This agreement will benefit both U.S. and Mexican consumers. It is a significant step forward in the introduction of new nationwide radio programming with compact disc quality sound. The U.S. licensed two satellite DARS providers, Sirius Satellite Radio and XM Satellite Radio, which have initiated service to the public and together account for more than 1.2 million subscribers as of the end of 2003.

4. Electronic Filing Initiatives

90. To reduce paper filings and make use of new Internet technologies to improve processing efficiency, the International Bureau developed a consolidated licensing and application processing system known as the International Bureau Filing System (IBFS). Implementation of the pilot IBFS web modules began in February 1999. The IBFS allows for electronic filing of applications for International Bureau service areas, facilitating the following applications and filings: (1) space station authorization and special temporary authority; (2) earth station authorization and special temporary authority; (3) space and earth station application for modification of current authorization; (3) Section 214 international authorization and special temporary authority; (4) cable landing license; (5) accounting rate change; (6) recognized operating agency; (7) international signaling point code; (8) request for data network identification code; (9) and foreign carrier affiliation notification filings.

91. The IBFS provides many benefits to applicants. Under the traditional method of paper filing, procedures for many types of applications before the Commission require the applicant to file an original copy and multiple photocopies of an application with the Commission. Also, unlike many automated systems that require entities to follow up their electronic data submissions with paper submissions, the IBFS electronic filing requires no further action on the part of the applicant. The IBFS eliminates all paper filing requirements for applications, including the requirement to file the Commission's Remittance Advice Form, when filers choose to pay for their applications via on-line credit card. This reduces applicants' time and administrative filing costs. Software features in the IBFS also enable applicants to copy easily information from existing applications to subsequent applications. These features benefit those applicants who need to file multiple versions of similar applications.

92. Moreover, the IBFS "demystifies" the process, making it easier for applicants to initiate filings, especially the new entrants to the market, without the need to retain outside counsel. The IBFS provides access to valuable processing and technical data for new entrants and the general public. For example, persons can check the status of applications by accessing the IBFS from personal computers. In addition, users are easily able to identify the competitors in a service area using the IBFS's powerful search engine, from any web-ready location.

93. The International Bureau strongly encourages electronic filing via the IBFS, but permits many applicants to opt for paper filing. The Commission, however, is working towards a five year goal that calls for 100% electronic filing of applications to the extent that applicants have access to electronic media,[66] and the Commission now accepts credit card payment of application fees associated with IBFS filings.

94. During 2003, in connection with its actions on satellite licensing reforms, the Commission will complete its move to mandatory electronic filing for satellite space station applications, routine earth station filings and associated, non-docketed comments and petitions, and the new "Schedule S," the Commission's form for capturing satellite space station technical data. The measures:

[66] FCC Chairman William E. Kennard, *A New FCC for the 21st Century: Draft Strategic Plan* (Aug. 1999).

Improve Public Access to Data—Almost all satellite applications and routine earth station applications are now filed electronically or will be by the end of 2003. As a result, the public will have instant access to filings via the Internet. This is particularly significant to those members of the public and small businesses without regular representation in Washington, D.C.

Simplify Filing of Earth Station Application—Before the end of 2003, the new 312EZ form for routine earth stations will make the earth station application process error-free. The 312EZ form will be interactive and will have built-in edit checks, of particular benefit to smaller firms that do not file such applications with sufficiency to gain specialized filing expertise.

Facilitate Intelligent Use of Data—The Commission's newly established Schedule S ensures that technical space station data is submitted in a standardized format that will enhance the Commission's spectrum management, homeland security, and data-sharing requirements.

95. During 2004, the International Bureau plans to complement the electronic filing initiatives identified above by redesigning the IBFS home page to be customizable, easier to navigate, and contain enhanced features such as a "watch list" to track applications.

96. We are making all these changes to the IBFS and procedures for processing applications with the goals of making the process more user-friendly and efficient. Achievement of these goals will make it easier for small businesses to file applications on their own and pass on those efficiencies to other small businesses and consumers.

5. Detariffing International Services

97. In July 2001, as part of the 2000 Biennial Regulatory Review process, the Commission reduced a significant regulatory burden placed on many small firms by eliminating the requirement that non-dominant carriers file tariffs for international interexchange services. In the *International Detariffing Order*,[67] the Commission concluded that significant changes in the international services market have benefited consumers and competition in the past several years and that support the detariffing of international interexchange services. In particular, the international interexchange marketplace experienced increased privatization and liberalization, rapidly declining international settlement rates, and a greater number of providers of international interexchange services. Therefore, the Commission forbore from the tariffing requirements in Section 203 of the Communications Act,[68] as those requirements applied to non-dominant carriers providing international interexchange services. The tariffing requirements continue to apply to a small category of carriers, such as those that are classified as dominant for reasons other than an affiliation with a foreign carrier that possesses market power.

98. In addition, in the *International Detariffing Order*, the Commission further reduced the regulatory burden on non-dominant carriers, many of which are small businesses, by clarifying that the contract filing requirements in Section 43.51 of the Commission's Rules apply solely to: (1) carriers classified as dominant for reasons other than foreign affiliation; and (2) carriers, whether classified as dominant or non-dominant, contracting directly for services with foreign carriers that possess market power.[69]

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[67] *2000 Biennial Regulatory Review: Policy and Rules Concerning the International, Interexchange Marketplace*, Report and Order, 16 FCC Rcd 10,647 (2001) (*International Detariffing Order*).

[68] 47 U.S.C. § 203.

[69] 47 C.F.R. § 43.51(a)-(b).

6. International Settlements Policy

99. The Commission is taking action to remove regulatory impediments and to increase competition in the international telecommunications marketplace through reform of the longstanding ISP.[70] In 1999, in the *ISP Reform Order*, the Commission adopted sweeping deregulatory inter-carrier settlement arrangements between U.S. carriers and foreign non-dominant carriers on competitive routes.[71] Specifically, the Commission: (1) eliminated the ISP and contract filing requirements for arrangements with foreign carriers that lack market power; (2) eliminated the ISP for arrangements with all carriers on routes where rates to terminate U.S. calls are at least 25% lower than the relevant settlement rate benchmark previously adopted by the Commission in its *Benchmark Order*;[72] (3) adopted changes to contract filing requirements to permit U.S. carriers to file, on a confidential basis, arrangements with foreign carriers with market power on routes where the ISP is removed; (4) adopted procedural changes to simplify accounting rate filing requirements; and (5) eliminated the flexibility policy in recognition that the reforms to the ISP render the flexibility policy largely superfluous.

100. The Commission's primary goal underlying this policy is and will continue to be the protection of U.S. consumers, including small businesses, from potential harm caused by instances of insufficient competition in the global telecommunications market. To the extent that small businesses utilizing international telecommunications have fewer resources than large global corporations to deal with instances of insufficient competition, such protection reduces or eliminates disadvantages in the procurement of telecommunications services and enhances the chances of successful market entry and firm viability. As a result of U.S. policies and increasing competition internationally, the average U.S. settlement rate fell substantially over the last several years as have U.S. calling prices.[73]

101. In October 2002, the Commission initiated a rulemaking proceeding to examine possible further reform of the ISP, the Commission's benchmarks and international simple resale (ISR) policies in light of greater participation in the U.S.-international market, lower international settlement rates, and greater competition in foreign markets.[74] Specifically, the Commission sought comment on the competitive status of the U.S.-international market and whether removing the ISP from certain U.S.-international routes would benefit consumers by promoting greater competition, while still preventing any anticompetitive harm from foreign carriers and otherwise protecting the public interest. Moreover, the

[70] The ISP provides a regulatory framework within which U.S. carriers negotiate with foreign carriers to provide bilateral U.S.-international services. There are three elements of the ISP that serve as conditions on U.S. carriers entering into agreements with foreign carriers: (1) all U.S. carriers must be offered the same effective accounting rate and same effective date for the rate ("nondiscrimination"); (2) U.S. carriers are entitled to a proportionate share of U.S.-inbound, or return, traffic based upon their proportion of U.S.-outbound traffic ("proportionate return"); and (3) the accounting rate is divided evenly 50-50 between U.S. and foreign carriers for U.S. inbound and outbound traffic ("symmetrical settlement rates"). *See* 47 C.F.R. § 43.51(e).

[71] *See 1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements* (Phase II), Report and Order and Order on Reconsideration, 14 FCC Rcd 7963 (1999) (*ISP Reform Order*).

[72] *See International Settlement Rates,* Report and Order*,* 12 FCC Rcd 19,806 (1997) (*Benchmarks Order*), *aff'd sub nom. Cable and Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999), Report and Order on Reconsideration and Order Lifting Stay*,* 14 FCC Rcd 9256 (1999) (*Benchmarks Reconsideration Order*).

[73] *See International Settlements Policy Reform; International Settlement Rates*, Notice of Proposed Rulemaking, 17 FCC 19,954, 19,964-66 (2002) (*ISP Reform Notice*).

[74] *Id.*

Commission requested comment on the success of its policies to lower international accounting and termination rates and whether the Commission should consider further revisions to these policies. The Commission also inquired whether foreign mobile termination rates may be eroding the benefits of the Commission's accounting rate policies to the detriment of U.S. consumers and competition, and if so, how the Commission should effectively address the issue and better inform U.S. consumers,

7. Satellite Licensing Reforms

102. The Commission took several steps to modernize its satellite licensing procedures. These measures expedite the satellite licensing process and facilitate public access to the Commission, particularly regarding satellite license filings. These measures advance the Commission's strategic goals of modernizing the Commission and facilitating efficient spectrum management, while at the same time, increasing transparency and easing public participation for all entities, including small business.

103. In April 2003, the Commission adopted a new first-come, first-served approach for satellite space station licensing to speed delivery of satellite services to consumers.[75] This reform will increase regulatory certainty, advance the digital migration, facilitate spectrum efficiency, and continue U.S. leadership in the global satellite industry. After developing a substantial public record, the Commission adopted a flexible and agile framework and a market-based licensing scheme for the future. The Commission's goal in adopting this framework is to create a regulatory environment in which satellite providers large and small can respond quickly and efficiently to the challenges of a competitive telecommunications industry, and, ultimately to provide new satellite services to consumers as expeditiously as possible. The Commission also adopted in June 2003 two interactive forms that will facilitate the application process for satellite and earth station licenses, most of which are applications small businesses file.

8. Submarine Cable Landing Licenses

104. In December 2001, the Commission adopted new streamlining procedures for processing applications for submarine cable landing licenses, including transfers of control of such licenses.[76] These measures facilitate the expansion of capacity and facilities-based competition in the submarine cable market and enable submarine cable applicants and licensees to respond timely to the demands of the market. We anticipate that the reforms will save time and resources for both industry and government, while preserving the Commission's ability to guard against anti-competitive behavior. These improvements are significant because over two-thirds of U.S. international traffic is carried on submarine cables.

105. The approach the Commission adopted in the *Submarine Cable Report and Order* tracks the streamlining procedures and competitive safeguards it adopted for Section 214 authorizations of international telecommunications services.[77] We now can act on many applications that qualify for

[75] *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking (rel. May 19, 2003) (*First Space Station Reform Order*) (http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-102A1doc).

[76] *Review of Commission Consideration of Applications under the Cable Landing License Act*, Report and Order, 16 FCC Rcd 22,167 (2001) (*Submarine Cable Report and Order*). *See also* Letter from Alan Larson, Under Secretary of State for Economic, Business, and Agricultural Affairs, U.S. Department of State, to Chairman Michael Powell, Federal Communications Commission (dated Dec. 3, 2001) (facilitating Commission adoption of new 45 day streamlining process through 30 day notification to State Department under Exec. Order No. 10530).

[77] *See Streamlining the International Section 214 Authorization Process and Tariff Requirements,* Report and Order, 11 FCC Rcd 12,884 (1996) (*International 214 Streamlining Order*); *1998 Biennial Regulatory Review—Review of* (continued....)

streamlining in the forty-five day period following *Public Notice*, a significant improvement over prior processing times. Further, licensees that seek and receive our approval to amend their existing licenses to add a new *pro forma* condition can complete future *pro forma* transfers of control and assignments without prior Commission approval. The new rules also ease burdens on small carriers and investors by providing that entities that do not own or control a landing station in the U.S. or have a less than 5% interest in a proposed cable system generally do not have to be licensees on the cable system. Through codification of the routine cable landing license conditions, the Commission provides clarity and certainty to licensees and the public. The new procedures also provide for the grant of many applications by *Public Notice* instead of by written order, simplifying the process for applicants and the Commission. All of these enhancements provide benefits to smaller carriers.

9. Reporting Requirements

106. The Commission is continually reviewing its reporting requirements to determine whether revision would lessen the burdens placed on carriers while maintaining their important purpose. The information provides the Commission, other government agencies, state regulators, international organizations, industry, and the public with valuable information on market and other industry trends and developments. This information is helpful to the Commission in identifying developments in regulatory issues, monitoring compliance with existing rules and policies, and evaluating the effects of policy choices.

107. In December 2002, in the *International 2000 Biennial Regulatory Review Order*, the Commission took actions to reduce reporting requirements on CMRS carriers and to eliminate an outdated rule.[78] At the request of CMRS carriers, the Commission reviewed the reporting requirements for carriers providing international service and found that it was no longer necessary for CMRS carriers providing resale of international switched services to file quarterly traffic and revenue reports pursuant to Section 43.61 of the Commission's Rules. The Commission also eliminated an outdated rule that required certain foreign-owned carriers to file with the Commission annual revenue and traffic reports with respect to all common carrier telecommunication services they offered in the U.S. In addition, the International Bureau Staff Report to the 2002 Biennial Regulatory Review recommended that the Commission undertake proceedings to consider revision of a number of other reporting requirements and obligations. The Commission has begun work on two of these proceedings and expects to release *Notices of Proposed Rulemakings* in the near future.

D. Media Bureau

108. In March 2002, as part of FCC Chairman Michael K. Powell's reorganization plan promoting a more efficient, responsive, and effective organizational structure, the Commission combined the former Cable Services Bureau and the former Mass Media Bureau to form the new Media Bureau. The Media Bureau develops, recommends, and administers policy and licensing programs relating to electronic media, including cable television, broadcast television, and radio in the U.S. and its territories. The Media Bureau also handles post-licensing matters regarding Direct Broadcast Satellite service. The Media Bureau, and its predecessor bureaus, made myriad efforts on behalf of small entities in the broadcast and cable sectors. In its many proceedings, including the comprehensive media ownership review and proceedings impacting the transition from analog to digital television (DTV) transmission, the

(...continued from previous page)
International Common Carrier Regulations, Report and Order, 14 FCC Rcd 4909 (1999) (*1998 International Biennial Review Order*); *2000 Biennial Regulatory Review*, 17 FCC Rcd 11,416.

[78] *Id*.

Media Bureau developed rules, policies, and procedures that help to remove barriers to entry for entrepreneurs and small businesses. In addition, the Media Bureau instituted several web-based initiatives that make the task of contacting the Commission, filing requisite forms and applications, and staying abreast of current information more simple and cost efficient, particularly for smaller licensees and permit holders. A more thorough examination of several specific Media Bureau actions to eliminate market entry barriers for entrepreneurs and small businesses follows below.

1. Biennial Regulatory Review of Broadcast Ownership Rules

109. In June 2003, the Commission adopted new rules and policies regarding multiple ownership of radio and television broadcast stations pursuant to the congressional mandate of Section 202(h) of the Telecommunications Act of 1996, which requires the Commission to reassess its broadcast ownership rules every two years, and to modify or eliminate those rules found no longer necessary in the public interest as a result of competition.[79] In its third Biennial Regulatory Review proceeding, the Commission reviewed all six broadcast ownership rules and it: (1) replaced the newspaper/broadcast cross-ownership and radio-television cross-ownership rules with new Cross Media Limits; (2) revised the market definition for local radio multiple ownership and the way it counts stations for compliance with the local radio ownership rule; (3) revised the local TV multiple ownership rule; (4) raised the national TV ownership cap to 45%; and (5) retained the dual network rule. The Commission grandfathered existing combinations of broadcast stations that exceed the new ownership limits. Thus, no divestiture is required. However, as part of an initiative to address the concerns raised by small businesses, the Commission developed new transferability procedures. Under these procedures, existing combinations that exceed the ownership limits may be sold to certain eligible entities. An eligible entity is defined as an entity that would qualify as a small business consistent with the SBA's standards for its industry grouping.[80] In adopting these transferability provisions, the Commission stated its belief that small businesses that qualify as eligible entities require greater flexibility than do larger entities for the disposition of assets. Thus, these entities may transfer any existing grandfathered combination generally without restriction. A qualified small business may not, however, transfer a grandfathered combination acquired after the adoption date of the *Biennial Report and Order* to an entity other than another qualified small business unless it has held the combination for at least three years. Moreover, the Commission committed to issuing a *Notice of Proposed Rulemaking* to address issues relating to advancing minority and female ownership of broadcast media. The Commission indicated that it would refer the question of how best to ensure that interested buyers, including small businesses, are aware of broadcast properties for sale to the Federal Advisory Committee on Diversity for further inquiry.[81] Chairman Powell

[79] *2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13,620 (2003) (*Biennial Report and Order*). On September 3, 2003, the U.S. 3rd Circuit Court of Appeals stayed the effective date of the rule changes contained in the *Biennial Report and Order*. In its order, the Court stated that "the prior ownership rules [will] remain in effect pending resolution of these proceedings." *Prometheus Radio Project v. FCC*, No. 03-3388, at 3 (3rd Cir. Sept. 3, 2003) (per curiam) (order granting motion to stay effective date of the Commission's new ownership rules).

[80] In addition to the SBA's standards, the Commission decided that control of the eligible entity purchasing the grandfathered combination must meet one of the following control tests. The eligible entity must hold (1) 30% or more of the stock/partnership shares of the corporation/partnership, and more than 50% voting power, (2) 15% or more of the stock/partnership shares of the corporation/partnership, and more than 50% voting power, with no other person or entity controlling more than 25% of the outstanding stock, or (3) if the purchasing entity is a publicly traded company, more than 50% of the voting power. *Biennial Report and Order*, 18 FCC Rcd at 13,810, para. 489.

[81] Chairman Powell announced his intention to form a Federal Advisory Committee (Committee) to assist the Commission in formulating new ways to create opportunities for minorities and women in the communications (continued....)

announced his intention to form a Federal Advisory Committee (Committee) to assist the Commission in formulating new ways to create opportunities for minorities and women in the communications sector.[82] The Committee was formed in furtherance of the FCC's responsibilities under the Communications Act "to make available, so far as possible to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide . . . wire and radio communication service . . . ."[83] The Committee includes four subcommittees that examine distinct issues impacting the participation of minorities and women in communications: (1) Financial Issues; (2) Transactional Transparency and Related Outreach; (3) Career Advancement; and (4) New Technologies. The Committee held its initial meeting on September 29, 2003 at FCC headquarters in Washington, D.C.[84] The Committee's next meeting is scheduled for January 26, 2004 at FCC headquarters.

2. Localism Initiative

110. In August 2003, Chairman Powell announced a series of initiatives to enhance localism among radio and television broadcasters. Part of that effort included formation of a Localism Task Force to advise the Commission on steps it can take and, if warranted, to make legislative recommendations to Congress that would strengthen localism in broadcasting. The Localism Task Force will play a critical role in gathering empirical data and grassroots information on broadcast localism. Toward that end, the Localism Task Force organized a series of public hearings on localism around the country.[85] The purpose of the hearings is to gather information from consumers, industry, civic organizations, and others on broadcasters' service to their local communities. The general public is afforded time to register its views through an "open microphone" format. The initial hearing was conducted in Charlotte, North Carolina on October 22, 2003.[86] A subsequent hearing has been announced for January 28, 2004 in San Antonio, Texas.[87]

3. Digital Transition

111. The Commission adopted a number of initiatives in the transition to DTV transmission that have benefited small broadcasters. In the *First DTV Periodic Review Memorandum Opinion and Order*, the Commission took several steps to allow broadcasters to save both on construction and

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sector. Public Notice (rel. May 19, 2003) (http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-234645A1.pdf). The Committee held its initial meeting on September 29, 2003 at FCC headquarters in Washington, D.C. News Release (Sept. 30, 2003) (http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-239398A1.pdf).

[82] Public Notice (May 19, 2003) (http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-234645A1.pdf).

[83] *See* 47 U.S.C. § 151; *see also* 47 U.S.C. § 257 (directing the FCC to work toward elimination of market entry barriers in order to promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience and necessity).

[84] News Release (Sept. 30, 2003) (http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-239398A1.pdf).

[85] News Release (Oct. 3, 2003) (http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-239578A2.pdf).

[86] The transcript of the hearing is available online at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-242307A1.pdf.

[87] Public Notice (Dec. 11, 2003) (http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-03-3911A1.pdf).

operating costs, including power expenses.[88] Partially in response to smaller market broadcasters' concerns about their ability to obtain financing to construct DTV facilities sufficient to replicate analog service areas, thereby limiting the operational experience needed to determine which core channel is superior for DTV transmission, the Commission decided to allow stations to construct initial DTV facilities designed to serve at least their communities of license, while still retaining for the time being DTV interference protection to provide full replication at a later date. The Commission also determined that it would continue to provide DTV interference protection to the maximized service area specified in outstanding DTV construction permits for facilities in excess of those specified in the DTV Table of Allotments. The Commission temporarily deferred the replication protection and channel election deadlines established in the *First DTV Periodic Report and Order*. The Commission stated, however, that in the next DTV periodic report it would establish a firm date by which broadcasters must either replicate their NTSC service areas or lose DTV service protection of the unreplicated areas, and by which broadcasters with authorizations for maximized digital facilities must either provide service to the coverage area specified in their maximization authorizations or lose DTV service protection to the uncovered portions of those areas. The Commission also stated that it would establish a deadline by which broadcasters with two in-core allotments must elect which channel they will use at the end of the transition. The Commission stated that these replication, maximization, and channel election deadlines may be earlier than, but will in no event be later than, the latest of either the end of 2006 or the date by which 85% of the television households in a licensee's market are capable of receiving the signals of digital broadcast stations. In addition, the Commission allowed DTV stations subject to the May 1, 2002, or May 1, 2003, construction deadlines to operate initially at a reduced schedule by providing, at a minimum, a digital signal during prime time hours, consistent with their simulcast obligations. By permitting stations to elect a more graduated approach to providing DTV service, the Commission allowed stations, including small broadcasters, to focus their energies initially on providing digital service to their core communities, while allowing stations to increase operating hours and expand their coverage area as the transition progresses.

112. Additionally, in the *First DTV Periodic Review Memorandum Opinion and Order*, the Commission decided to consider, on a case-by-case basis, whether it should afford a broadcaster additional time to construct its DTV facilities where the cost of meeting the minimum build-out requirements exceeds the station's financial resources. To qualify under this standard, the applicant must provide an itemized estimate of the cost of meeting the minimum build-out requirements and a detailed statement explaining why its financial condition precludes such an expenditure. A brief downturn in the economy is not sufficient grounds for a showing of financial hardship. Commission records show that some 772 commercial and 212 noncommercial educational stations availed themselves of this process and were granted at least one six month extension to construct their DTV facilities.

113. The Commission addressed further concerns of small broadcasters in a *Notice of Proposed Rulemaking* (*NPRM*) initiating the second periodic review.[89] Having temporarily deferred channel election deadlines to the next periodic review, the Commission sought comment in this *NPRM* on establishing a deadline that gives broadcasters with two in-core channels enough time to make an informed decision about which of their two core channels would be most suitable to use for digital broadcasting. The Commission indicated its continuing belief that stations that choose to begin service at lower power should be given an opportunity to increase power and to test for interference or other service

[88] *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television,* 16 FCC Rcd 5946 (2001) (*First DTV Periodic Report and Order*), *on recon.,* Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 20,594 (2001) (*First DTV Periodic Review MO&O*).

[89] *Second Periodic Review of the Commission's Rules and Policies Affecting Conversion to Digital Television, Public Interest Obligations of TV Broadcast Licensees,* 18 FCC Rcd 1279 (2003) (*Second Periodic Review*).

problems at those higher power levels before they are required to decide which of their two channels is preferable for DTV operations. The Commission proposed that commercial and noncommercial broadcast licensees with two in-core assigned channels make their final election by May 1, 2005; this tentative date provides three years for commercial broadcasters and two years for noncommercial broadcasters after the applicable digital construction deadline to make the channel election. The Commission also sought comment on whether those noncommercial broadcasters that were not already airing a digital signal anticipated meeting the May 1, 2003 construction deadline, and, if not, what obstacles were preventing completion of construction. The Commission invited comment on what steps, if any, it should take to assist noncommercial stations in the transition to DTV. For example, in the *NPRM*, the Commission asked whether it should apply the financial hardship standard for grant of an extension of time to construct a DTV station differently to noncommercial licensees. The Commission also asked whether it should permit satellite television stations, which operate in small or sparsely populated areas that have insufficient economic bases to support full-service operations, to turn in their analog authorizations and "flash-cut" to DTV transmission at the end of the transition period.

114. In addition, the *Second Periodic Review* sought further comment on an outstanding *Notice of Proposed Rulemaking* (*Children's DTV Public Interest NPRM*) adopted in September 2000 regarding children's television obligations of DTV broadcasters.[90] The *Children's DTV Public Interest NPRM* proposed clarifying broadcaster obligations under the Children's Television Act and related Commission guidelines in a DTV environment. The *Children's DTV Public Interest NPRM* focused primarily on two areas: (1) the obligation of television broadcast licensees to provide educational and informational programming for children; and (2) the requirement that television broadcast licensees limit the amount of advertising in children's programs. It sought comment on how the Commission should apply the current three hour children's core educational programming processing guideline in light of the many possible ways broadcasters may choose to use their DTV spectrum; whether the Commission should revise or adopt the current preemption rules for core educational programming for the digital environment; and whether steps should be taken to ensure that programs designed for children or families do not contain product promotions that are unsuitable for children to watch. The *Second Periodic Review* requested comment on the issues and their impact on small businesses.

115. In 2002, the Commission initiated a rulemaking to explore possible implementation of a copy protection mechanism for digital broadcast television.[91] In 2003, the FCC issued a *Report and Order and Further Notice of Proposed Rulemaking* (Order),[92] adopting an anti-piracy mechanism, known as the "broadcast flag" to prevent the indiscriminate redistribution of digital broadcast signals. Pursuant to this Order, products that are capable of receiving DTV signals over-the-air, including personal computers, must have the capability to detect and give effect to the broadcast flag by July 1, 2005. The Order adopted interim measures through which the Commission would approve robust and secure content protection and recording technologies, and initiated a further notice seeking comment on a permanent process for approving such technologies.

4. DTV Low Power Television

116. Recognizing the challenges presented by limited spectrum availability and the constrained budgets of many stations in the low power television service, the Commission earlier this

[90] *Children's TV Obligations of Digital TV Broadcasters,* 15 FCC Rcd 22,946 (2000) (*Children's DTV Public Interest NPRM*).

[91] *Digital Broadcast Copy Protection,* 17 FCC Rcd 16,027 (2002) (*NPRM*).

[92] *Digital Broadcast Content Protection*, 18 FCC Rcd 23,500 (2003).

year initiated a *Notice of Proposed Rulemaking* (*NPRM*) to establish rules, policies, and procedures for the digital conversion of low power television (LPTV), Class A TV stations, TV translator stations, and TV booster stations.[93] LPTV stations operate at reduced power levels and serve much smaller geographic regions than full-service stations. An LPTV station may be the only television station in an area providing local news, weather, and public affairs programming. Many LPTV stations air "niche" programming, often locally produced, to residents of specific ethnic, racial, or special interest communities. A TV translator station is a low power television broadcast station that receives the signal of a television station and simultaneously retransmits it on another TV channel. Licensees often use these stations to deliver the only free off-air television service available to rural communities. In the *NPRM*, the Commission tentatively concludes that digital translator stations should be technically capable of retransmitting the complete signals of DTV broadcast stations for reception by the general public. The Commission also proposes that TV channels 2-13 and 14-59 (except channel 37, which is reserved for radio astronomy) be made available for digital LPTV and TV translator stations. It seeks comment on whether TV channels 60-69 should also be made available for digital low power service during the transition. With regard to application filing procedures, the Commission tentatively concludes that a high priority should be given to facilitating the digital transition of existing analog LPTV and TV translator and Class A TV licensees, to be followed by a separate filing procedure of ongoing "rolling one-day" filing windows, essentially a first-come, first-served filing system. The Commission seeks comment on whether certain statutory provisions for the termination of analog TV service apply to authorizations in the LPTV service and, if not, whether the Commission should consider establishing a trigger-based mechanism for this purpose, similar to that for full-service television stations, but distinct to account for the significant difference between full-service and low power stations.

5. Ancillary/Supplementary Use of DTV Capacity

117. Another DTV transition policy *Order* addressed Section 336 of the Communications Act, which authorizes the Commission to permit DTV licensees to offer revenue generating ancillary or supplementary ("A" or "S") services on their digital channels as long as their provision does not derogate any advanced television services the Commission may require. Feeable A or S services are deemed to be those services for which the payment of a subscription fee is required to receive such services or for which the licensee receives any compensation from a third-party other than commercial advertisements used to support non-subscription broadcasting. In its *Report and Order* on ancillary or supplementary use of DTV capacity by noncommercial educational (NCE) licensees, the Commission determined that (1) NCE licensees may offer A or S services on their digital channels; (2) NCE licensees must pay fees on revenues generated by the remunerative use of their excess digital capacity, even when licensees use those revenues to support their mission-related activities; public television stations must primarily furnish an educational, nonprofit and noncommercial broadcast service on their entire digital bitstream, including A or S services; and (3) that the prohibition against advertising applies to broadcast programming streams provided by NCE licensees, but does not apply to any A or S services presented on their excess DTV channels that do not constitute broadcasting.[94] The Commission found that NCE TV licensees by virtue of their nonprofit, noncommercial, educational broadcasting operations generate less revenue than commercial TV licensees and are more likely than commercial TV broadcasters to experience financial difficulties in constructing their DTV facilities and making the transition to DTV broadcasting. The Commission intends that the policies it adopted in the *Report and Order* enhance NCE TV licensees' ability to obtain funding to support their programming and operations and their transition to DTV.

[93] *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television* Stations, 18 FCC Rcd 18,365 (2003).

[94] *Ancillary/Supplementary Use of DTV Capacity by NCE Licensees*, Report and Order, 16 FCC Rcd 19,042 (2001) (*Report and Order*).

6. Navigation Devices

118. Section 629 of the Communications Act requires the Commission to adopt regulations to assure the commercial availability of navigation devices to guarantee consumers the opportunity to purchase navigation devices from sources other than their multichannel video program distributor (MVPD) service provider. In a previous *Report and Order*, the Commission adopted rules to implement Section 629 and expressed its intention to monitor developments to evaluate whether progress was being made toward the goals of Section 629, and, if necessary, to take further action to ensure a competitive marketplace and consumer choice in navigation devices.[95] The Commission's Rules require MVPDs to unbundle security from other functions of the navigation device and, to make available point-of-deployment modules (PODs), to separately perform the conditional access function.[96] Thus, an MVPD subscriber will be able to obtain a set-top box without the security features ("host device") from retailers but will need the MVPD to provide a card-sized POD module for security functions. In 2003, the Commission adopted the *Second Report and Order* in the Navigation Devices proceeding. This *Second Report and Order* contains technical, labeling and encoding rules to permit TV sets to be built with "plug and play" functionality for one-way digital cable services, which include typical cable programming services and premium channels.[97] Because of potential compliance burdens on the part of smaller cable operators, the cable portions of the rules generally apply only to digital cable systems with 750 MHz or greater capacity. In order to make sure that the process whereby equipment produced in accordance with the rules is open and nondiscriminatory, equipment may be tested in third-party testing facilities and decisions relating to the testing and certification process may be brought to the Commission for review.[98] Further comment is sought on whether the rules governing cable system transmissions should be extended to digital systems with an activated channel capacity of 550 MHz or greater. The *Second Report and Order* initiates a *Second Further Notice of Proposed Rulemaking* to examine other potential processes regarding these outputs and technologies. The *Second Report and Order* also includes interim procedures for approving new digital output and content protection technologies.

7. Digital Audio Broadcasting

119. In the context of digital radio broadcast services, the Commission adopted a *Report and Order* (*DAB First Report and Order*) that selected in-band on-channel (IBOC) as the sole digital technology for the terrestrial radio broadcast service.[99] The *DAB First Report and Order* announced notification procedures that will allow AM and FM broadcasters to begin digital operations immediately on an interim basis using the IBOC systems developed by iBquity Digital Corporation. The Commission stated that the adoption of a single IBOC transmission standard will facilitate the development and commercialization of digital services for terrestrial broadcasters. The Commission has solicited industry assistance to develop a formal standard. Although radio broadcast services continue to serve as a mainstay of mass communications, broadcasters now face significant technical limitations and competitive challenges. Many terrestrial radio broadcasters view DAB not only as a technical

[95] *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices,* Report and Order, 13 FCC Rcd 14,775 (1998) (*Navigation Devices Order*).

[96] 47 C.F.R. § 76.1204.

[97] *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 20,885 (2003).

[98] *Id.*

[99] *Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service*, 17 FCC Rcd 19,990 (2002) (*DAB First Report and Order*).

opportunity, but as a competitive necessity. The transition to digital audio broadcasting promises the benefits that have generally accompanied digitalization—better audio fidelity, more robust transmission systems, and the possibility of new auxiliary services. Small broadcasters stand to benefit from this development that brings new competitive opportunities to offer enhanced broadcasting sound quality and a range of new supplementary programming services. Implementation of digital audio broadcasting is voluntary, thus, broadcasters can initiate the service on their own time frame and defer costs as they deem appropriate.

8. Low Power FM

120. The FY 2001 District of Columbia Appropriations Act[100] required the Commission to prescribe third adjacent channel protection requirements for LPFM stations. It also directed the Commission to conduct an experimental program and field tests to determine the potential for third-adjacent channel interference and other impacts on existing broadcasters. The Commission subsequently selected Mitre Corporation (Mitre) to complete the independent tests.

121. On June 2, 2003, Mitre delivered its final report (Mitre Report) to the Commission. The Mitre Report concludes that reduction or elimination of third-adjacent channel LPFM minimum distance separation requirements is possible without increasing the potential for interference to existing stations. The Mitre Report also recommends that Phase II listener tests and economic analyses not be completed due to the lack of measurable interference produced by LPFM stations.

122. The Commission accepted the Mitre Report and issued a *Public Notice*[101] requesting public comment on it. Twenty-four parties filed comments. Eighteen comments supported relaxation of third-adjacent channel LPFM minimum distance separation requirements, and three favored retention of the current rule. The Commission will send a report including recommendations, along with copies of the Mitre Report, to Congress.

9. Equal Employment Opportunity

123. In January 2000, the Commission adopted new broadcast and cable Equal Employment Opportunity (EEO) rules pursuant to remand from the U.S. D.C. Circuit Court of Appeals *Lutheran Church—Missouri Synod v. FCC* decision.[102] The new rules retain the long-standing anti-discrimination provision of the broadcast and cable EEO rules. The Commission also adopted new outreach program rules that it intends will ensure wide dissemination of information about job openings so that all qualified candidates are able to compete for jobs in the broadcast and cable industries. The Commission provided two different outreach program options to offer maximum flexibility to broadcasters in designing their EEO programs. The Commission exempted small size broadcasters with fewer than five full-time employees from certain outreach programs and record-keeping requirements, as it did cable entities with fewer than six full-time employees. In addition, the Commission permitted station employment units with five to ten full-time employees to perform fewer long-term outreach initiatives, such as internships, job fairs, and conferences.

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[100] *D.C. Appropriations – FY 2001,* Pub. L. No. 106-553, § 632, 114 Stat. 2762, 2762A-111 (2000).

[101] DA 03-2277, Public Notice (rel. July 11, 2003).

[102] *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies,* 15 FCC Rcd 2329 (2000).

124. The Commission revised its EEO rules in November 2002 following a separate court challenge to the January 2000 EEO rules.[103] The new broadcast and cable rules retain the anti-discrimination provisions of the former rules and adopted outreach program rules for wide dissemination of job information. Similarly, the new rules offer relief to small size and small market broadcasters and cable entities. The Commission retains its policy of exempting small size broadcasters (fewer than five full-time employees) and small size cable entities (fewer than six full-time employees) from certain outreach programs and record-keeping requirements. Additionally, the Commission requires station employment units with five to ten full-time employees and station employment units located in small markets to perform only two, rather than four, menu options, i.e., long-term outreach initiatives, every two years.[104]

10. Cable Inside Wiring

125. In a proceeding pertaining to cable television inside wiring rules, the Commission adopted rules and policies intended to facilitate competition in video distribution markets.[105] The Commission intends that the new rules foster opportunities for MVPDs to provide service in multiple dwelling unit (MDU) buildings by establishing procedures regarding how and under what circumstances the existing cable home run wiring will be made available to alternative video service providers. In its *Order on Reconsideration*, the Commission modified its rules to provide that: (1) in the event of sale, the home run wiring be made available to the MDU owner or alternative provider during the 24-hour period prior to actual service termination by the incumbent, and (2) home run wiring located behind the sheet rock is physically inaccessible for purposes of determining the demarcation point between home wiring and home run wiring.[106] The Commission believes that these rule modifications will promote competition and reduce entry barriers into MDUs for MVPDs. The Commission also provided relief for small non-cable MVPDs (less than 1000 subscribers or serving less than 1000 units) from the annual reporting requirements of the Commission's signal leakage rules. These reporting requirements mandate that cable operators file annually with the Commission certain information relating to their use of the aeronautical radio frequency bands. Relief from the annual reporting requirement will allow small non-cable MVPDs to focus on the prevention of leaks by devoting their scarce resources primarily to maintenance, leakage detection, and repair.

11. 12 GHz

126. In the area of Cable Television Relay Services (CARS), the Commission adopted a *Report and Order* amending Part 78 of its Rules to expand the class of entities eligible for CARS licenses

[103] *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies,* 17 FCC Rcd 24,018 (2002).

[104] The scope of the small market station exemption extends to any station employment unit consisting solely of a station or stations licensed to a community that is located in a county that is outside of all metropolitan areas, as defined by Office of Management and Budget, or is located in a metropolitan area that has a population of fewer than 250,000 persons. *Id.* at 24,070, para. 170.

[105] *Telecommunications Services, Inside Wiring, Customer Premises Equipment; In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring*, Report and Order and Second Further Notice of Proposed Rulemaking, 13 FCC Rcd 3659 (1997).

[106] *Telecommunications Services Inside Wiring*, First Order on Reconsideration and Second Report and Order, 18 FCC Rcd 1342 (2003).

to include all MVPDs.[107] Eligible services use the 12 GHz and 18 GHz CARS bands for microwave relays pursuant to Part 78 of the Commission's Rules, which govern licensing and operations of fixed or mobile CARS stations. Licensees use CARS principally as a video transmission service for intermediate links in a distribution network. A primary and continuing use of the 12 GHz CARS band is to deliver signals over long distances between reception points and communities. Licensees do not use CARS to provide service or relay signals directly to subscribers, but, instead, use it to transmit television broadcast and low power television and related audio signals, among other signals, from one point to another point. Prior to the Commission's modification of these rules, franchised cable systems and wireless cable systems were eligible for CARS licenses, but private cable operators (PCOs) and other formerly non-eligible MVPDs (NMVPDs) were not. The Commission's action created opportunities for small entities such as PCOs and other NMVPDs to compete with incumbent providers of video programming in the 12 GHz CARS frequency band. The new rules will allow new entrants, many of which we deem small entities, to access the 12 GHz CARS frequency on an equal basis with franchised cable operators and other users.

12. Cable Operations and Licensing System

127. The Commission continues to provide enhanced electronic filing systems to the various media industries. Electronic conversion of several of the forms used by cable and broadcast media has occurred and allows applicants and other users to file Commission documents with greater speed and efficiency. One initiative in this area is the implementation of the Cable Operations and Licensing System (COALS).[108] In adopting the *Report and Order* instituting the new system, the Commission stated that the filing of forms and applications for the Multichannel Video and Cable Television Services would make license and cable operational information more accessible to the Commission's staff, the MVPD industry, and the general public. Further, electronic filing may produce additional resource and cost benefits to small entities. To facilitate electronic filing and review, the Commission created three new forms: FCC Form 321 to standardize the format in which MVPDs provide notification regarding usage of aeronautical frequencies; FCC Form 322 to standardize the format for cable community registrations; and FCC Form 324 to standardize the format used when a cable operator needs to notify the Commission of a change in name, mailing address, or operational status. Additionally, the Commission modernized FCC Form 320 (annual signal leakage report), FCC Form 325 (signal and frequency distribution data), and FCC Form 327 (CARS). The Commission provided for a transitional period prior to instituting mandatory electronic filing of the forms. It recognized that some small cable operators serving rural areas may not have access to computers with the hardware or capability to utilize the software necessary to submit their applications electronically. Thus, the Commission ruled that electronic filing of each form will become mandatory six months after that form becomes available for filing electronically.

13. Consolidated Database System

128. The Media Bureau continues to update and make additional forms available for electronic filing through its Consolidated Database System (CDBS). Currently, CDBS supports electronic filing of a number of FCC forms, including several of the most frequently utilized broadcast applications, such as, FCC Form 301 (Application for Construction Permit for Commercial Broadcast Station), FCC Form 302-

[107] *Amendment of Eligibility Requirements in Part 78 Regarding 12 GHz Cable Television Relay Service,* 17 FCC Rcd 9930 (2002).

[108] *Amendment of the Commission's Rules for Implementation of its Cable Operations And Licensing System (COALS) to Allow for Electronic Filing of Licensing Applications, Forms, Registrations and Notifications in the Multichannel Video and Cable Television Service and the Cable Television Relay Service,* 18 FCC Rcd 5162 (2003).

DTV (Application for Digital TV Broadcast Station License), FCC Form 314 (Application for Consent to Assignment of Broadcast Station Construction Permit or License), FCC Form 319 (Application for Low Power FM Broadcast Station License), and FCC Form 323 (Ownership Report). The Commission's expansion of the electronic filing capability benefits small entities by helping them to obtain Commission authorizations and approvals more independently and access information more readily.

129. Additionally, the Media Bureau endeavors to assist licensees and applicants via its section of the Commission's website, www.fcc.gov/mb. The Media Bureau's webpage provides links to each of its divisions (Industry Analysis, Policy, Engineering, Audio and Video), as well as special links to pages of significant interest to the public, such as media ownership and DTV. As part of its efforts to inform and support licensees during the upcoming eight year renewal cycle, the Media Bureau established a renewal page, www.fcc.gov/mb/renewal to provide current information on license expiration dates, the revised FCC Form 302-S (Renewal of License for Commercial or Noncommercial Educational AM, FM, TV, Class A TV, FM Translator, TV Translator, LPTV or Low Power FM Broadcast Station), and the renewal process. The renewal page identifies staff support resources and includes step-by-step instructions on completing the renewal form. Thus, small entities have the necessary tools to navigate the renewal process more efficiently and successfully.

E. Office of Communications Business Opportunities

130. The Commission created the Office of Communications Business Opportunities (OCBO) in 1994 to promote business opportunities for entrepreneurs and small businesses, including minority and women-owned small businesses. OCBO oversees the administration of the Commission's obligations under the RFA and the Small Business Act,[109] including agency regulatory review provisions. OCBO's staff participates in conferences and seminars throughout the country to keep the public informed about entrepreneurial and small business opportunities in the telecommunications sector. In May 2002, OCBO held a small business financing seminar, at which venture capitalists, private capital fund representatives, and government officials from the Commission, the SBA, the Department of Commerce, and the Department of Agriculture discussed issues of interest to the small business community.[110] As part of the Commission's outreach to small businesses, OCBO maintains a database of approximately 3,000 small businesses to which it sends information regarding Commission actions, including new service opportunities. In addition, OCBO's page on the Commission's website contains vital information concerning Commission rulemakings and service opportunities for the small business community.

1. Regulatory Flexibility Act and Small Business Act Initiatives

131. Following the dictates of the SBREFA amendments to the RFA,[111] the Commission works diligently to make its RFA analyses precise and helpful, including a focus on plain language. As the Commission writes rulemakings relating to the many communications services it regulates, such as TV, FM radio, paging, and amateur radio, it conducts numerous RFA analyses describing each service and the extent of the small entity participation within each. Through diligent monitoring of existing services and recognition of new service areas, the Commission constantly revises its service sector analyses. Consequently, the Commission provides full and accurate analyses and certifications in the 100 or more rulemaking items it adopts each year. One of OCBO's most important functions, as related to

[109] Small Business Act, 15 U.S.C. § 632.

[110] *FCC Holds 2002 Small Business Financing Seminar*, News Release (May 2, 2002).

[111] SBREFA came into force as part of Title II of the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA).

RFA analyses, is to recommend alternatives to regulations that would have an adverse impact on small entities.

132. From April 2002 to March of 2003, OCBO staff conducted RFA training for all Commission Bureau and Offices that engage in rulemakings. Two-hundred and sixty-three staff members attended the sessions. Building on the success of those sessions, on November 6, 2003, the Commission partnered with the SBA to offer additional training for Commission staff engaged in rulemakings to further their understanding of the effect the Commission's Rules have on small businesses and to inform them how they can, during the deliberative process, formulate policies that will benefit small businesses.[112] Beginning in 2004, the Commission will embark on a major *Small Entity Compliance Guide* (Compliance Guide) program, which OCBO developed. The Compliance Guide program, after initial training for staff, will result in the release of guides that are better geared towards assisting small businesses in understanding how the Commission's newly released rules apply to them.

2. Ten Year Review of Rules

133. During 2002, OCBO completed an updated, comprehensive listing of Commission Rules subject to review under the RFA's "ten-year review of rules" provision.[113] Section 610 requires agencies to publish in the *Federal Register* a plan for the periodic review of rules that have a significant economic impact on a substantial number of small entities. The Commission's submission identifies hundreds of rules that could be amended or rescinded in an effort to serve better the public interest. The Commission's record of compliance with this requirement is now among the top of sixty or so federal agencies.

3. Special Small Business Size Standards

134. Federal departments and agencies that promulgate regulations that affect small businesses usually use the SBA's size criteria as they develop the regulations.[114] To ensure that our initiatives accurately target small entity participation in the telecommunications sector, OCBO also works closely with the SBA's Office of Size Standards to create any necessary new telecommunications small business size standards. To accomplish this, we also send the SBA descriptions and analyses of proposed size standards prior to the Commission's adoption of a *Notice of Proposed Rulemaking*, and, thereafter, send the SBA additional comments and documentation at each stage of the rulemaking process. At the end of the process, prior to final Commission consideration of the new size standard, the Commission sends a formal request for approval to the SBA Administrator.

4. Unified Agenda of Federal Regulatory and Deregulatory Actions

135. OCBO submits a Report for publication in the semi-annual Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda), which provides information to the public regarding Commission regulations under development.[115] The Unified Agenda has appeared in the *Federal Register* twice each year since 1983. It helps governmental agencies comply with their

[112] *FCC Office of Communications Business Opportunities Hosts Small Business Regulatory Training Program*, News Release (Nov. 6, 2003).

[113] *See* 5 U.S.C. § 610.

[114] *See* 15 U.S.C. § 632.

[115] *See* 5 U.S.C. § 602. The Government Services Administration's Regulatory Information Service Center publishes the Unified Agenda in the Spring and Fall of each year.

obligations under the RFA, other statutes, and Executive Orders. As a part of the Fall 2003 Unified Agenda, the Commission listed and described 134 ongoing rulemaking proceedings.[116] These descriptions assist the public in becoming involved in the regulatory process, and aid the regulated community in complying with existing regulations.

5. Office of the National Ombudsman

136. OCBO coordinates the Commission's responses to small entity-related enforcement matters with the SBA's Office of the National Ombudsman (Ombudsman). One avenue for assistance is the Ombudsman's written comment (complaint) procedures. Using a one page Federal Agency Appraisal Form, a small business may submit to the Ombudsman any complaints, suggestions, or compliments concerning a federal agency's enforcement action. The Ombudsman then forwards the form, along with any other documentation, to the agency for review. OCBO is certified as the Commission's formal contact for this function. OCBO also annually attends an Ombudsman public hearing, during which OCBO describes the Commission's efforts to assist small entities with the Commission's enforcement programs. OCBO, in coordination with the Enforcement Bureau, responds to a number of inquiries during the year and sends an annual letter to the Ombudsman describing the Commission's enforcement initiatives on behalf of small entities. Annually, the Ombudsman submits a report to Congress in which it describes the efforts of federal agencies, including the Commission.

6. White House Initiative on Asian Americans and Pacific Islanders

137. President Bush signed Executive Order 13216 on June 6, 2001, committing his administration to increase opportunities and improve the quality of life for Asian Americans and Pacific Islanders (AAPIs) through greater participation in federal programs where they may be underserved.[117] To implement its mandate, the Executive Order designated the Secretary of the Department of Health and Human Services to initiate a federal Inter-agency Working Group (IWG). The IWG, which consists of representatives of thirty-four participating federal agencies, oversees the development of all federal policies and initiatives addressing AAPI populations, particularly with respect to the development of programs and services for underserved AAPI populations.

138. OCBO's Director is the Commission's representative to the IWG. A separate group, the Coordinating Committee (CC), was created to implement the policies and programs designed by the IWG. The CC consists of staff members selected from each of the thirty-four currently involved federal departments and agencies. At present, an OCBO Attorney-Adviser serves on the CC.

139. Given our mission to promote business opportunities in telecommunications, we have focused our efforts on promotion of AAPI economic and community development and on health-related issues. We seek to cooperate with other agencies that are interested in using telecommunications technologies to provide business related information services, and healthcare and other services, to rural, remote, and otherwise underserved populations.

F. Office of Engineering and Technology

140. The Office of Engineering and Technology took several actions in the last three years intended to remove barriers and lessen burdens for small businesses. It reduced time to market and regulatory costs for new unlicensed devices by expanding the role of domestic Telecommunications Certification Bodies (TCB) and by pursuing additional Mutual Recognition Agreements (MRA) to ease

[116] The Spring 2003 Unified Agenda included 128 Commission rulemakings. *See* 68 Fed. Reg. 31,310-01 (2003).

[117] President Clinton signed the underlying Executive Order, No. 13125, on June 7, 1999.

the marketing of domestically-produced devices in other countries. It also expanded its Electronic Equipment Authorization System to increase public access to information about equipment. To provide additional entrepreneurial opportunities and to provide better tools for all businesses, the Commission enabled a proliferation of innovative unlicensed devices, advanced ultra-wideband (UWB) technology, and is exploring the capability of the country's electrical utility infrastructure to carry broadband service. In addition, it enhanced the capabilities for users of the Low Power Radio Service (LPRS) and the Broadcast Auxiliary Service (BAS), and established a Wireless Medical Telemetry Service (WMTS), whose device providers include small businesses. The Chairman convened a Spectrum Policy Task Force (SPTF) to provide recommendations to the Commission on changes to spectrum policy that could increase the public benefits derived from the use of the radio spectrum. The SPTF's recommendations include policies that will provide greater market access for new technologies and service, which are, very often, the province of entrepreneurs and small businesses.

1. Telecommunications Certification Bodies

141. The Commission is taking several actions to streamline further and simplify the processes for authorization of equipment. The Commission established standardized testing procedures and undertook regular and extensive training of the private TCBs to expand the types of equipment that the TCBs can authorize. As a result, TCB authorizations increased eight to nine times in the last three years, speeding new devices to market for the benefit of the numerous small companies whose devices are subject to the equipment approval process. Additionally, this increased the workload and productivity of the independent test labs that provide this and related services.

2. Mutual Recognition Agreements

142. The Commission also significantly expanded its MRAs with other countries, whereby the signatories to an MRA mutually agree to recognize the equipment authorizations provided by authorized laboratories or other authorized entities, thereby greatly increasing the ease of international marketing for makers of all kinds of equipment. As of July 2003, there were over 160 small businesses designated to test or approve equipment to foreign technical requirements. The list of designated U.S. Conformity Assessment Bodies (CABs), as well as the list of participating countries, continues to grow. These measures enhance market opportunities for small businesses and manufacturers that supply parts and services to telecommunications service providers, and also to those that engage in compliance testing of equipment, all fifteen of which are small start-up enterprises. These measures also promote competition in the provision of telecommunications products and electronic equipment and speed delivery of products to the public.

3. Electronic Equipment Authorization

143. The Commission also continues expansion of the Electronic Equipment Authorization System. In the last three years, the Commission increased public access to equipment authorization by: (1) making all application information (except confidential and pending information) electronically available to all users via the Internet; (2) increased Internet search options allowing greater flexibility in accessing equipment authorization information; and (3) revising approximately 75% of all web pages to be Section 508 compliant, thereby increasing accessibility to all users.

4. Spectrum Management

144. Through various spectrum management efforts, the Commission endeavors to facilitate new and innovative services and to encourage the involvement of small entities and entrepreneurs in telecommunications. Specifically, the Commission enabled the proliferation of unlicensed services.

First, the Commission revised its rules for spread spectrum devices to facilitate the development of new and innovative technology that is often used for wireless applications that employ high data rates.[118] In particular, it revised the rules for Spread Spectrum Devices to allow greater flexibility for different types of modulation and transmission systems. This allows manufacturers flexibility to design and market a more diverse set of products that operate efficiently in the unlicensed bands. The rule changes will also allow for greater spectrum sharing by removing regulatory barriers to the introduction of new non-interfering technologies. The Commission also proposed revisions to its Part 2 and Part 15 Rules to permit the use of advanced antenna technologies and ease antenna replacement restrictions for Part 15 devices. These changes would significantly enhance the ability of wireless internet service providers (WISPs), especially in rural areas, where start-up companies are beginning to provide high-speed date service.[119] The same initiative looks at ways to provide greater flexibility in the approval and use of component or modular transmission systems, many of whose component parts small companies manufacture.[120] The Commission also provided for wireless medical telemetry service in Part 95, as well as the current bands in Part 15. Additionally, it harmonized its AC line conducted limits in Parts 15 and 18 with the international limits in Comité International Spécial des Perturbations Radioélectriques (CISPR) Publication 22.[121] This will help manufacturers make one piece of equipment that can be sold worldwide instead of making multiple products to meet different national standards. In turn, this will reduce consumer costs and increase business profits.

5. Ultra-Wideband Technology

145. The Commission continues to promote the development and deployment of one of the newest innovative wireless offerings: UWB technology. UWB technology can be employed for a vast array of new applications that have the potential to provide significant benefits for businesses and consumers. Examples of UWB applications include radar imaging of objects buried under the ground or behind walls, and short-range, high-speed data transmissions. Small businesses manufacture these devices, which provide important survey information for architects, planners, builders, and a variety of public and private infrastructure participants, many of which are small businesses. The Commission began investigating UWB technology in 1998,[122] and established regulations that permitted the marketing and operation of certain types of new products incorporating UWB technology in 2002.[123] Most recently, the Commission affirmed the existing UWB rules with the expectation that a variety of new UWB devices will be deployed in the next twelve to eighteen months.[124]

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[118] *Amendment of Part 15 of the Commission's Rules Regarding Spread Spectrum Devices*, Report and Order, 17 FCC Rcd 10,755 (2002).

[119] Modification of Parts 2 and 15 of the Commission's Rules for Unlicensed Devices and Equipment Authorization, Notice of Proposed Rulemaking, 2003 WL 22136267 (2003).

[120] *Id*.

[121] The English translation is "International Special Committee on Interference."

[122] *Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems*, FCC 98-208, Notice of Inquiry, 13 FCC Rcd 16,376 (1998); Notice of Proposed Rulemaking, 12 FCC Rcd 12,086 (2000).

[123] *Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems*, First Report and Order, 17 FCC Rcd 7435 (2002), *Erratum*, 17 FCC Rcd 10,505 (2002).

[124] *Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems*, Memorandum Opinion and Order and Further Notice of Proposed Rule Making, 18 FCC Rcd 3857 (2003).

6. Broadband over Power Line and Wireless Local Area Networks

146. The Commission also engaged in several technical and operational studies to support and promote new technologies that both aid small business operations and also directly provide new opportunities for small businesses. These include broadband over power line (BPL), which would provide Internet service over the existing power grid, enhancing broadband access for all businesses and providing business opportunities for the suppliers of this equipment and technology. Another example is wireless local area networks (WLANs), which greatly increase business flexibility and productivity, and provide manufacturing and marketing opportunities for suppliers of this equipment and service.

147. In April 2003, the Commission initiated a *Notice of Inquiry* to obtain information on a variety of issues related to BPL systems.[125] BPL technologies could play an important role in providing additional competition in the offering of broadband infrastructure to all entities, regardless of their size or location. For example, BPL could offer Internet and high-speed broadband access to businesses and entrepreneurs in rural and underserved areas—places that are difficult to serve due to the high costs associated with upgrading existing infrastructure and interconnecting communication nodes with new technologies.

7. Low Power Radio Service

148. In addition, the Commission elevated the LPRS in the 216-217 MHz band from secondary to primary status. This action will protect the investment various businesses have made in LPRS devices for use at such locations as theaters, arenas, and stadiums.[126]

8. Wireless Medical Telemetry Service

149. Similarly, the Commission allocated the bands 608-614 MHz, 1395-1400 MHz, and 1429-1432 MHz to the WMTS used in hospitals and other medical facilities. This action provides much needed, dedicated spectrum to WMTS devices that were experiencing interference due to operating in the television and land mobile bands.[127] Subsequent to that action, the Commission further modified the WMTS allocation by relocating the WMTS to the 1427-1429.5 MHz band from the 1429-1432 MHz band to allow licensees to use the spectrum more efficiently because the spectrum sharing environment will be more favorable at the lower end of the band.[128]

9. Broadcast Auxiliary Service

150. The Commission also took action to simplify and expand opportunity for aural and TV BAS licensees to use digital modulation techniques in all of their allocated frequency bands. This action eliminated the need for entities to file requests for waivers and Special Temporary Authority (STA), thus

[125] *Inquiry Regarding Carrier Current Systems, including Broadband over Power Line Systems*, Notice of Inquiry, 18 FCC Rcd 8498 (2003).

[126] *Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz Government Transfer Bands, and Amendment of Parts 2 and 95 of the Commission's Rules to Create a Wireless Medical Telemetry Service, and Amendments to Part 90 of the Commission's Rules Concerning Private Land Mobile Radio Services*, Report and Order, 17 FCC Rcd 368 (2002).

[127] *Amendment of Parts 2 and 95 of the Commission's Rules to Create a Wireless Medical Telemetry Service*, ET Docket 99-255, Report and Order, 15 FCC Rcd 11,206 (2000).

[128] *See supra* n.126.

saving businesses the time it takes to prepare these requests and their associated filing fees. This decision also injected more flexibility into the rules so that entities can better design their systems to perform more reliably at reduced cost. The Commission also permitted motion picture and television producers to operate new wireless assist video devices on certain unused VHF and UHF TV channels. This will provide a more cost effective means for producers to monitor multiple camera angles when producing program material.[129]

10. Spectrum Policy Task Force

151. The Chairman convened a SPTF to provide recommendations to the Commission on changes to spectrum policy that could increase the public benefits derived from the use of radio spectrum. In creating the SPTF, the Chairman initiated the first ever comprehensive and systematic review of spectrum policy at the Commission.[130] The SPTF made many recommendations designed to assist licensees and manufacturers of all sizes. A prominent element of the SPTF's recommendations was its conclusion that spectrum access was more of a problem than spectrum scarcity and that the Commission should work to increase opportunities for technologically innovative and economically efficient spectrum use. In other words, the SPTF's recommendations were shaped by the general conclusion that spectrum policy must evolve towards more flexible and market-oriented regulatory models. These policies countenance greater market access for new technologies and services, which are, very often, the province of entrepreneurs and small businesses. Further, the SPTF recommended that the Commission consider a balance among three general models for assigning spectrum usage rights: (1) an "exclusive use" model; (2) a "commons" model, and (3) a "command and control" model. By applying each of these models appropriately, the SPTF concluded that all entities would potentially be able to gain more flexibility in more spectrum. With respect to rural areas, the SPTF stated that the Commission should explore ways to promote spectrum access and flexibility, including flexible regulation of power levels, utilization of secondary markets' mechanisms to encourage leasing of spectrum usage rights, and consideration of rural issues in defining geographic licensing areas.

152. The Commission also continues its efforts to provide accessible information to the public, small businesses, local governments, manufacturers, and telecommunications service providers. For example, the Commission created a Radio Spectrum Home Page on the Internet so that entities can more easily research spectrum issues that affect their operations.[131]

153. With these new allocations, rules, and spectrum management principles, the Commission anticipates the development of a broad range of new devices and communications options that will stimulate economic development and the growth of new industries and promote the ability of manufacturers—including small businesses and entrepreneurs—to compete globally.

G. Wireless Telecommunications Bureau

154. During the past three years, the Wireless Telecommunications Bureau initiated and advanced several new rulemaking proceedings, as well as continued to implement ongoing policies,

[129] *Revisions to Broadcast Auxiliary Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78, and 101 of the Commission's Rules*, Report and Order, 17 FCC Rcd 22,979 (2002).

[130] *See Spectrum Policy Task Force Report*, ET Docket No. 02-135 (rel. Nov. 2002) (*SPTF Report*). The *SPTF Report* and other related materials can be found at www.fcc.gov/sptf. *See also Commission Seeks Public Comment on Spectrum Policy Task Force Report*, Public Notice, 17 FCC Rcd 24,316 (2002).

[131] http://www.fcc.gov/oet/spectrum/.

which reduce barriers to entry for small businesses. The initiatives concerning secondary markets, rural access, and tribal lands enhance the ability of small businesses and entrepreneurs to obtain access to wireless spectrum and provide new services. Through continued implementation of its competitive bidding procedures in recent auctions, the Commission offers significant incentives to encourage the participation of small businesses in obtaining new wireless licenses. The Commission also designed several auctions to enhance participation of small businesses by offering license areas in smaller sizes that may be more suited for such businesses. Similarly, in band manager licensing the Commission improved opportunities for small businesses to obtain ready access to discrete portions of spectrum, in the amount and for the period they need, consistent with their business plans. In licensing policies that permit sharing of spectrum among private wireless service licensees, the Commission enables small businesses in the same geographic area to meet their respective needs by combining limited resources to use transmitters and equipment services offered by a single provider under "multiple licensing." Finally, through its recent actions to streamline several service rules, add flexibility to construction requirements, expand outreach efforts to explain its policies and processes, improve license application and filing procedures, lessen reporting requirements, and develop implementation schedules more appropriate for small businesses, the Commission continues to act to reduce burdens on small businesses and facilitate their entry into the field of wireless radio service providers.

1. Secondary Markets

155. The Commission is making significant advances in facilitating broader access to the valuable wireless spectrum resource by a variety of entities, including entrepreneurs and small businesses, through the development of secondary markets in wireless radio spectrum. In November 2000, the Commission concurrently adopted a *Policy Statement* and a *Notice of Proposed Rulemaking* (*Secondary Markets NPRM*), in which it proposed a framework to enable the development of these secondary markets.[132] The Commission set forth several goals to guide its efforts to eliminate regulatory barriers that hinder access to spectrum and to promote more efficient use of spectrum. As discussed in the *Secondary Markets NPRM*, these goals include removing regulatory uncertainty and establishing clear policies and rules concerning "spectrum leasing" arrangements in the wireless radio services.[133] Recently, the SPTF strongly endorsed this approach, as well as other Commission efforts to promote access to spectrum through secondary markets.[134]

156. In May 2003, the Commission adopted a *Report and Order* (*Secondary Markets Report and Order*), in which it implemented policies and procedures to facilitate two different categories of spectrum leasing arrangements. These changes further the ability of licensees and entities that seek to gain access to spectrum, including entrepreneurs and small businesses, to enter into arrangements best suited the parties' respective needs and business models.[135] Consistent with the goals of the *Secondary*

[132] *See generally Principles for Promoting Efficient Use of Spectrum By Encouraging the Development of Secondary Markets*, Policy Statement, 15 FCC Rcd 24,178 (2000) (*Policy Statement*); *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Notice of Proposed Rulemaking, 15 FCC Rcd 24,203 (2000) (*Secondary Markets NPRM*).

[133] *See Secondary Markets NPRM*, 15 FCC Rcd at 24,204-05, paras. 1-4. In particular, the Commission proposed to remove regulatory uncertainty and clarify the respective responsibilities of licensees, spectrum lessees, and the Commission with regard to spectrum leasing arrangements, all in a manner consistent with our statutory mandates and public interest objectives. *See id.* at 24,215-15, paras. 27-62, 24,227-33, paras. 70-82.

[134] *See supra*, para. 151 and n.130.

[135] *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 20,604 (2003) (*Secondary Markets Report and Order*).

Markets NPRM, the Commission designed this framework to: (1) remove unnecessary regulatory barriers to the development of secondary markets in spectrum usage rights; and (2) create significantly broader access to valuable spectrum resources by enabling a wide array of facilities-based providers of broadband and other communications services to enter into spectrum leasing arrangements with wireless radio service licensees. Facilitating the development of secondary markets enhances and complements several of the Commission's major policy initiatives and public interest objectives, including significant efforts to enhance economic opportunities and access for the provision of telecommunications services by designated entities, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.

2. Rural Initiatives

157. The Commission continues to pursue innovative policies to enhance access to spectrum by rural services providers, including small businesses. In December 2002, the Commission commenced a proceeding with the issuance of a *Notice of Inquiry* (*Rural Notice of Inquiry*) seeking comment on the effectiveness of its current regulatory tools in facilitating the delivery of spectrum-based services to rural areas.[136] In addition, we requested comment on the extent to which rural telephone companies and other entities seeking to serve rural areas have opportunities to acquire spectrum and provide spectrum-based services pursuant to Sections 309(j)(3) and 309(j)(4) of the Communications Act.[137]

158. In September 2003, the Commission adopted a *Notice of Proposed Rulemaking* (*Rural Access NPRM*), in which the Commission continues to examine ways to promote the rapid and efficient deployment of quality spectrum-based services in rural areas.[138] The *Rural Access NPRM* builds upon the record developed in response to the *Rural Notice of Inquiry*, including comments as to how the Commission could modify its policies to encourage further the provision of wireless services in rural areas. The *Rural Access NPRM* also draws upon the findings and recommendations of the SPTF, which identified and evaluated potential changes in the Commission's spectrum policy that would increase public benefits from spectrum-based services.[139] As a complement to the measures the Commission took, the proposals set forth in the *Rural Access NPRM* seek to minimize regulatory costs and eliminate unnecessary regulatory barriers to the deployment of spectrum-based services in rural areas. As reflected in the proposals set forth in the *Rural Access NPRM*, the Commission believes there are additional spectrum policy initiatives it can adopt to reduce the overall cost of regulation and increase flexibility in a manner that will facilitate access, capital formation, build-out, and coverage in rural areas.

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[136] *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, Notice of Inquiry, 17 FCC Rcd 25,554 (2002) (*Rural Notice of Inquiry*).

[137] *Id.* Section 309(j)(3) generally requires the Commission to promote the development and rapid deployment of new technologies, products and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays. It further requires the Commission to promote opportunity and competition by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. *See generally* 47 U.S.C. § 309(j)(3). Section 309(j)(4)(D) requires that in prescribing regulations, the Commission "ensure that small business … and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and for such purposes, consider the use of tax certificates, bidding preferences, and other procedures." *See id.* § 309(j)(4)(D).

[138] *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, 18 FCC Rcd 20,802 (2003) (*Rural Access NPRM*).

[139] *See supra*, para. 151 and n.130.

3. Tribal Lands Initiatives

159. Similar to our actions in the *Rural Access NPRM* to promote the deployment of services in rural areas, in June 2000, the Commission adopted a *Report and Order and Further Notice of Proposed Rulemaking*, in which the Commission adopts rules and policies that provide incentives for wireless telecommunications carriers to serve individuals living on underserved tribal lands.[140] As the Commission stated previously, Congress, through the Telecommunications Act of 1996, instructed the Commission to help ensure that all Americans have access to affordable telecommunications services.[141] Because many tribal lands, particularly those in the western U.S., are geographically isolated,[142] obtaining the lowest cost for providing basic telephone service to the reservation population may often require use of a terrestrial wireless technology, a satellite technology, or a combination of both. Terrestrial wireless technology includes both mobile services, such as cellular and personal communications service (PCS), and fixed "wireless local loop" services.

160. In March, 2003, the Commission adopted a *Second Report and Order and Second Further Notice of Proposed Rulemaking,* in which it extended the certification period from ninety days to 180 days to provide licensees and tribal authorities more time to complete the certification process.[143] Also, in order to seek further ways to encourage greater participation in the existing tribal lands bidding credit program, the Commission sought additional comment on whether it should make certain modifications to the program, including: (1) reconsidering the current construction obligations on carriers utilizing the tribal lands bidding credit; (2) possible modifications to the bidding credit amount and methodology; (3) accounting for year 2000 Census information regarding tribal lands penetration rates; and (4) giving credit to tribal lands carriers for providing service to non-tribal lands with comparably low penetration rates.[144]

4. Competitive Bidding Incentives

161. The Commission continues to offer a number of incentives to encourage the participation of small businesses in the auction process, consistent with the mandates set forth in Section 309(j) of the Communications Act.[145] For example, in the auction of broadband PCS licenses, the Commission

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[140] *Extending Wireless Telecommunications Services to Tribal Lands*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 11,794 (2000).

[141] *See, e.g.*, *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, 7523-24, para. 51, *Errata*, 14 FCC Rcd 17,090 (1999). *See also* Telecommunications Act of 1996, § 706.

[142] U.S. Congress, Office of Technology Assessment, Telecommunications Technology and Native Americans: Opportunities and Challenges 74, 80 (1995) (OTA Study). Data now suggests that Indian tribes live on some of the most isolated areas, locations that telecommunications carriers find especially expensive to serve.

[143] *Extending Wireless Telecommunications Services to Tribal Lands*, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 4775 (2003).

[144] *Id*. at 4783-88, paras. 21-35.

[145] The Omnibus Budget Reconciliation Act of 1993 added Section 309(j) to the Communications Act. *See* Pub. L. No. 103-66, Title VI, § 6002(a), 107 Stat. 312, 387 (1993). Section 309(j) originally authorized the Commission to employ competitive bidding to choose from among mutually exclusive applications for initial licenses in services where the licensee receives compensation from subscribers. In 1997, Congress expanded the Commission's auction authority. Specifically, the Balanced Budget Act of 1997 amended Section 309(j)(1) to require the Commission to award mutually exclusive applications for initial licenses or permits using competitive bidding procedures, except in limited circumstances. *See* 47 U.S.C. § 309(j)(1) (as amended by the Balanced Budget Act of 1997, § 3002). As (continued....)

established entrepreneurs' blocks in which participation was limited to applicants with $125 million or less in annual gross revenues for the previous two years and total assets of $500 million or less.[146] In addition, many auctions conducted since the *2000 Report* offered small business bidding credits, which are available to businesses whose gross revenues do not exceed a specific threshold.[147] The Commission intends these bidding credits to encourage participation in the competitive bidding process by entities that otherwise might have difficulty gaining access to capital.[148]

162. Recent statistics indicate that a significant portion of both small businesses and rural telephone cooperatives that participated in spectrum auctions received small business bidding credits. For instance, in the twenty-nine auctions completed by the Commission as of September 18, 2002 that offered small business bidding credits, 84% of the qualified bidders that identified themselves as rural telephone cooperatives and 79% of all qualified bidders were eligible to receive a small business bidding credit.[149] Other incentives the Commission designed to encourage auction participation by small businesses have, in the past, included reduced upfront payments,[150] installment payment plans with favorable interest

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noted previously, Section 309(j)(3) requires the Commission to promote opportunity and competition, *inter alia*, by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. *See generally* 47 U.S.C. § 309(j)(3). Section 309(j)(4)(D) requires that the Commission seek to "ensure that small business … and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and for such purposes, consider the use of tax certificates, bidding preferences, and other procedures." In the *2000 Report*, the Commission acknowledged the challenges that small businesses face in their efforts to acquire geographic area licenses. Accordingly, many of the Commission's spectrum assignment and wireless licensing procedures serve to facilitate market opportunities for small businesses.

[146] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Fifth Report and Order, 9 FCC Rcd 5522, 5585, para. 121 (1994) (*Competitive Bidding Fifth Report and Order*); *see also Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Sixth Report and Order, 11 FCC Rcd 136 (1995).

[147] *See, e.g., Reallocation and Service Rules for the 698-746 MHz Spectrum Band* (Television Channels 52-59), Report and Order, 17 FCC Rcd 1022, 1088, 1092, paras. 173, 178 (2002) (35% bidding credit for entrepreneurs, 25% bidding credit for very small businesses, and a 15% bidding credit for small businesses); *Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz*, Report and Order, 17 FCC Rcd 9980, 10,022-23, para. 106 (2002) (25% bidding credit for very small businesses, and a 15% bidding credit for small businesses); *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range*, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, para. 4 (2002) (15% bidding credit for entrepreneurs, 25% bidding credit for small businesses, and a 35% bidding credit for very small businesses); *Amendment of Commission's Rules Concerning Maritime Communications*, Second Memorandum Opinion and Order and Fifth Report and Order, 17 FCC Rcd 6685 (2002) (25% bidding credit for small businesses and a 35% bidding credit for very small businesses); *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Service at 24 GHz*, Report and Order, 15 FCC Rcd 16,934, 16,936, para. 2 (2000) *(24 GHz R&O)*; *Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, Report and Order and Second Further Notice of Proposed Rule Making, 12 FCC Rcd 18,600, 18,625, para. 47 (1997) (25% bidding credit for small businesses and a 35% bidding credit for very small businesses).

[148] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2391, para. 242 (1994).

[149] These calculations are based on data available at the Commission's Auction Form 175 database (http://auctionfiling.fcc.gov/form175/index.htm).

[150] *See, e.g., Competitive Bidding Fifth Report and Order,* 9 FCC Rcd at 5600, para. 155 (25% reduction for all broadband PCS C block small business applicants).

rates,[151] and reduced down payments on winning bids. The Commission also established an exemption for rural telephone cooperatives from the requirement that the gross revenues of entities controlled by an applicant's officers and directors are attributed to the applicant for the purpose of determining eligibility for small business preferences, including bidding credits.[152] The Commission anticipates that this action will increase the ability of rural telephone cooperatives to participate in spectrum auctions and provide service in rural areas.

163. Finally, in 2002 the Commission took additional action to facilitate auction participation by all entities, including small businesses. The Wireless Telecommunications Bureau, pursuant to delegated authority from the Commission, streamlined competitive bidding procedures for the service-specific competitive bidding rules and portions of the Part 1 general competitive bidding rules.[153] This action eliminated approximately sixty-six pages of redundant and unnecessary rules from the Code of Federal Regulations,[154] thereby providing clearer guidance to future auction participants.

[151] *See, e.g., Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463, 1574, para. 248 (1995); *Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use*, Second Report and Order, 11 FCC Rcd 624, 662-663, paras. 96-98 (1996). In the *Part 1 Third Report and Order*, the Commission suspended the installment payment program. *See Amendment of the Part 1 Rules—Competitive Bidding Procedures*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 13 FCC Rcd 374, 397-98, para. 38 (1997) (*Part 1 Third Report and Order*). The Commission noted therein that Congress did not require the use of installment payments in all auctions, but, rather, recognized them as one means of promoting the objectives of Section 309(j)(3). Specifically, Section 309(j)(4) of the Communications Act states that the Commission shall, in prescribing regulations pursuant to these objectives and others, "*consider* alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods that promote the objectives described in paragraph (3)(B) . . . ." *See* 47 U.S.C. § 309(j)(4)(A) (emphasis added). Section 3007 of the Balanced Budget Act requires that the Commission conduct certain future auctions in a manner that ensures that all proceeds from such bidding are deposited in the U.S. Treasury not later than September 30, 2002. *See* Section 3001 of the Omnibus Consolidated Appropriations Act for 1997, P.L. 104-208, 110 Stat. 3009 (1997). In weighing the competing objectives in Section 309(j) of promoting the development and rapid deployment of new spectrum-based services and ensuring that designated entities are given the opportunity to participate in the provision of such services, the Commission determined that installment payments should not be used in the immediate future until we assess the efficacy of this type of program in meeting Congress's objectives. *Part 1 Third Report and Order*, 13 FCC Rcd at 397-98, para. 38. In the *Part 1 Fifth Report and Order*, the Commission adhered to its previous decision to suspend the installment payment program. The Commission did not receive any response to our request for comment on ways to provide an effective installment payment program while at the same time minimizing significant concerns (e.g*.,* licensee default or difficulty meeting financial obligations to the Commission). *Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures*, Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making, 15 FCC Rcd 15,293, 15,321-22, paras. 54-55 (2000).

[152] *See Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures*, Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order, 18 FCC Rcd 10,180, 10,186-95, paras. 10-20 (2003). A bidding credit is a payment discount on a winning bid determined at the conclusion of the bidding process.

[153] *Amendment of Parts 1, 21, 22, 24, 25, 27, 73, 74, 80, 90, 95,100, and 101 of the Commission Rules—Competitive Bidding*, Order, 17 FCC Rcd 6534 (WTB 2002) (*Competitive Bidding Amendment*)*; Erratum*, 17 FCC Rcd 11,146 (WTB 2002).

[154] *Competitive Bidding Amendments,* 17 FCC Rcd at 6535, para 1.

5. Small Geographic Areas/Spectrum Blocks

164. An additional means by which the Commission seeks to enhance participation in spectrum auctions is by adopting service areas of various sizes. In a number of services, for instance, we license areas of varying sizes, ranging from small to large, in order to attract a diverse group of prospective bidders.[155] Larger entities may seek to acquire licenses that cover whole regions of the country, while other entities, such as rural telephone cooperatives, may be interested in obtaining licenses to serve only particular rural areas. After seeking comment, the Commission varied the size of the geographic service area depending upon the nature of the service provided and the likely users. By continuing to vary the size of the service area based on the needs of the likely users, we will promote economic opportunity for a wide variety of applicants, including entrepreneurs and small businesses. Another way in which the Commission seeks to enhance spectrum auction participation is by offering an array of spectrum block sizes in each geographic area to present ample opportunities for participation by rural telephone companies and small businesses.[156]

165. The Commission recently auctioned eighteen MHz of spectrum, in two blocks of spectrum, in the lower 700 MHz band. The C block, composed of twelve MHz of this spectrum, which the Commission auctioned in relatively small geographic area licenses (MSAs and RSAs) in an effort to promote opportunities for small and rural wireless providers to obtain spectrum. The Commission auctioned six additional MHz of spectrum in the D block in larger geographic area licenses, known as Economic Area Grouping (EAG). The Commission completed an initial auction of the C and D blocks of the Lower 700 MHz Band in September 2002 (Auction No. 44). In that auction, 102 winning bidders won 484 licenses. Seventy-two of the winning bidders claimed small business, very small business, or entrepreneur status, and obtained a total of 329 licenses. The Commission made available the licenses that went unsold in that auction in a second auction (Auction No. 49), which closed on June 13, 2003. In the second auction, thirty-five bidders won 251 licenses, with seventeen of these winning bidders claiming small or very small business status and winning sixty licenses, while nine winning bidders claimed entrepreneur status and won 154 licenses. The Commission's decision to license a significant portion of the Lower 700 MHz Band over these small geographic areas helped to better balance the playing field such that small and rural providers had an opportunity to participate in the auction and the provision of spectrum-based services.

6. Band Manager Licensing

166. Following the *2000 Report*, the Commission applied the concept of band manager[157] licensing, which it first created in 2000 in the 700 MHz Guard Band Manager proceeding,[158] to other

[155] For example, in the lower 700 MHz Band auction, we used Rural Service Areas (RSAs) and Metropolitan Statistical Areas (MSAs), collectively designated Cellular Market Areas (CMAs), of which there are 734 geographic units for the entire U.S. (306 MSAs and 428 RSAs). In the 800 MHz Specialized Mobile Radio (Upper 10 MHz), 220 MHz, General Wireless Communications Service and Location and Monitoring Service auctions, we used Economic Areas (EAs) to license the services. In the Local Multipoint Distribution Service (LMDS) auction, we used Basic Trading Areas (BTAs) to license the service.

[156] For example, in the lower 700 MHz Band auction, we divided the five spectrum blocks available in a given geographic areas as follows: three 12 MHz paired blocks, with each block consisting of a pair of six MHz segments, and two six MHz blocks of contiguous, unpaired spectrum.

[157] As we indicated in the *2000 Report*, Guard Band Managers, a new class of commercial licensee, engage solely in the business of leasing spectrum to third-parties on a for-profit basis. The Guard Band Manager licensee may subdivide its spectrum in any manner it chooses and make it available to system operators, including small businesses, or directly to end users for fixed or mobile communications, consistent with the frequency coordination and interference rules specified for these bands. Generally, band manager licensing has many potential benefits, (continued....)

bands. Band manager licensing increases opportunities for small businesses to gain ready access to discrete portions of wireless spectrum, in the amount and for the area and period they need, by leasing the amount of spectrum they need from band manager licensees. This process involves fewer transactional costs and regulatory burdens than that associated with acquiring large, full-term geographic area licenses by means of assignment or the competitive bidding process. 700 MHz Guard Band Managers are in the process of developing equipment and business plans while broadcast incumbency and other issues are resolved. The Commission extended the spectrum leasing benefits set forth in band manager licensing to the 1390-1392 MHz, 1670-1675 MHz, and 2385-2390 MHz bands, and the paired 1392-1395 and 1432-1435 MHz Government Transfer Bands.[159] In October, 2002, the Commission further extended the concept of band manager licensing to the already licensed 220 MHz services, through the grant of a waiver to a current geographic area/nationwide licensee to provide band management services in that band.[160]

7. Private Wireless Service Access

167. In addition to being able to obtain licenses through competitive bidding, the Commission's Rules also provide for licensing of shared, non-exclusive private land mobile radio (PLMR) spectrum on a first-come, first-served basis.[161] By this process, many small businesses or entities in a given geographic area might be assigned the same spectrum, increasing the amount of frequency re-use that is possible compared to the alternative of exclusive use with set distance separations.[162] Small businesses or entities in the same geographic area, each licensed for shared spectrum in this way, often combine resources to use transmitters and equipment offered by a single (often third-party) provider under a concept called "multiple licensing."[163] Additionally, a given licensee,

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including: (1) enabling the licensee to engage in market-based transactions in wireless capacity at a time when access to spectrum is a critical need for a wide variety of wireless operations; (2) providing spectrum users, including small businesses, with more flexibility in obtaining access to the amount of spectrum, in terms of quantity, length of time, and geographic area, that best suits their needs; (3) facilitating the development of a "free market" in spectrum could result in more efficient use of this limited resource; and (4) streamlining the day-to-day management of this spectrum. Several of the spectrum leasing features of band manager licensing have been incorporated into the spectrum leasing policies recently adopted by the Commission in the *Secondary Markets Report and Order.*

[158] *See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, Second Report and Order, 15 FCC Rcd 5299 (2000).

[159] *See Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands*, Report and Order, 17 FCC Rcd 9980, 9989-92, paras. 13-20 (2002). The Commission extended the spectrum leasing policies set forth in the *Secondary Markets Report and Order* to these bands. *See Secondary Markets Report and Order*, at para. 84.

[160] *See Access 220, LLC, Request for Waivers to Provide Band Management Services Utilizing Licenses in the 220-222 MHz Band*, Memorandum Opinion and Order, 17 FCC Rcd 20,464 (WTB 2002).

[161] *See generally* 47 C.F.R. Part 90.

[162] *See Implementation of Sections 309(j) and 332 of the Communications Act of 1934 as Amended*, Notice of Proposed Rule Making, 14 FCC Rcd 5206, 5217, para. 14 (1999) (*Balanced Budget Act NPRM*).

[163] *See* 47 C.F.R. § 90.185. In the *CMRS Second Report and Order*, the Commission concluded that multiple licensing was still permissible as a matter of law and desirable as a matter of public policy because the "practical realities" that led to the development of community repeaters continue to prevail, namely, that most Part 90 licensees cannot independently afford the monthly site rent for a tower or rooftop that could provide the necessary (continued....)

whether on shared spectrum or not, may share the use of its particular PLMR license with other small businesses or entities also eligible for that particular spectrum.[164]

168. The Commission continues to encourage partnering between PLMR licensees, such as public safety entities and utilities.[165] Each of these sharing paradigms promotes conservation of capital, operational efficiency, and cost reduction for the small business entity. The Commission took several steps to increase market opportunities for such private licensees, many of which are small businesses. For example, in 2002, the Commission increased business opportunities by lifting its rule that prohibited stations licensed in the microwave services as private systems from leasing reserve capacity to common carriers.[166] Furthermore, although the Commission retained its prohibition against private licensees offering common carrier services without first becoming licensed as common carriers, it nonetheless waived the filing fees associated with a change in regulatory status, thereby easing financial burdens on entities desiring to enter the commercial market.[167]

169. The Commission continues to ease regulatory burdens and lower market entry barriers for small businesses by streamlining many of its rules, including those relating to private wireless services, and by eliminating unnecessary or burdensome requirements. For example, for licensees in the maritime services, the Commission is considering relaxing license posting requirements, and permitting the maintenance of records via electronic means.[168] Also, in November 2000, the Commission adopted the *Balanced Budget Act Report and Order*, in which it adopted rules and policies to implement Sections 309 (j) and 337 of the Communications Act, as amended by the Balanced Budget Act of 1997.[169] In this rulemaking, the Commission amended its 800 MHz rules to permit modification of certain PLMR stations for commercial use or assignment to a commercial user. The Commission found that permitting private license conversion or assignment to a commercial user would create additional flexibility for both PLMR

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coverage, and that if each entity had to construct a separate system, it would be difficult to coordinate. *See Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411, 1430, para. 47 (1994). The Commission also concluded that Congress did not intend such arrangements to be classified as a "for-profit" CMRS service under the 1993 Budget Act. *Id.* at 1430-31, para. 49. More recently, the Commission concluded that such arrangements also do not constitute commercially available communications services for purposes of our competitive bidding authority. *See Balanced Budget Act NPRM*, 14 FCC Rcd at 5230-32, paras. 46-50; *Implementation of Sections 309(j) and 332 of the Communications Act of 1934 as Amended*, Report and Order and Further Notice of Proposed Rule Making, 15 FCC Rcd 22,709, 22,750 n.129 (2000).

[164] *See* 47 C.F.R. § 90.179.

[165] *See*, *e.g.*, *American Electric Power Service Corp*., Order, DA 00-107 (WTB PSPWD rel. Jan. 20, 2000); *Commonwealth of Pennsylvania*, Order, 14 FCC Rcd 14,029 (WTB PSPWD 1999); *Central and South West Services, Inc*., Order, 13 FCC Rcd 16,162 (WTB PSPWD 1998); *State of South Carolina*, Order, 13 FCC Rcd 8787 (WTB 1997); *Public Utility District No. 1 of Snohomish County*, Order, 13 FCC Rcd 7964 (WTB PSPWD PRB 1997); *Texas Utilities Services, Inc*., Order, 13 FCC Rcd 4258 (WTB 1997).

[166] *Amendment of Part 101 of the Commission's Rules to Streamline Processing of Microwave Applications in the Wireless Telecommunications Services*, Report and Order, 17 FCC Rcd 15,040, 15,048, para. 12 (2002).

[167] *Id.* at 15,048, para. 13.

[168] *Amendment of the Commission's Rules Concerning Maritime Communications*, Fourth Further Notice of Proposed Rulemaking, 17 FCC Rcd 227, 238-39, para. 22 (2001).

[169] *See Implementation of Sections 309(j) and 332 of the Communications Act of 1934 as Amended*, Report and Order, 15 FCC Rcd 22,709 (2000) (*Balanced Budget Act Report and Order*).

licensees seeking to fill their communications needs and for commercial licensees seeking additional spectrum.[170]

170. More recently, in 2002 the Commission released a *Memorandum Opinion and Order and Second Report and Order* in the 1998 Biennial Regulatory Review of Part 90 proceeding, eliminating eligibility restrictions on the Multi-Use Radio Service (MURS).[171] This action, which allowed any entity to operate MURS on Public Safety Pool frequencies, provided small entities with greater licensing opportunities. Likewise, the Commission's elimination of power restrictions on seven of the thirty-one "dockside" channels resulted in the potential to pair these dockside frequencies with the other Industrial/Business Pool frequencies, thereby permitting greater opportunities for small (and other) businesses by providing for increased signal coverage and more reliable communications. In 2003, the Commission designated twenty-five channels in the 450-470 MHz band for low power, itinerant operations.[172] This allocation will enhance business opportunities for small entities such as plumbers, electricians, and construction companies that need on-site, short term communications on an itinerant basis.[173] The Commission is also making significant strides towards accelerating the migration to narrowband technology, which will result in additional vacant spectrum, thereby providing small businesses in congested areas with greater opportunities to operate their own radio systems.[174]

8. Application Processing and Filing

171. The Commission is taking several steps to ensure that its application processing and filing rules and policies do not present barriers for small businesses. In this regard, the Commission brought competition to the frequency coordination process, unified its administrative rules for filing applications, and implemented electronic filing and online information resources over the Internet. As described below, each of these actions constitutes an affirmative step toward reducing burdens on small businesses that hold wireless radio services licenses.

a. Frequency Coordination

172. In the Part 90 PLMR services,[175] frequency coordinators analyze applications before they are submitted to the Commission to select a frequency that will meet the applicant's needs, while minimizing interference to licensees already using the frequency band. Frequency coordinators recommend the best available frequency for the applicant's proposed operations to the Commission.[176]

[170] *Id*. at 22,760, para. 109.

[171] *1998 Biennial Regulatory Review—47 C.F.R. Part 90—Private Land Mobile Radio Services*, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9830, 9831, para. 2 (2002) (*1998 Part 90 Biennial Review*).

[172] *See Amendment of Part 90 of the Commission's Rules and Policies for Applications and Licensing of Low Power Operations in the Private Land Mobile Radio 450-470 MHz Band*, Report and Order, 18 FCC Rcd 3948, 3970, para. 55 (2003).

[173] *Id.*

[174] *See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as amended, Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies*, Second Report and Order and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 3034, 3038, para. 12 (2003).

[175] 47 C.F.R. Part 90.

[176] *See Balanced Budget Act NPRM*, 14 FCC Rcd at 5217, para. 14.

Applicants utilize frequency coordinators most frequently for shared, non-exclusive PLMR spectrum. In the bands below 512 MHz, which are mostly shared PLMR spectrum, the Commission, in the *Refarming* proceeding, consolidated twenty radio services into two broad frequency pools: Public Safety and Industrial/Business.[177]

173. As we stated in the *2000 Report*, the Commission's *Refarming Second Report and Order*[178] adopted rules to inject competition into the frequency coordination process.[179] In 1997, frequency coordinators had sole control over the frequencies within their respective radio services.[180] Thereafter, the Commission changed that process to allow, generally, coordination of any Industrial/Business pool frequency by any of the coordinators of the services that were consolidated into the pool.

174. Today, we continue along these lines by increasing frequency coordination competition in additional radio services, specifically in the bands above 800 MHz. We intend this competitive coordination to lessen market entry barriers by reducing prices, improving coordination services, and providing more flexibility for the small businesses that constitute the bulk of PLMR licensees. The Commission will continue to explore ways in which to stimulate competition among frequency coordinators.

b. Electronic Filing

175. The Commission's goal is that all wireless licensees have access to licensing information online and the ability to file license applications electronically without the need for high-end computer systems or specialized, hard-to-obtain software.[181] As we noted in the *2000 Report*, the Commission achieved this goal for the wireless radio services by implementing its Universal Licensing System (ULS). The ULS is an online, interactive application filing system and research facility that benefits, in several ways, small businesses that are licensees. Because electronic filing is both easily accessible and simple, the development of the ULS greatly reduced the cost of preparing wireless applications and pleadings, while increasing the speed of the licensing process, for all licensees, including small businesses. In addition, application, license, and *Public Notice* information is available online. In this connection, the Wireless Telecommunications Bureau has combined ten separate licensing databases into the single ULS database, eliminating the need for small businesses to conduct research on multiple databases and be familiar with multiple database formats. The Wireless Telecommunications Bureau's portion of the Commission's website (http://wireless.fcc.gov) provides the public with online access to all released documents, *Public Notices*, and the current auction schedule (including maps and channel band plans). Further, licensees may review the Commission's weekly *Public Notices* online. Small businesses benefit from this approach by having the capability to review quickly Commission actions and proposed actions in a consistent format without having to obtain paper copies.

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[177] *See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them*, Second Report and Order, 12 FCC Rcd 14,307, 14,317, para. 20 (1997) (*Refarming Second Report and Order*).

[178] *Id.*

[179] *Id.* at 14,328, para. 40.

[180] *Id.*

[181] In the *1997 Report,* we noted that the Small Business in Telecommunications Association suggested that the Commission should design its electronic filing programs so that they can be used on less sophisticated computers, and, in particular, can be used to prepare applications on computers that are not interconnected.

176. Since the *2000 Report*, we converted all wireless radio services to the ULS, with the exception of Multipoint Distribution Service/Instructional Television Fixed Service.[182] This milestone marked the end of the Commission's ULS implementation phase and began a new phase of maintaining and, where appropriate, enhancing the ULS to serve better wireless applicants and licensees, including small businesses. Some of the enhancements include a redesigned license search, which provides more search options, easier navigation for reviewing license data, and a more convenient layout of the license data. The redesign of the ULS license search involved public forums where the Wireless Telecommunications Bureau gathered input from various ULS users, including small businesses. The Wireless Telecommunications Bureau also automated the filing of FCC Form 602, which certain licensees use to submit ownership information to the Commission. This enhancement provides easily accessible electronic filing and search capabilities for all entities that need to file ownership information regarding wireless licenses and anyone that wants to search for ownership information, including small businesses. Most recently, the Wireless Telecommunications Bureau began to redesign and enhance online filing for wireless applicants in order to provide an even simpler, more convenient, and direct method for filing wireless applications. This should provide considerable benefit to small businesses that may not be familiar with the ULS, as one of our goals of this enhancement is to have the ULS mirror the look and feel of many commercial websites and commercially available software used to submit filings of various kinds.

9. Outreach Efforts

177. The Wireless Telecommunications Bureau operates a booth at many industry trade shows, including those regularly attended by representatives of small businesses. The booth provides hands-on training in use of the Commission's ULS and auction bidding software over the Internet. The Commission's outreach program also includes a webpage and an Auctions/ULS Hot Line.[183] Members of the Commission and its staff speak at numerous industry, trade association, public interest organization, and telecommunications user group conferences on opportunities in wireless services licensed by the Commission, and will continue with this outreach. In addition, prior to the start of each service-specific Commission auction, the Wireless Telecommunications Bureau routinely holds seminars for bidders to provide additional information about auction procedures. We offer these seminars free-of-charge and provide anyone interested in specific auctions the opportunity to see presentations on radio service and auction rules and observe a demonstration of the competitive bidding system.

178. In implementing the electronic ULS, the Commission established a task force to receive public input on the design of the system and to coordinate efforts. The Wireless Telecommunications Bureau conducted numerous interactive demonstrations for licensees and their representatives on the proper use of the system for filing license applications and conducting database research. We announced these demonstrations by *Public Notice* and, in 1999, held approximately sixty sessions on certain topics of interest, including: (1) finding information in the ULS for license and application searches; (2) filing and researching license transfers and assignments; and (3) general application filing procedures. As stated above, our implementation of the ULS resulted in substantial benefits to all applicants, including small businesses. The Wireless Telecommunications Bureau held public forums and issued numerous *Public Notices* to educate the public on ULS procedures and benefits, and to obtain public input on ULS issues.[184] We maintain an electronic mail list of interested parties, to whom we provide updated ULS

[182] With regard to the MDS/ITFS services, we have created a transitional database wherein current licensees can view their license information and make corrections to any erroneous data.

[183] The Auctions/ULS Hotline telephone number is 1-888-225-5322.

[184] A list of Commission *Public Notices* concerning the ULS is available on the Wireless Telecommunications Bureau's ULS Homepage at www.fcc.gov/wtb/uls.

information free-of-charge. In addition, the Wireless Telecommunications Bureau also maintains a toll-free phone line and e-mail address[185] to assist with licensing and forms questions during the ULS transition, and established a technical support hotline and e-mail address[186] to assist the public with computer-related issues, including set-up and configuration.

179. The Commission revised its Antenna Structure Registration (ASR) program in conjunction with the implementation of the ULS, resulting in a streamlined approach to application filings and greater public access to ASR information. For example, antenna structure owners may now use the Internet to determine interactively whether their structures meet certain registration criteria. Previously, such research involved dialing into a Commission network and paying a per-minute fee to use Commission software. Similarly, the Commission expanded the public's ability to research existing records on the Internet, and began providing expanded database, daily transaction, and Federal Aviation Administration (FAA) files for downloading. The new ASR procedures allow electronic filers to determine, at the time of filing, whether their application will be granted, which reduces delay and transactional costs associated with the registration of antenna structures.

180. The Wireless Telecommunications Bureau also developed a wireless facility siting page that, among other things, provides current information about Commission Rules and procedures. The webpage provides access to fact sheets and rules and regulations regarding local government and environmental issues related to wireless facility siting. The webpage also provides links to the Commission's environmental rules and federal agencies responsible for environmental laws that are of concern to small businesses proposing to locate on communications facilities such as towers. In 2001, the Commission redesigned its Indian Initiative website and Auctions website and, in 2002, the Commission redesigned its websites for various services, including PCS, cellular, and paging. These informational and organizational updates are part of the Commission's continuing efforts to enhance website services to the public.

181. After the *2000 Report*, the Commission offered a series of seminars, most recently in July 2003, aimed at providing information to Native American tribal leaders and other interested parties to help increase telecommunications services to tribal residents. The Commission brought together its own experts, along with representatives from other federal government agencies, telecommunications companies and emerging technology firms, to inform tribal governments about various facets of telecommunications services and how different technologies, regulatory rules, and government programs can benefit tribal communities.[187] The Commission plans to continue its efforts at furthering this initiative.

10. Reporting and Other Requirements

182. In the past three years, the Wireless Telecommunications Bureau has examined ways to reduce the burden or impact of certain regulatory reporting requirements on smaller entities, without compromising its statutory mandate to promote the public interest. An example of the Commission's initiative to find ways to strike the appropriate balance is its approach to instituting new regulatory requirements designed to ensure access to wireless services for persons with hearing disabilities. In 2000,

[185] The toll-free number regarding ULS questions is 1-888-225-5322, and the e-mail address for ULS licensing and forms questions is ulshelp@fcc.gov.

[186] The Technical Support telephone number is 202-414-1250 and the e-mail address for ULS technical questions is ulscomm@fcc.gov.

[187] *See Federal Communications Commission Announces Wireless Telecommunications Bureau Indian Telecom Training Initiative (ITTI) 2000 Fall Seminar*, Public Notice (rel. Feb. 29, 2000); *see also* www.fcc.gov/Indians.

the Commission determined that it would remove the requirement from its rules that carriers provide analog service compatible with Advanced Mobile Phone Service (AMPS) specifications. However, in making this determination, the Commission established a five year transition period, to take into account both the need for carriers and manufacturers to develop devices that are digital but usable by persons with hearing disabilities and to lessen the impact on smaller entities with potentially fewer resources.[188] The Commission also took steps to eliminate reporting requirements that might unduly burden small entities with respect to TRS requirements. In implementing its June 30, 2002 final deadline by which all digital wireless systems were to be capable of transmitting 911 calls made using TTY devices, small entities were allowed to fulfill their reporting obligations through the TTY Forum.[189] Commenters strongly encouraged the Commission to allow such reporting because it is an extremely simple and inexpensive method of reporting for all entities, including small entities, and does not have a negative impact on the Commission's policy goal of ensuring greater access for persons with hearing disabilities.

183. On August 14, 2003, the Commission released a *Report and Order* modifying the exemption for wireless phones under the Hearing Aid Compatibility Act of 1988 (*HAC Act*) to require that digital wireless phones be capable of being used effectively with hearing aids.[190] In its *Report and Order*, the Commission recognized that certain manufacturers and service providers might have only a small presence in the market and that affording an exemption to such entities would not harm the goal of ensuring access to persons with hearing disabilities. For those manufacturers and service providers, the Commission adopted a *de minimis* exception. In instances where a manufacturer or a carrier offers no more than two digital handset models in the U.S., it is exempted from the compatibility requirements. In instances where a manufacturer or carrier offers three digital wireless handsets, it must make at least one compliant handset available within two years. Furthermore, to the extent there are digital wireless providers that obtain handsets only from manufacturers that offer more than two digital wireless phone models in the U.S., the service provider would likewise be exempt from the rules. Similarly, if a service provider obtains handsets only from manufacturers that offer three digital wireless phone models in the U.S., that service provider would have to offer only one compliant handset model. Additionally, in considering the possible impact of our rules on the many small business owners that act as agents for service providers, the Commission crafted its labeling rules to allow these entities flexibility in how they convey the information to persons with hearing disabilities. Thus, in implementing its *HAC Act* regulations, the Commission served two equally important policy goals: (1) promoting the ability of small entities to compete in the marketplace and (2) providing persons with hearing disabilities a range of handset choices commensurate to those available to persons without hearing disabilities.

11. Implementation Schedules

184. In recent years the Commission has made progress in the area of Enhanced 911 (E911) implementation. The deployment of E911 requires the development of new technologies and upgrades to local PSAPs, in conjunction with a coordinated effort among public safety agencies, wireless carriers, technology vendors, equipment manufacturers, and local wireline carriers. This complex collaboration among so many parties necessitates a firm commitment from all to meeting deployment goals. Because of the important public interest benefits associated with the provision of E911 services, the Commission

[188] *See Year 2000 Biennial Regulatory Review-Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services*, Report and Order, 17 FCC Rcd 18,401, *Erratum*, 17 FCC Rcd 22,140 (2002).

[189] *See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fourth Report and Order, 15 FCC Rcd 25,216 (2000).

[190] *See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, FCC 03-168, Report and Order, 18 FCC Rcd 16,753 (2003).

has considered it essential to maintain uniform E911 regulations for large and small entities alike, and has retained the flexibility to provide individualized relief from these rules for small entities on a showing that the carrier has met the Commission's waiver standards. Public safety is considered paramount in E911 implementation because a delayed or less than adequate response to a wireless 911 call can be disastrous regardless of whether a small carrier or large carrier is involved. Because of the important public safety aspect of these rules, we often must balance whatever burdens are imposed on smaller entities in the implementation of E911 against the general benefits of protecting the public interest.

185. Nevertheless, the Commission recognizes that market barriers exist and seeks to minimize the significant impact on affected small and rural entities by granting relief from E911 through the provision of longer implementation schedules for smaller entities than for larger entities. Many smaller carriers reported to the Commission about market barriers such as their inability to secure commitments from vendors for necessary technology upgrades (e.g., the vendors are currently catering to the larger carriers), and their inability to receive necessary E911 handsets from vendors until after the larger carriers receive their equipment. To ameliorate the apparent market disparities between large and small carriers, the Commission created a tiered approach to E911 implementation and provided different dates and conditions for carriers based on their number of subscribers. In October 2001, the Commission granted relief from certain provisions of the Phase II E911 regulations[191] to five major nationwide CMRS carriers (Tier I Carriers).[192] In July 2001, the Commission granted similar relief to certain non-nationwide carriers (Tier II and Tier III Carriers) that petitioned for relief because they had less ability than the nationwide CMRS carriers to obtain special vendor commitments necessary to deploy E911 rapidly.[193] These different dates and conditions are further reflected in the different reporting requirements to which we require large and small carriers to adhere. We require Tier I Carriers to file quarterly reports with the Commission each year until 2006 and Tier II Carriers until 2004. To minimize the burden on the smallest carriers, we limit the reporting requirement for Tier III carriers to those Tier III carriers that have been granted relief from a Commission deadline. Only those Tier III carriers must file a one-time Interim Report to enable the Commission to monitor their deployment progress.[194] The Commission also made efforts to reduce the burden on small entities in other aspects of E911 implementation. One notable decision in which the Commission demonstrated concern for small entities was the *Petition of the City of Richardson* proceeding.[195] In that proceeding, the Commission adopted rules clarifying what constitutes a

[191] Under Phase II of the Commission's wireless E911 rules, we require wireless carriers to provide the location of wireless 911 callers, a capability known as Automatic Location Identification (ALI). *See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18,676 (1996). For additional information regarding the Commission's wireless E911 program, *see* www.fcc.gov/e911.

[192] Tier I Carriers refer to the five nationwide carriers, AT&T Wireless Services, Inc., Cellco Partnership d/b/a Verizon Wireless, Sprint Spectrum L.P. d/b/a Sprint PCS, Cingular Wireless LLC, and Nextel Communications, Inc. On September 8, 2000, the Commission granted a waiver to a sixth major nationwide carrier, T-Mobile USA (formerly VoiceStream Wireless), which we also consider a Tier I carrier.

[193] For a definition of Tier II and Tier III Carriers, *see Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, 17 FCC Rcd 14,841, 14,847, paras. 22-24 (2002) (*Non-Nationwide Carriers Order*).

[194] *See Wireless Telecommunications Bureau Provides Further Guidance on Interim Report Filings By Small Sized Carriers*, Public Notice, 18 FCC Rcd 12,845 (2003).

[195] *Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems*, Petition of City of Richardson, Texas, 16 FCC Rcd 18,982 (2001), *recon granted in part and denied in part*, 17 FCC Rcd 24,282 (2002).

PSAP request so as to trigger a wireless carrier's obligation to provide E911 service to that PSAP. The Commission's clarification balances the goal of providing carriers of all sizes with the tools they need to determine whether a PSAP will be E911 capable with the goal to avoid placing unnecessary burdens on PSAPs, 96% of which qualify as small entities. Further, in response to petitions filed by certain Tier III carriers seeking temporary relief from the application of Phase I and various Phase II E911 deployment and/or accuracy obligations imposed under section 20.18(d)-(h) of the Commission Rules, the Commission granted relief to those Tier III carriers that had requested waiver relief no greater than that already granted to similarly situated Tier III carriers in the *Non-Nationwide Carriers Order*, and temporarily stayed the application of various provisions of section 20.18 of the Commission's Rules to other Tier III carriers, pending resolution of their petitions.[196] The Commission also provided guidance with regard to the heavy burden a carrier bears to demonstrate good cause for waiver relief, in view of the countervailing public interest in rapid and full deployment of E911. A carrier must show that its request is as narrowly tailored as possible, given its unique circumstances, and that it is taking every possible step to achieve full compliance as quickly as possible.[197]

H. Wireline Competition Bureau

186. Pursuant to the statutory directive, the Wireline Competition Bureau (WCB) took numerous steps to identify and eliminate market entry barriers for entrepreneurs and small businesses in the provision of telecommunications and information services and equipment. For example, WCB removed regulations that prohibited small businesses from offering consumer packages of telecommunications services and customer premises equipment (CPE) at a single price, thus providing small businesses the flexibility to market services and equipment in a less restrictive manner. WCB also resolved several issues in connection with a carrier's use of customer proprietary network information (CPNI) that lessened the regulatory burden on small carriers. Carriers may now freely choose to obtain opt-in or opt-out approval for certain CPNI uses, depending upon the carriers' needs and circumstances. Other WCB activities include: new streamlining measures for carrier authorization requirements; nondiscriminatory access to local directory assistance information; and various orders relating to advanced services, broadband deployment, interconnection and resale, including the Commission's comprehensive *Triennial Review Order*. Finally, the Bureau instituted several proceedings related to the Universal Service program, including rules for increased billing transparency, affordable services for all eligible schools and libraries, and modified interstate access charges and Universal Service mechanisms for incumbent LECs subject to rate of return regulations. A more detailed examination of WCB's activities is set forth below.

1. Customer Premises Equipment and Enhanced Services Unbundling Rules

187. On March 30, 2001, consistent with the Telecommunication Act of 1996's directive that the Commission repeal or modify any regulation it determines no longer in the public interest, the Commission released an *Order* (*CPE Order*) that reviewed the state of competition in the customer premises equipment (CPE) and enhanced services markets, and ultimately eliminated the CPE bundling restriction for all carriers.[198] For enhanced services, the Commission retained the requirement that

[196] *See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers*, Order to Stay, 18 FCC Rcd 20,987 (2003) (the Tier III carriers covered are listed in the appendices).

[197] *Id.*

[198] *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended; 1998 Biennial Regulatory Review—Review of Customer Premises Equipment And Enhanced Services Unbundling Rules In the Interexchange, Exchange Access And Local Exchange Markets*, Report and Order, 16 FCC Rcd 7418 (2001) (*CPE Order*).

facilities-based carriers must continue to offer the underlying transmission service component of an enhanced service on nondiscriminatory terms, and clarified that as long as carriers meet this requirement, they may bundle enhanced services with telecommunications services at a single price.

188. The only economic impact the *CPE Order* has on small carriers is positive. It relieved small carriers of regulations that prohibited them from offering consumers packages of telecommunications services and CPE at a single price. Removal of these rules provides small entities the necessary flexibility to market services and CPE in a less restrictive manner.

189. The *CPE Order* also confirmed that incumbent LECs must offer the transmission service component of CPE bundles separately on a nondiscriminatory basis. The *CPE Order* benefits consumers by enabling them to take advantage of innovative and attractive packages of services and equipment; fosters increased competition in the markets for CPE, enhanced, and telecommunications services; and allows the Commission to repeal regulatory requirements that no longer make sense in light of current technological, market, and legal conditions.

2. Customer Proprietary Network Information

190. The Telecommunications Act of 1996 created Section 222, which establishes customer proprietary network information (CPNI) requirements that apply to all telecommunications carriers.[199] After the *2000 Report*, the Commission issued several orders further clarifying the CPNI rules and their operation.[200] Specifically, on August 28, 2001, the Commission adopted an *Order* (*CPNI Clarification Order*) clarifying the status of its CPNI rules in light of a U.S. Tenth Circuit Court of Appeals order that vacated a portion of these rules, and the Commission issued a *Further Notice of Proposed Rulemaking* (*Clarification Order Further NPRM*).[201] On July 25, 2002, the Commission released an *Order* (*Third CPNI Order*) resolving several issues in connection with carriers' use of CPNI, and it issued a *Third Further Notice of Proposed Rulemaking*.[202] These orders have a positive impact on small businesses.

191. Overall, the requirements the Commission adopted in the *Third CPNI Order* are likely to lessen the regulatory burden on small carriers, yet, none of the requirements affect small carriers disproportionately. Among other actions the Commission adopted in the *Third CPNI Order*, carriers now are given a choice of obtaining opt-out or opt-in approval for certain CPNI uses. For instance, if a small carrier only intends to use CPNI internally for marketing communications-related services, it will only

[199] 47 U.S.C. § 222. CPNI is defined as "(A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier." *Id*. § 222(h).

[200] *2000 Report*, 15 FCC Rcd at 15,395-96, paras. 49-51.

[201] *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, Clarification Order and Second Further Notice of Proposed Rulemaking, 16 FCC Rcd 16,506 (2001) (*CPNI Clarification Order*).

[202] *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended; 2000 Biennial Regulatory Review—Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Third Report and Order and Third Further Notice of Proposed Rulemaking, FCC 17 Rcd 14,860 (2002) (*Third CPNI Order*).

have to obtain opt-out approval from its customers. Carriers that use opt-out approval must provide notice to their customers every two years. This requirement is counterbalanced because carriers that choose to use the opt-out method will be able to use and disclose more CPNI for marketing than under the previous opt-in method. Furthermore, a carrier that finds the burden of biennial notices outweighs the benefit of expanded CPNI access can choose to obtain opt-in approval from its customers and avoid the biennial notice requirement.

192. Importantly, the Commission also streamlined the notice requirements for carriers to obtain limited, one-time use of consumers' CPNI for the duration of an inbound or outbound call with the customer. This will benefit small carriers by lowering their marketing and call center costs. The Commission also forbore from applying its CPNI approval regulations to PC freezes, allowing small and large carriers alike easier access to PC freeze information.[203]

193. Overall, these requirements lessen the regulatory burden on small carriers by allowing carriers to obtain customers' consent through an opt-out approval mechanism to use customers' CPNI for marketing communications-related services. Further, the *Third CPNI Order* specifically allows carriers to use opt-in approval for all CPNI uses should a carrier determine that opt-in is more appropriate for its individual circumstances, allowing carriers more flexibility regarding their customers and resources.

3. Streamlining Measures

a. Part 63

194. The Commission, through its streamlining measures, is taking steps to eliminate market barriers and promote competition. On March 21, 2002, the Commission released an *Order* adopting rules to govern and streamline review of domestic Section 214 transfer of control applications.[204] By adopting these rules, the Commission reduced the burden on carriers of complying with the Commission's authorization requirements concerning mergers and other transactions and, at the same time, increased the predictability and transparency of these requirements.

195. Under the streamlined procedures, the Commission presumed a number of categories of transactions involving small entities to be of the kind not likely to raise public interest concerns, and they receive automatic approval after a thirty day review period unless otherwise notified by the Commission. For example, transfer applications involving domestic, interstate carriers that are non-dominant in the provision of any service where their combined post-transaction market presence is unlikely to raise public interest concerns are presumptively streamlined. In addition, these streamlined procedures are particularly helpful to resellers, to small, rural carriers and to domestic carriers in bankruptcy that are seeking to transfer assets or services that, absent the cost-saving streamlined review procedures, might otherwise be unable to obtain the additional financing necessary to compete for customers or even be forced to discontinue services to existing customers altogether. The streamlined approach reduces the business and legal resources applicants may need to expend to manage applications through the Commission review process because applicants can now predict the level of scrutiny the Commission will give applications. The streamlined approach also offers small entities the benefit of business certainty by designating a date certain on which the Commission would permit proposed transactions to close. Finally, the *Section 214 Streamlining Order* relieves all carriers of the obligation to file applications for approval of *pro forma* transactions.

[203] For a related discussion on preferred carrier or PC changes, *see infra* paras. 34-44.

[204] *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517 (2002) (*Section 214 Streamlining Order*).

b. Part 68

196. Part 68 of the Commission's Rules governs the connection of terminal equipment (TE) to the public switched telephone network (PSTN), and to wireline facilities owned by wireline telecommunications carriers and used to provide private line services. Under Part 68, wireline carriers must allow all TE to connect to their networks, provided that the TE meets technical criteria for preventing proscribed harms to the network and carrier personnel. Initially, working with the industry, the Commission developed the technical criteria and published them in its rules, established TE certification and registration processes, maintained a database of approved equipment, and provided enforcement.

197. In the 2000 Biennial Regulatory Review of Part 68, the Commission adopted new rules streamlining and privatizing the standards development and approval process for TE.[205] It transferred responsibility for development of TE technical criteria from the Commission to standards bodies accredited under the organization and standards committee of the American National Standards Institute (ANSI). In addition, it created the Administrative Council for Terminal Attachments (ACTA) under the joint sponsorship of the Alliance for Telecommunications Industry Solutions (ATIS) and the Telecommunications Industry Association (TIA). ACTA's primary duties are to publicize draft criteria for industry review and to publish the final criteria after the review period is closed.

198. The Commission also examined its own role in approving TE for connection to the PSTN. It concluded that although an organized system of equipment approval procedures requiring appropriate documentation is still necessary, it was no longer in the public interest to continue Commission certification and registration of TE. The Commission subsequently ceased performing all such functions other than consideration of appeal requests. The Commission affirmed an earlier decision allowing suppliers to seek TE approval from TCBs.[206] It also permitted a second method of approval, via Supplier Declaration of Conformity (SDoC), to applicable rules and standards. The Commission made ACTA responsible for establishing and maintaining a publicly accessible database of approved TE and for developing labeling standards for TE. All approved TE must be listed in ACTA's database, regardless of the method of obtaining approval.

199. The Commission believes these measures promote competition in the provision of telecommunications products and electronic equipment by permitting the connection of competitively provided TE, and speed delivery of these products to the public. The Commission also believes these measures enhance market opportunities for small business, such as those that engage in compliance testing of equipment, and manufacturers that supply parts and services to telecommunications service providers.

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[205] *2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations*, Report and Order, 15 FCC Rcd 24,944 (2000).

[206] *Office of Engineering and Technology and Common Carrier Bureau Announce the Designation of Telecommunications Certification Bodies (TCBs) to Approve Radiofrequency and Telephone Terminal Equipment,* Public Notice, 15 FCC Rcd 18,705 (2000); *see also 1998 Biennial Regulatory Review—Amendment of Parts 2, 25, and 68 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency Equipment, Modify the Equipment Authorization Process for Telephone Terminal Equipment, Implement Mutual Recognition Agreements and Begin Implementation of the Global Mobile Personal Communications by Satellite (GMPCS) Arrangements*, Report and Order, 13 FCC Rcd 24,687 (1998).

4. Directory Listing Information

200. In an *Order* released January 23, 2001, the Commission concluded that LECs must provide competing Directory Assistance (DA) providers that qualify under Section 251(b)(3) of the Telecommunications Act of 1996 with nondiscriminatory access to the LECs' local directory assistance databases, and must do so at nondiscriminatory and reasonable rates.[207] These requirements will have a significant positive economic impact on a substantial number of small competitive DA providers and small directory publishers by ensuring the ability of these entities to provide service on a competitively neutral basis. In addition, these requirements will have a positive economic impact on some competitive LECs. Many competitive LECs, both small and large, rely upon small competitive DA providers to outsource their DA services; the requirements should result in more competition in the DA arena, and, therefore, a savings to these competitive LECs.[208]

5. Provision of Advanced Services

201. As Congress contemplated in enacting Section 251(c)(6), the Commission's collocation requirements benefit small competitive LECs in their efforts to compete against incumbent LECs, both large and small, in the provision of telecommunications services, including advanced services. In the *Advanced Services First Report and Order*, the Commission strengthened its collocation rules to reduce the costs and delays faced by carriers that seek to collocate equipment at the premises of incumbent LECs. In *GTE v. FCC*, the U.S. D.C. Circuit Court of Appeals affirmed several of those rules, but vacated others, and remanded the case to the Commission.[209] In the *Collocation Remand Order*, the Commission addressed the remanded issues.[210] Then, in the *Order on Reconsideration*, the Commission addressed a petition for clarification or partial reconsideration of the *Collocation Remand Order*.[211] The Commission also addressed in the *Fifth Report and Order* a number of additional collocation issues raised

[207] *Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, First Report and Order, 16 FCC Rcd 2736 (2001).

[208] We note that the Commission released a *Notice of Proposed Rulemaking* on January 9, 2002, seeking comment on whether the Commission should take any additional steps to promote competition in the retail directory assistance market, and if so, whether certain suggested solutions would be feasible or appropriate. *Provision of Directory Listing Information Under the Communications Act of 1934, As Amended, The Use of N11 Codes and Other Abbreviated Dialing Arrangements, Administration of the North American Numbering* Plan, Notice of Proposed Rulemaking, 17 FCC Rcd 1164 (2002) (*Retail Directory Assistance NPRM*). Specifically, the Commission sought comment on whether it should require that directory assistance be provided through presubscription to 411, or some other reasonable alternative method of promoting competition in the retail directory assistance market. *Id.* The Commission considered and sought comment on the potential impact and benefits of these proposals on small entities in accordance with the Regulatory Flexibility Act. *Id*. at 1191-96, paras. 57-72.

[209] *GTE Service Corp. v. FCC*, 205 F.3d 416 (D.C. Cir. 2000).

[210] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Fourth Report and Order, 16 FCC Rcd 15,435 (2001) (*Collocation Remand Order*), *aff'd sub nom. Verizon Tel. Co. v. FCC*, 292 F.3d 903 (D.C. Cir. 2002).

[211] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Reconsideration of Fourth Report and Order, and Fifth Report and Order, 17 FCC Rcd 16,960 (2002) (*Order on Reconsideration* or *Fifth Report and Order*).

as part of the *Second Further Notice*.[212] Collectively, these actions reduce the burdens small competitive LECs encounter in seeking to compete without unduly burdening incumbent LECs.

202. Among other actions, in the *Collocation Remand Order*, the Commission adopted rules for determining which equipment a competitive LEC may collocate at an incumbent LEC's premises. In addition to ensuring that, like incumbent LECs, small competitive LECs are able to deploy technologically advanced equipment, these rules preclude the collocation of equipment that improperly infringes the incumbent LEC's property interests. The Commission also required incumbent LECs to provide cross-connects between collocated carriers upon reasonable request. This rule gives small competitive LECs that provide their own transport the opportunity to obtain additional customers, while other small competitive LECs can minimize their transport costs. In addition, the Commission required that an incumbent LEC allow a requesting carrier to submit physical collocation space preferences prior to assigning that carrier space. This enables a competitive carrier to request the space that best fits its operational needs.

203. Subsequently, in the *Order on Reconsideration*, the Commission required incumbent LECs, including those classified as small entities, to include their cross-connect offerings in their federal tariffs. To minimize any unnecessary regulatory burdens, however, the Commission clarified that incumbents shall have the flexibility to include the rate, terms, and conditions under which they provide cross-connects, in any appropriate federal tariffs. In so doing, the Commission implicitly rejected, as unnecessarily burdensome, alternatives such as requiring incumbent LECs to use individual case basis (ICB) pricing in these tariffs in appropriate circumstances. The Commission rejected as inconsistent its prior policy of precluding all use of ICB pricing for cross-connects. Rejection of this alternative ensures that incumbent LECs have an additional measure of flexibility in developing their federal cross-connect tariffs.

6. Interconnection and Resale Barriers

204. The Telecommunications Act of 1996 added Section 251 to the Communications Act. Section 251 imposes specific obligations on telecommunications carriers designed to promote competition in local exchange markets across the country. Incumbent carrier compliance with the obligations set forth in this section is absolutely necessary for achievement of Congress' pro-competitive goals and policies. Section 251 establishes the general interconnection obligations for all telecommunications carriers, delineates further obligations for LECs, and prescribes additional requirements for incumbent LECs. Section 252 generally sets forth the procedures that state commissions, incumbent LECs, and new entrants must follow to implement the requirements of Section 251 and to establish specific interconnection arrangements. As we stated in the *2000 Report*, the Commission continues to ensure carrier compliance with the rights and obligations set forth in Section 251.[213]

205. In the *Triennial Review Order*, the Commission undertook a comprehensive evaluation of its unbundling rules to ensure that its regulatory framework remains current and faithful to Congress' pro-competitive market-opening provisions. The *Triennial Review Order* fulfills the commitment the Commission undertook in its 1999 *UNE Remand Order*[214] to reexamine, in three years, the list of network

[212] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Reconsideration and Second Further Notice of Rulemaking, 15 FCC Rcd 17,806 (2000) (*Collocation Reconsideration Order* or *Second Further Notice*).

[213] *2000 Report*, 15 FCC Rcd at 15,386-87, paras. 26-29.

[214] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*UNE Remand Order*).

elements that incumbent LECs must offer to competitors on an unbundled basis, and responds to several significant judicial rulings issued since the Commission last conducted a comprehensive review of its unbundling rules.[215]

206. Among other actions, in the *Triennial Review Order*,[216] the Commission adopted rules regarding the unbundling of network elements. The Commission also modified its impairment analysis to find that a requesting carrier is impaired when lack of access to a facility in the incumbent LEC's network poses barriers that are likely to make entry into the market uneconomic. These can include both operational and economic barriers, such as scale economies, sunk costs, first mover advantages, absolute cost advantages, and barriers within the control of the incumbent LEC. In adopting this interpretation, the Commission considered a variety of factors relating to the size of regulated entities and the customers they serve. The Commission considered a number of barriers to competitive entry, including those faced by small competitors, as well as the importance of scale economies as they relate to small entities. The *Triennial Review Order* also affirms that incumbent LECs are obligated to provide access to UNEs and UNE combinations. The Commission intends that these new rules will promote small businesses' entry into the market for competitive local service.

7. Impartial Administration of Telecommunications Numbers

207. In undertaking to develop national numbering resource optimization strategies, the Commission seeks to fulfill its statutory mandate under Section 251(e) of the Telecommunications Act of 1996, which grants the Commission exclusive jurisdiction over the NANP.[217] Following the *2000 Report*, the Commission released the *Second Report and Order*, *Order on Reconsideration*, and *Second Further Notice of Proposed Rulemaking*, in which the Commission took the following steps to develop, adopt, and implement a number of strategies to ensure that NANP's numbering resources are used efficiently, and that all entities have the numbering resources they need to compete in the rapidly expanding telecommunications marketplace.[218]

208. First, the Commission required carriers to utilize 60% of their existing inventory of numbers before receiving additional resources within a particular rate center. The threshold increases by 5% each year, starting June 30, 2001, to a maximum threshold of 75%. The Commission established these small, yearly percentage increases to allow carriers, especially small carriers, sufficient time to maximize their utilization levels. Next, the Commission decided that additional rules or guidelines will not be enumerated at the federal level with regard to geographic splits or all-services overlays. Such an approach allows state commissions to consider the surrounding local circumstances, including the needs of small, local businesses, in deciding whether or how to provide area code relief.[219] Lastly, the

[215] *See, e.g.*, *Verizon v. FCC*, 535 U.S. 467 (2002); *Competitive Telecommunications Ass'n. v. FCC*, 309 F.3d 8 (D.C. Cir. 2002); *United States Telecom Ass'n. v. FCC*, 290 F.3d 415 (D.C. Cir. 2002).

[216] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16,978 (*Triennial Review Order*), *corrected by* Errata, 18 FCC Rcd 19,020 (2003), *petitions for review pending*, *United States Telecom Ass'n v. FCC*, D.C. Cir. No. 00-1012 (and consolidated cases).

[217] 47 U.S.C. § 151(e)(1).

[218] *Numbering Resource Optimization*, Second Report and Order, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 16 FCC Rcd 306 (2000).

[219] *See Petition of the Connecticut Department of Public Utility Control for Delegated Authority to Implement Specialized Transitional Overlays*, Memorandum Opinion and Order, 18 FCC Rcd 10,946 (2003); *Wireline* (continued....)

Commission established a comprehensive audit program to verify carriers' actual need for numbering resources, in accordance with federal rules and industry guidelines. This audit program consists of "for cause" and random audits. For small carriers, audits will help to ensure that large businesses are not hoarding numbers or otherwise preventing small carriers from gaining access to numbering resources.

209. In a more recent *Order*, the Commission continued its efforts to maximize number conservation and utilization in the NANP. In the *Fourth Report and Order*, the Commission reaffirmed that carriers need only deploy local number portability (LNP) in switches within the 100 largest MSAs for which another carrier has made a specific request for the provision of LNP.[220] By maintaining this requirement, the Commission did not impose new burdens on small carriers operating in the 100 largest MSAs. The Commission also specifically exempted rural telephone companies and Tier III wireless carriers (carriers with 500,000 or fewer customers) that have not received a request to provide LNP from the thousands-block number pooling requirement. The Commission exempted carriers operating in rate centers where they are the only service provider receiving numbering resources.[221]

8. Universal Service

a. Universal Service Fund

210. Following the *2000 Report*, the Commission, through its Universal Service programs, helped to ensure comparability between urban and rural rates and services, promoted access to the network by low income consumers, and effectuated the availability of telecommunications services and access to the Internet by schools, libraries, and rural health care providers. Specifically, in an *Order* released December 13, 2002, the Commission minimized significant economic impact on small entities by adopting modifications to the revenue-based methodology for assessing and recovering contributions to the federal Universal Service mechanisms.[222] In modifying the existing contribution system, the Commission adopted rules related to contribution recovery that will increase billing transparency and decrease confusion for consumers regarding the amount of Universal Service contributions that carriers pass through, while ensuring that carriers continue to have the flexibility to recover legitimate administrative costs from consumers through other means. In light of these changes, the Commission prohibited carriers from marking up federal Universal Service line items above the contribution factor. These actions addressed small entity concerns regarding recovery practices. The Commission also

(...continued from previous page)
Competition Bureau Seeks Comment on the Petition of the California Public Utilities Commission and of the People of the State of California to Implement Specialized Overlay Area Codes, Public Notice, 18 FCC Rcd 21,331 (WCB 2003).

[220] *Numbering Resource Optimization*; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*; *Telephone Number Portability*, Fourth Report and Order and Fourth Further Notice of Proposed Rulemaking, 18 FCC Rcd 12,472 (2003) (*Fourth Report and Order*).

[221] The Commission received more than 20 petitions for waiver concerning rural carriers that operate in areas overlapping the largest 100 MSAs.

[222] *Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format,* Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24,952 (2002).

retained the *de minimis* exemption for carriers whose annual contributions would be less than $10,000 (i.e., they do not pay in) to ensure that compliance costs associated with contributing to Universal Service do not exceed actual contribution amounts.

b. Schools and Libraries

211. The Congress established the Schools and Libraries Universal Service program as part of the Telecommunications Act of 1996 to provide affordable telecommunications services for all eligible schools and libraries, especially those in rural and economically disadvantaged areas. The Commission is working to meet this statutory goal. Over the last three years, the Commission made multiple advances on this front. First, in an *Order* released in 2001, the Commission adopted a rule to provide additional time for recipients under the Schools and Libraries Universal Service Support Mechanism (Support Mechanism) to implement contracts or agreements with service providers for non-recurring services.[223] This action provides schools and libraries with more time to install non-recurring services, and thereby make greater use of their Universal Service discounts.

212. Next, the Commission revised Section 54.507(a) of its Rules to provide that unused funds from the Support Mechanism may be applied to stabilize the amount of contributions to the Universal Service Fund for no more than the next three quarters, beginning with the third quarter of 2002.[224] Thereafter, unused funds from the Support Mechanism will be carried forward for use in subsequent funding years of the schools and libraries program. The revised rules benefit small entities that contribute to the Universal Service Fund by stabilizing or reducing contribution requirements. In addition, the carryover of unused funds from the Support Mechanism benefits small entities by providing additional funds that may be committed to schools and libraries pursuant to the Support Mechanism.

213. Finally, in an *Order* released April 30, 2003, the Commission took major steps to streamline the operation of its Support Mechanism, while improving its oversight over the support mechanism.[225] Among other actions, the Commission clarified that wireless services are eligible for support under the schools and libraries Support Mechanism to the same extent wireline services are eligible, and that requests for wireline and wireless services must be reviewed under the same standard. This clarification will benefit small service providers by ensuring that discounts are available for such services. In addition, consistent with its desire to assist small entities, the Commission directed the Universal Service Administrative Company to develop a pilot program testing an online list of internal connections equipment that is automatically eligible for discounts, provided the uses are eligible and all other funding requirements are satisfied. This program is likely to reduce compliance burdens on small applicants because it will help facilitate the application process. The *Order* also allows for the funding of discounts for voice mail. This action reduces the administrative burden on all schools and libraries participating in the program because they will no longer have to segregate the voice mail portion of their phone bills when they apply for funding. The inclusion of voice mail will have a positive effect on entities that receive discounts for telecommunications in that this commonly used service is now eligible for discounts.

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[223] *Federal-State Joint Board on Universal Service*, Report and Order, 16 FCC Rcd 13,510 (2001).

[224] *Schools and Libraries Universal Service Support Mechanism*, First Report and Order, 17 FCC Rcd 11,521 (2002).

[225] *Schools and Libraries Universal Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003).

c. Access Charge and Universal Service Reform

214. In October 2001, the Commission modified the interstate access charge and Universal Service support system for incumbent LECs subject to rate-of-return regulation.[226] Consistent with Congress' mandate, the Commission sought to foster competition and efficient pricing in the market for interstate access services, and to create Universal Service mechanisms that would be secure in an increasingly competitive environment. By simultaneously removing implicit support from the rate structure and replacing it with explicit, portable support, the Commission provided a more equal footing for competitors in local and long distance markets, while ensuring that consumers in all areas of the country, especially those living in high-cost, rural areas, have access to telecommunications services at affordable and reasonably comparable rates.

215. The Commission rationalized the rate structure for recovery of interstate access costs by aligning non-traffic-sensitive costs with access charges employing non-traffic-sensitive features. Thus, the Commission gradually increased the ceiling on the subscriber line charge, phased out the carrier common line charge assessed on interexchange carriers (IXCs), and reassigned certain costs among access categories to reflect generally a more cost-causative approach to access charges. As one of our goals, we seek to foster competition for residential subscribers in rural areas by facilities-based carriers and to enhance incentives for IXCs to originate service in rural areas and facilitate long distance toll rate averaging, which will help small businesses in rural areas.

216. The Commission's action also removed implicit support from the interstate access rate structure and provided for its recovery through the Interstate Common Line Support mechanism, one of the Commission's Universal Service support programs. Recovery of non-traffic sensitive costs through per-minute rates creates an implicit support flow from high- to low-volume users of interstate long distance service and is incompatible with a competitive market for local exchange and exchange access services. Some rate-of-return LECs had expressed particular concern that high per-minute charges may place them at a disadvantage in competing for high-volume customers, jeopardizing an important source of revenue.

217. The Commission addressed several specific challenges facing small carriers serving rural and high-cost areas. Although the Commission reduced per-minute switched access charges for all rate-of-return carriers, those small carriers retain the flexibility to establish rates based on their own costs in the areas they serve, rather than being required to conform to a prescribed target rate. The Commission continues to permit rate-of-return carriers to set interstate rates based on an authorized rate of return of 11.25%. Finally, a new, uncapped Universal Service support mechanism will provide certainty and stability by ensuring that the rate structure modifications adopted do not affect overall recovery of interstate access costs by rate-of-return carriers.

9. Payphone Regulation

218. Section 276 of the Communications Act directs the Commission to take a number of actions to promote competition among payphone services.[227] On January 31, 2002, the Commission

[226] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, Fifteenth Report and Order, and Report and Order, 16 FCC Rcd 19,613 (2001) (*MAG Order*), *recon. pending*.

[227] 47 U.S.C. § 276.

released an *Order* on Wisconsin intrastate payphone access line rates.[228] The Commission concluded that Section 276 requires BOCs to set their intrastate payphone line rates in compliance with the Commission's cost-based forward-looking "new services" test. On June 25, 2003, the Commission adopted a rule exempting payphone lines from the presubscribed IXC charge (PICC).[229] As a result of these decisions, the payphone market is more competitive because small payphone providers are able to obtain the inputs needed from BOCs at cost-based rates and will not be required to pay the PICC, which contains a subsidy to other incumbent LEC services.

10. Local Competition and Broadband Data Gathering Program

219. The Commission adopted the Local Competition and Broadband Data Gathering Program to establish a reporting program to collect basic information about two critical areas of the communications industry: (1) the deployment of broadband services; and (2) the development of local telephone service competition.[230] The Commission concluded that collecting this information would materially improve its ability to develop, evaluate, and revise policy in these rapidly changing areas and provide valuable benchmarks for Congress, the Commission, other policy makers, and consumers.

220. In the *Data Gathering Order*, the Commission adopted a standardized form (FCC Form 477) to collect this information. The Commission structured Form 477 to include separate sections on deployment of broadband services, local telephone service competition, and provision of mobile telephone service. To minimize the form's impact on small carriers, the Commission established a separate reporting threshold for each section of the form. The Commission requires providers to complete only the portions of the form for which they meet or exceed the defined reporting thresholds. For broadband reporting, the rules require any facilities-based provider with at least 250 full or one-way broadband lines (or wireless channels) in a given state to complete applicable portions of the form (Parts I and V) for that state. For local competition reporting, the rules require any LEC with 10,000 or more local telephone service lines (or fixed wireless channels) in a state to complete applicable portions of the form (Parts II and V) for that state. Finally, the Commission requires facilities-based providers of mobile telephone services to complete applicable portions of Form 477 (Part III) for each state in which they serve 10,000 or more subscribers.

221. In establishing these reporting thresholds, "[t]he Commission [tried] to craft its rules in such a manner that the burdens imposed take into account any potentially disparate impact such rules may have on smaller entities." The Commission balanced its need to collect reliable and comprehensive data with its desire to minimize reporting burdens, particularly for smaller entities that may lack significant resources to devote to regulatory compliance. Specifically, the Commission made special provision to exempt most small carriers from the requirement to report local competition data.[231] The Commission adopted a threshold of 10,000 voice grade lines or wireless channels, because such a threshold allows the Commission to collect data from the significant participants in most markets without imposing burdens on entities that are relatively small. The Commission estimated that approximately 200 of the nation's largest LECs would meet the threshold and be required to report local telephone competition data.

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[228] *Wisconsin Public Service Commission, Order Directing Filings*, Memorandum Opinion and Order, 17 FCC Rcd 2051 (2002).

[229] *Access Charge Reform,* Order on Reconsideration, 18 FCC Rcd 12,626 (2003).

[230] *Local Competition and Broadband Reporting*, Report and Order, 15 FCC Rcd 7717 (2000) (*Data Gathering Order*).

[231] *Local Competition and Broadband Reporting*, Notice of Proposed Rulemaking, 14 FCC Rcd 18,100, 18,111, para. 25 (1999).

222. Regarding the broadband reporting threshold, the Commission noted that Congress directed it to track the deployment of advanced telecommunications capability to all Americans. Given the broad reach of this directive, the Commission concluded that it should establish a more comprehensive reporting requirement for providers of broadband services to ensure that it did not miss broadband developments by smaller entities, for example, in rural areas. The Commission further concluded that a 250 broadband line or wireless channel threshold would best meet its needs. To balance this comprehensive reporting threshold, however, the Commission streamlined the broadband section of the reporting form to include only the most essential information, in as simple a format as possible.

11. Competitive LEC Access Charges

223. In April 2001, the Commission addressed a number of interrelated issues concerning competitive LEC charges for interstate switched access services and the obligations of IXCs to exchange access traffic with competitive LECs.[232] By taking action, the Commission sought to ensure, by the least intrusive means possible, that competitive LEC access charges would be just and reasonable, while reducing regulatory arbitrage opportunities that previously existed with respect to tariffed competitive LEC access services. The Commission revised its tariff rules to align tariffed competitive LEC access rates more closely with those of the incumbent LECs. The Commission adopted a declining benchmark ceiling rate for competitive LEC access charges until it reached the level tariffed by the incumbent LEC. The Commission presumes that competitive LEC access rates that are at or below the benchmark are just and reasonable and competitive LECs may impose them by tariff. Above the benchmark, the Commission requires competitive LEC access services detariffed, so competitive LECs must negotiate higher rates with IXCs.

224. The Commission concluded that the benchmark approach to competitive LEC access charges minimize the impact of the rules on small entities in several ways. First, it allows small business competitive LECs to continue to enjoy the convenience of offering a tariffed service, an advantage sought by competitive LECs, many of which may be relatively new and small businesses. Second, it enables small IXCs to purchase most access services via tariff, rather than having to negotiate agreements with every competitive LEC. Finally, the approach ensures that IXCs will continue to accept and pay for competitive LEC switched access services, as long as the competitive LEC's tariff rates are within the Commission's benchmarks.[233] Many competitive LECs argued that such an outcome was essential for new, relatively small competitive LECs to continue to offer services.

12. Mandatory IXC Carrier Detariffing

225. On July 31, 2001, the Commission completed the steps to implement detariffing of the provision of interstate long distance services by non-dominant IXCs that it originally had ordered in 1996.[234] The Commission concluded that a policy of not permitting non-dominant IXCs to file tariffs for such services would advance one of the principal goals of the Telecommunications Act of 1996—the promotion of increased competition in all telecommunications markets, including those that are already open to competition, particularly long distance service markets. The Commission observed that when interstate, domestic, interexchange services are completely detariffed, consumers will be able to take

[232] *Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001).

[233] We note that many competitive LECs sought action from the Commission precisely because IXCs threatened to cut off traffic and stopped paying for competitive LEC switched access services.

[234] *Common Carrier Bureau Extends Transition Period for Detariffing Consumer Domestic Long Distance Services*, 16 FCC Rcd 2906 (2001).

advantage of remedies provided by state consumer protection laws and contract law against abusive practices. The Commission requires non-dominant IXCs to make available to the public information on the rates, terms, and conditions for all of their interstate, domestic, interexchange services.

226. Subsequently, the U.S. D.C. Circuit Court of Appeals stayed the detariffing decision.[235] On reconsideration, the Commission eliminated the public disclosure requirement,[236] but, on further reconsideration, the Commission reinstated the public disclosure requirement and added that IXCs must post tariff information on their website if they have a website.[237] The U.S. D.C. Circuit Court of Appeals ultimately affirmed the Commission's decision to detariff interstate, domestic interexchange services.

227. The Commission found that precluding non-dominant IXCs from filing tariffs for interstate, domestic, interexchange services would enhance competition among all providers of such services (regardless of size), promote competitive market conditions, and establish market conditions that more closely resemble an unregulated environment. It further found that filing tariffs imposed costs on carriers that attempt to make new service offerings. The complete detariffing should minimize regulatory burdens on all non-dominant IXCs, including small entities. Furthermore, the increased competition that detariffing makes available to consumers, many of which are small businesses, leads to lower prices for interstate, domestic, and interexchange services, thereby benefiting all consumers, including small businesses.

13. Accounting Reform

228. With the release of the *Phase 2 Report and Order*[238] in November 2001, the Commission completed the second phase of its comprehensive, biennial review of the accounting and reporting rules prescribed for incumbent LECs. That review led to four major accounting and reporting reforms: (1) streamlining of the accounting requirements prescribed for Class A and Class B carriers; (2) relaxation of certain aspects of the affiliate transactions rules; (3) elimination of the annual cost allocation manual (CAM) filing requirement and the associated independent audit requirement for mid-sized carriers; and (4) reduction of the Automated Reporting Management Information System (ARMIS) reporting requirements for mid-sized carriers.

229. Incumbent LECs record their costs and revenues pursuant to the Uniform System of Accounts (USOA) prescribed in Part 32 of the Commission's Rules.[239] In the *Phase 2 Report and Order*,

[235] *MCI Telecommunications Corp. v. FCC*, No. 96-1459 (D.C. Cir. Feb. 13, 1997).

[236] *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, Order on Reconsideration, 12 FCC Rcd 15,014 (1997).

[237] *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, Second Order on Reconsideration and Erratum, 14 FCC Rcd 6004 (1999).

[238] *2000 Biennial Regulatory Review—Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; and Local Competition and Broadband Reporting*, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19,911 (2001) (*Phase 2 Report and Order*), *on recon.*, *2000 Biennial Regulatory Review-Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers*, Order on Reconsideration, 17 FCC Rcd 4766 (2002) (*Phase 2 Reconsideration Order*).

[239] 47 C.F.R. Part 32.

the Commission reduced by 45% the number of Class A accounts it requires the largest incumbent LECs to maintain and by 27% the number of Class B accounts it requires the mid-sized and small incumbent LECs to maintain. The Commission also: (1) simplified accounting for nonregulated revenues; (2) eliminated certain inventory requirements; (3) simplified deferred tax accounting; (4) expanded the $2,000 expense limit rules to include central office tools and test equipment; and (5) eliminated the requirement for a revenue study analyzing the effect of proposed accounting standards changes prior to their implementation.

230. Prior to the *Phase 2 Report and Order*, Section 64.903 of the Commission's Rules required incumbent LECs with $121 million or more in annual operating revenues to file CAMs setting forth the cost allocation procedures they use to allocate costs between regulated and nonregulated services,[240] and Section 64.904 required each incumbent LEC that filed a CAM to have an attest engagement or financial audit performed by an independent auditor every two years.[241] In the *Phase 2 Report and Order*, the Commission revised its rules to eliminate the CAM filing requirement and the independent attest engagement or audit requirement for mid-sized incumbent LECs. The Commission also eliminated the requirement that mid-sized incumbent LECs file the ARMIS 43-02 USOA Report, 43-03 Joint Cost Report, and 43-04 Separations and Access Report.

231. Some of these changes will affect smaller LECs. For example, the reduction in the number of Class B accounts and the reports based on that level of accounting detail will reduce those burdens on smaller LECs. In addition, the reduced inventory requirements and expanded expensing of central office tools and test equipment permitted by the revisions further reduce small LEC accounting costs.

III. LEGISLATIVE PROPOSALS

232. Section 257(c)(2) requires us to identify statutory market entry barriers that Congress can eliminate, consistent with the public interest, convenience, and necessity.[242] In this Section, we submit five legislative proposals for Congress's consideration.

A. Create New Tax Incentive Program

233. We propose statutory changes to provide the Commission with additional authority to adopt a new tax incentive program benefiting small businesses. Such a program could permit deferral of taxes on any gain from the sales of telecommunications businesses to small telecommunications firms, including disadvantaged firms and firms owned by minorities or women, as long as that gain is reinvested in one or more qualifying replacement telecommunications businesses. The program also could permit tax credits for sellers who offer financing on sales to small telecommunications firms, thereby facilitating sales to small businesses. It could also include strict limits on the size of eligible purchasing firms, the length of time the firm must hold the business purchased, and the dollar value of eligible transactions. This would encourage diversification of ownership in the telecommunications industry, and provide entry opportunities for small businesses, including disadvantaged businesses and businesses owned by minorities and women.

[240] 47 C.F.R. § 64.903.

[241] 47 C.F.R. § 64.904.

[242] 47 U.S.C. § 257(c)(2).

B. Establish a Spectrum Relocation Fund for Federal Incumbents

234. The Commission endorses amendment of Section 113(g) of the National Telecommunications and Information Administration Organization Act[243] to create a Spectrum Relocation Fund (Fund) that would streamline the reimbursement process for Federal Incumbents in spectrum transferred from Government to non-Government use (Government transfer spectrum). Where licenses for the use of Government transfer spectrum are assigned through competitive bidding, auction receipts would be paid into the Fund and Federal Incumbents would be reimbursed for their relocation costs out of the Fund. This Fund would reduce market entry barriers for providers of new wireless communications services, including small businesses and other new entrants, in auctions of licenses for the use of Government transfer spectrum because it would eliminate uncertainties associated with the existing reimbursement scheme under which new licensees are responsible for paying the Federal Incumbent's reimbursement costs. Further, establishment of this Fund would improve the economic efficiency of these auctions by increasing the likelihood that the winning bidders are the parties with the highest valued use for the licenses.

C. Clarify Authority to Conduct Innovative Spectrum Auction Designs and to Facilitate Relocation of Incumbent Licensees

235. We recommend amendment of Section 309(j) of the Communications Act to expressly allow the Commission to employ any one of a number of innovative auction designs, whereby spectrum previously licensed to incumbent licensees would be available at auction with different rights.[244] Such mechanisms would increase the value of spectrum usage rights of incumbent licensees, including small entities, as well as enable new licensees, including small entities, to obtain access to spectrum, and do so at lower transaction costs, so that it can be put to its most highly valued use.

D. Expand Authority to Authorize Operation of Radio Stations without Individual Station Licenses

236. The Commission recommends amending Section 307(e) of the Communications Act to allow the Commission greater latitude to authorize operation of radio stations by rule without the need for individual licenses.[245] Currently, Section 307(e)(1) restricts the Commission's use of such authority to four radio services: citizens band, radio control, aviation (aircraft stations) and marine (certain ship stations).[246] Greater flexibility to accommodate unlicensed use without being restricted to these four specific services would assist the Commission to better optimize spectrum access.

E. Amendment to Section 623(d)

237. The Commission recommends that Section 623(d) of the Communications Act[247] be amended to address potentially anticompetitive pricing practices used by incumbent cable operators that may impede market entry by competitors. Entities seeking to enter a local cable/broadband market

[243] 47 U.S.C. § 923(g).

[244] Section 309 of the Communications Act sets out the Commission's authority with respect to applications; specifically, 309(j) authorizes the use of competitive bidding as a method of granting licenses. 47 U.S.C. § 309(j).

[245] 47 U.S.C. § 307(e)(1).

[246] 47 U.S.C. § 307(e)(1)(A)-(D).

[247] 47 U.S.C. § 623(d).

experience difficulties when the incumbent cable operator in the market, which is able to spread costs over a larger subscriber base, offers discounts targeted to customers of the would-be competitor. A number of new competitors have complained that, when they enter a new market with services including competitive video, telephony and broadband, the local incumbent cable provider targets discounts that are so deep that the new entrant cannot effectively compete for customers. Such tactics normally would violate the uniform pricing requirements of Section 623(d) of the Communications Act and Section 76.984(a) of the Commission's Rules;[248] however, if an MVPD is determined by the FCC to be subject to effective competition, the uniform pricing requirements no longer apply to that operator in the franchise area. Because the attempted market entry of the would-be competitor may form the predicate for an effective competition finding, relief under existing statutory regulations often is unavailable. Lacking an effective remedy, some potential entrants may forego entry all together, thereby denying consumers the benefit of additional competition.

238. Section 623(d) currently states that "[b]ulk discounts to multiple dwelling units shall not be subject to this subsection, except that a cable operator of a cable system that is not subject to effective competition may not charge predatory prices to a multiple dwelling unit. Upon a prima facie showing by a complainant that there are reasonable grounds to believe that the discounted price is predatory, the cable system shall have the burden of showing that its discounted price is not predatory." We recommend that Section 623(d)'s language relating to bulk discounts and predatory pricing be expanded to apply across the board, without regard to whether the cable operator is subject to "effective competition" as defined in the statute.

[248] 47 C.F.R. § 76.984(a).

IV. CONCLUSION

239. As documented in this *2003 Report*, over the last triennium, the Commission continued to fulfill its ongoing obligations under Section 257 of the Act. We are mindful of the role that entrepreneurs and small businesses serve in our society. In particular, we recognize their contributions to the country's economy. Consequently, where appropriate, we tailor our policies and regulations to assist these smaller players in the telecommunications field.[249] To do so is simply good business, for we all derive a benefit when they succeed.

240. We hereby submit this *2003 Report* to Congress.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[249] According to 2001 U.S. Census Bureau data, the radio, television, telephone, and telegraph sectors add $290 billion to the GDP.

SEPARATE STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Section 257 Triennial Report to Congress; Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses (released Feb. 12, 2004)

In section 257 of the Communications Act, Congress recognized the vital role that entrepreneurs and other small businesses play in driving economic growth, job creation, and innovation throughout our economy. Congress's faith in innovation, investment, competition, and deregulation — as expressed in the 1996 Act — charted a course that creates opportunities in the communications industry for small businesses throughout the nation.

Over the last three years this Commission's policies and actions have advanced the interests of entrepreneurs and other small businesses across the communications industry as we have focused on achieving results, not rhetoric. In our quest to bring broadband Internet access to every corner of the United States, the Commission's broadband efforts, especially in the wireless space, have created literally thousands of new small businesses. Entrepreneurial WISPs are bringing broadband Internet access to Americans across the United States—from New York City to Ryan, Iowa. Countless other small businesses have emerged to provide equipment, network management solutions, security, and unlicensed wireless devices that make broadband Internet access a reality today for 50 million Americans.

Additionally, our efforts to spur broadband deployment have focused not only on infrastructure, but on empowering entrepreneurs to use our nation's broadband networks as platforms for innovation. The fruits of our labors are also producing results as small businesses and entrepreneurs are using broadband to break into the formerly monopolistic worlds of telephony, video distribution, and news production. Small companies like Vonage and 8x8 lead the Internet voice revolution. Video streaming advances have prompted a host of small businesses and entrepreneurs to enter a field formerly occupied only by big media. Our broadband Internet efforts have also empowered diverse media voices. From "blogs" to moveon.org, to Google's 4,500 diverse media sources from around the globe, we are swimming in an abundance and diversity of media that have never before been seen.

As the Commission continues to push competitive, affordable, and universal broadband Internet access to the masses resulting in the demolition of barriers to entry for small businesses and entrepreneurs in voice, video, data, and software and hardware development, we are also dramatically lowering barriers to entry for small businesses and entrepreneurs across our economy. Using the tools provided by the Internet, companies across the United States are able to enter into new product markets and sell their products and services to anyone in the world. Whether you are a small travel company, flower shop, clothing apparel store, farmer, educator, or health care provider there is a place for your innovations, entrepreneurial spirit and service to Americans in the 21st Century communications revolution.

The ability of small businesses to enter new or established markets does not, however, end with broadband Internet services. Small businesses and entrepreneurs are entering media markets at a pace never before seen — flooding the cable and satellite television network and program production ranks. Policies by Congress and this Commission have allowed for investments by the cable and satellite industries that have increased channel capacity — thereby creating new opportunities for small businesses. Furthermore, the Commission's efforts in digital television and digital radio, together with recent actions opening up the filing window for new and modified AM stations and upcoming actions in LPFM, are giving small businesses and entrepreneurs new opportunities in the broadcasting business.

In short, the Commission's promotion of competition, broadband deployment, and new media outlets has gone a long way toward fulfilling the goals set forth in the section 257 of the Act. While I am proud of our record, we must continue to search for new ways to break down barriers and create new opportunities for entrepreneurs and other small businesses.

DISSENTING STATEMENT OF COMMISSIONER MICHAEL J. COPPS

RE: Section 257 Triennial Report to Congress; Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses

Congress understands the importance of small business to our country. But the Commission's 2003 Small Business Report will lead many to believe that the FCC does not. In Section 257 of the Telecommunications Act, which contains the mandate to produce this report, Congress told the FCC to start taking small business concerns seriously. Every three years we must identify the market entry barriers faced by small businesses in the communications industry and report on the specific regulations we have prescribed to eliminate those barriers. Despite this Congressional clarity, today's Report does not fulfill our statutory obligation. Instead, I fear that the Report will undermine our credibility with the small business community. To me, that is unacceptable. So I find myself forced to dissent.

Section 257 creates a critical reporting requirement for the Commission. It is critical because small business is the engine that drives America's economy. Small businesses generate two-thirds to three-quarters of new jobs annually in the United States. Almost 98 percent of U.S. telecommunications field employers are small businesses. Much of the future of the telecommunications industry hinges on how well our small to medium-sized businesses do in the national and international economy. This is not only because of the huge number of jobs involved, but also because small business is the source of much of the innovation and energy for the economy in general and for the communications sector in particular, developing 13 to 14 times more patents per employee than larger firms.

Recognizing this, Congress directed the FCC to examine the market entry barriers faced by small businesses and entrepreneurs and then to detail the efforts the FCC has taken to eliminate those market barriers. Congress created this requirement to force the Commission to explain what it was actively doing to promote entrepreneurship and to prevent the Commission from catering to industry giants at the expense of small business.

But today the Commission sends Congress a report that: (1) does not meet the specific requirements of the statute, and (2) for the most part blithely claims that three years of proceedings leading to the removal of competition and consumer protections were really designed to help entrepreneurs all along. American small businesses deserve better than this.

The Report Fails to Meet Section 257's Statutory Requirements

Section 257 states that the Commission must report to Congress every three years on "any regulations prescribed to eliminate barriers within its jurisdiction that are identified by subsection (a) and that can be prescribed consistent with the public interest, convenience and necessity."[1] The "barriers" identified by subsection (a) include "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications and services and information services, or in the provision of parts or services to providers of telecommunications services and information services."[2]

Section 257 thereby clearly requires the Commission to identify market entry barriers faced by small business and to report on new rules that it has promulgated to eliminate those barriers. Instead, we have a slapdash cataloging of miscellaneous Commission actions over the past three years that fails to

[1] 47 U.S.C. § 257(c)(1).

[2] 47 U.S.C. § 257(a).

comply with the requirements of Section 257. If Congress had wanted the Commission merely to list its proceedings and the general regulations that it had eliminated, it would have said so. In this particular report, the importance of small businesses to the economy and the legacy of small businesses facing market barriers in the communications industry led Congress to ask the Commission to report on ***proactive steps*** it had taken to establish new rules to help small business.

So why did the Commission fail to report on new initiatives designed to eliminate market barriers for small businesses, and thereby fail to comply with the statute? It may be because this Commission does not have a small business record to brag about.

We should be more forthright with Congress. We should admit that the Commission has not articulated a plan for how to eliminate market barriers for small business. We should recognize that we have created too few new rules designed specifically to help small businesses. And maybe most importantly, we should realize that some of this Commission's actions – indeed more than a few – have harmed small businesses.

I have supported some of the decisions made by this Commission and opposed others. Although I could give numerous examples raised in this Report, let me highlight just two of the major actions that increase market barriers for small businesses and that I opposed: (1) eliminating media consolidation protections, and (2) undermining broadband competition.

Eliminating Media Consolidation Protections Hurt Small Businesses

On June 2, the Commission voted to weaken its media ownership rules and open the door to more media control by ever fewer corporate giants. In Section 257 Congress expressly commands the Commission to "seek to promote the policies and purposes of this Act favoring diversity of media voices," but instead the Commission surrendered enormous powers over our news, information and entertainment to a handful of corporations.

In adopting this decision, the Commission failed to analyze how the media consolidation it allowed affects small businesses. The Office of Advocacy of the Small Business Administration strongly urged the Commission to conduct such an analysis prior to rushing ahead with a decision. We failed do so then, and we fail to do so in this Report.

Across this country, in the many hearings and forums that Commissioner Adelstein and I attended, we heard that weakening media concentration rules threatens the very survival of small businesses. As fewer and fewer companies control our media outlets, small local broadcasters will find it harder and harder to compete. Media analysts expect that the only option for small broadcasters will now be to sell. They conclude that those that want to remain will face an extremely tough road. During our hearings, we heard from small broadcasters that had already been squeezed out of the market, who explained that the Commission's decision will only accelerate this trend. Yet, we failed even to consider the impact of our decision on small broadcasters.

In addition, other small businesses will find it harder to produce and sell programming as national vertically integrated conglomerates control local distribution. We also heard from small businesses that consolidated media markets are more expensive for advertisers, and that this may hurt small businesses' ability to advertise their products and services, particularly if they seek to reach niche communities or minority groups.

Amazingly, the Commission states that only one aspect of its biggest decision of 2003 affects small businesses. The June 2 decision grandfathered any radio ownership clusters that exceed our ownership limits. But it also allows the grandfathered owners to sell the entire cluster to a small business,

which can turn around and re-sell the cluster, after only a few years, to anyone -- even to a media conglomerate. The Small Business Report, like the June 2 decision, claims that this will help small businesses, but fails to analyze such questions as whether this decision will encourage a regulatory shell game that threatens to make a mockery of the radio limits. And it fails to address the harms to small businesses of eliminating media concentration protections and allowing large conglomerates to lock up the available stations in a market.

The June 2 decision further relegated to some indeterminate future Notice of Proposed Rulemaking the critical question of how access to capital in the media industry acts as a barrier to entry for small businesses. This Report again fails to indicate when the Commission will take up this important issue.

Undermining Broadband Competition Hurt Small Businesses

The Report also fails to recognize that many of the FCC's recent telecom competition and broadband decisions will create new barriers to entry for small businesses, and that these decisions have eliminated earlier Commission efforts to break barriers down. More than 26 million access lines are provided by competitive carriers today, many of which are entrepreneurial upstarts. Yet when it comes to "promoting vigorous economic competition," we have failed these new entrants by closing off access to key facilities and raising barriers for entry into the telecommunications service market.

Last year, in the *Triennial Review Order*, the Commission undermined competition in the market for telecommunications services by limiting—on a nationwide basis in all markets for all customers—competitors' access to broadband loop facilities whenever an incumbent deploys a mixed fiber/copper loop. So as incumbents deploy fiber anywhere in their loop plant, they are relieved of the unbundling obligations that Congress imposed to ensure adequate competition in the local market. This can only make it more difficult for small businesses to get into the business of providing telecommunications services. With decisions like this, the Commission constructs barriers to vigorous economic competition by small entities, when it should be eliminating them.

The story is also ominous when it comes to the market for broadband information services. For years, the Commission has had in place policies that make it possible for information services entrepreneurs to access incumbent networks on nondiscriminatory terms. This has made it possible for small businesses like independent ISPs to provide service to customers. But two years ago, in the *Wireline Broadband NPRM*, the Commission suggested that these rules that keep the roads of the Internet open to all are no longer necessary. Should the Commission follow through with this proceeding, it will allow those who own and control networks to set up toll booths on the onramps to the Internet. This will prevent tomorrow's entrepreneurs—who are today tinkering away in garages and laboratories and office cubicles—from getting nondiscriminatory access to the transmission facilities they need to bring their innovations to market. By dismantling these rules, the Commission will raise barriers for small businesses and innovators interested in providing Internet-based information services.

Conclusion

As a final matter, let me just add that, although this Report highlights the entry barriers faced by small businesses that seek to provide telecommunications or information services, this Commission has failed to address the challenges faced by ***small businesses as consumers*** of telecommunications. As competition falls prey to consolidation and competitive and consumer protections are eliminated, small businesses will see prices rise and choices vanish. Today's small business men and women face limited or no choice for many services, they receive the same kind of confusing and misleading bills that individual consumers receive, and they have nowhere to turn if they are dissatisfied. While this is not the subject of this Report, it needs to be a central focus of Commission attention.

SEPARATE STATEMENT OF
COMMISSIONER KEVIN J. MARTIN
Approving in Part, Concurring in Part

RE: Section 257 Triennial Report to Congress; Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses

Today's decision outlines five legislative proposals for Congress's consideration. These proposals appear to offer statutory changes designed to lessen market entry barriers. While these proposals all appear to have merit, I reserve judgment on the details of these proposals, given that the Commissioners were provided with only limited time to consider this item.

SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
Approving in Part, Dissenting in Part

Re: Section 257 Triennial Report to Congress

This Triennial Report requires the Commission to identify and report to Congress on how it eliminated market entry barriers for entrepreneurs and other small businesses. The purpose of our exercise is clear from the statute – to promote the policies and purposes of the Communications Act "favoring diversity of media voices, vigorous economic competition, technological advancement, and the promotion of the public interest, convenience, and necessity."

I share a strong commitment to these Congressional goals. Entrepreneurs and small businesses play a crucial role in communications industries, from providing service in rural and underserved areas, to encouraging innovation and niche operations, to bringing a unique and diverse voice to the public airwaves, and countless other examples.

I support most of the Report and the legislative recommendations. I commend the Bureaus involved for the dedication to small business interests evidenced in the actions and legislative proposals described in the Report. In particular, a tax incentive program benefiting small communications businesses, including disadvantaged firms and those owned by women or minorities, could help create greatly-needed diversity of ownership in the media and other communications industries. Yet, there is more that we can do on the regulatory front, and I challenge the Bureaus to stay vigilant in identifying and eliminating market entry barriers.

I dissent, however, to any suggestion that the Commission's new broadcast ownership rules will promote "diversity of media voices" or eliminate market entry barriers for entrepreneurs and other small businesses. I believe they will have the opposite effect. Entrepreneurs and small businesses, as well as the general public, are in no way better served by slashing media ownership protections and thereby allowing fewer media companies to control what Americans see, hear and read.

A license to use the public airwaves means the ability to promote the ideas, news, culture, and language of the owner's choosing. Unfortunately, females and minorities historically have been, and continue to be, underrepresented in media ownership. As reported by NTIA, in 2000, minority broadcasters owned a mere 4 percent of the nation's commercial radio stations and 1.9 percent of the nation's commercial television stations – the lowest level of minority television ownership since the tracking of such data began in 1990. Minority ownership of broadcast stations has fallen by 14 percent since 1997.

The June 2003 Biennial Regulatory Review of Broadcast Ownership Rules will only exacerbate this worrisome trend. The new rules allow a massive increase in consolidation which will raise the already high entry barriers for smaller market participants or new entrants in the media industry. Small or single-station entrants will find themselves increasingly competing with large, consolidated group owners. In more concentrated and more expensive media markets, entrepreneurs will face even more difficulties raising capital, owning outlets, or having their unique voices heard.

Today's Report describes new transferability procedures that, in my view, are too little and too late. The transfer of entire grandfathered clusters to small entities will rarely, if ever, happen. If they ever come on the market at all, small businesses may have difficulty raising the capital needed to buy the expensive, large clusters rather than single stations or smaller clusters. Even under the new procedures, the small business can flip the grandfathered cluster to any large radio or media conglomerate after only three years, leaving little protection against a front company buying a cluster and later selling it to further

increase the bulk of well-capitalized radio giants. So these new procedures in no way offset the damage to new entrants caused by the overall slashing of media ownership protections.

I hope that I am proven wrong. Nevertheless, no entrepreneur or small business should take comfort that this transferability exception will come anywhere close to counteracting the damage done by loosening the media ownership protections.