FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

August 9, 2000

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
U.S. House of Representatives
H-232 U.S. Capitol Building
Washington, D.C. 20515

Dear Speaker Hastert:

Pursuant to Section 257(c) of the Communications Act of 1934, as amended, enclosed is the required Triennial Report to Congress on market entry barriers in the telecommunications industry.

Section 257, enacted as part of the Telecommunications Act of 1996, directed the Federal Communications Commission to complete a proceeding to identify and eliminate "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services." Pursuant to that mandate, the Commission adopted a report on market entry barriers in the summer of 1997. Section 257 also requires that every three years the Commission review and report to Congress on any regulations it prescribes to eliminate barriers and on any statutory barriers that it recommends be eliminated.

This Triennial Report describes the efforts of the Commission during the past three years to reduce market entry barriers facing entrepreneurs and other small businesses in the telecommunications industry, including revisions in Commission rules and policies, organizational structure, and administrative requirements. A series of studies are also underway to document the kinds of market entry barriers faced by small businesses, and these should be complete by early fall. I will forward copies of the studies to Congress as a supplement to this Report as soon as they are complete.

If you need additional information or have any questions about the Report, please contact Francisco Montero, Director, Office of Communications Business Opportunities, at (202) 418-0990.

Sincerely,

William Kennard

William E. Kennard
Chairman

Enclosure

# NEWS

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FOR IMMEDIATE RELEASE:
August 11, 2000


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## FCC RELEASES REPORT ON IDENTIFYING AND ELIMINATING MARKET ENTRY BARRIERS FOR ENTREPRENEURS AND OTHER SMALL BUSINESSES

Washington, D.C. – The Federal Communications Commission yesterday released a Triennial Report to Congress on market entry barriers in the telecommunications industry. The report describes the efforts of the Commission during the past three years to reduce market entry barriers facing entrepreneurs and other small businesses in the telecommunications industry, including revisions in Commission rules and policies, organizational structure, and administrative requirements.

Section 257 of the Communications Act of 1934, as amended, enacted as part of the Telecommunications Act of 1996, directed the Commission to complete a proceeding to identify and eliminate "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services." Pursuant to that mandate, the Commission adopted a report on market entry barriers in the summer of 1997. Section 257 also requires that every three years the Commission review and report to Congress on any regulations it prescribes to eliminate barriers and on any statutory barriers that it recommends be eliminated.

Action by the Commission July 28, 2000, by Report (FCC 00-279). Chairman Kennard, Commissioners Ness, Powell and Tristani, with Commissioner Furchtgott-Roth approving in part, dissenting in part, and issuing a separate statement.

Office of Communications Business Opportunities contact: Francisco Montero, Director, at (202) 418-0990.

- FCC -

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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

# REPORT

**Adopted:** July 28, 2000 **Released:** August 10, 2000

**By the Commission:** Commissioner Furchtgott-Roth approving in part, dissenting in part, and issuing a separate statement.

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## I. EXECUTIVE SUMMARY

1. This Report is submitted pursuant to Section 257(c) of the Communications Act of 1934, as amended ("Communications Act").[1] In the past three years, the Commission's efforts on behalf of entrepreneurs and other small businesses reflect conscientious compliance with the four major policies and purposes outlined in the Telecommunications Act of 1996 ("1996 Act"):[2] favoring the development of a diversity of media voices; enabling vigorous economic competition; facilitating the advancement of technology; and promoting the public interest, convenience, and necessity. Section 257 was enacted as part of the 1996 Act.

2. Section 257 required that the Commission complete a proceeding to identify and eliminate "market entry barriers for entrepreneurs and other small businesses" in telecommunications. Pursuant to that mandate, the Commission adopted a

[1] 47 U.S.C. § 257.

[2] Telecommunications Act of 1996, Public Law No. 104-104, 110 Stat. 56 (1996) ("1996 Act").

report on market entry barriers ("*1997 Report*")[3] and has undertaken revisions in Commission policy, organizational structure, and administrative requirements in the past three years. Since the *1997 Report* on Section 257, the Commission has responded to concerns raised in the *1997 Report* that the Commission could lower market entry barriers by streamlining some of its rules and by providing electronic access to Commission information and licensing procedures. The Commission's efforts to increase the availability of regulatory information, facilitate the acquisition of licenses, improve ease of participation in rule-makings, and streamline regulatory procedures and requirements were intended to improve access for entrepreneurs and other small businesses to telecommunications markets.

3. Part III describes pertinent regulatory and other initiatives undertaken by the Commission's bureaus and offices during the three-year period since the *1997 Report*. This section discusses initiatives in the common carrier, wireless, cable, mass media, international, and engineering and technology areas that affect the ability of small businesses to enter and participate in the dynamic telecommunications marketplace.

4. In the area of common carrier services, the Commission undertook the following initiatives.

- unbundling of network elements;
- reducing Commission tariff filing burdens on carriers by streamlining contributor reporting requirements, adopting a single filing location requirement, and coordinating sharing of information submitted on reporting worksheets;
- streamlining accounting requirements for mid-sized incumbent local exchange carriers, while excluding small carriers from requirements to submit yearly operating revenue reports and cost allocation manuals;
- deregulating and streamlining domestic market entry certification and domestic exit reporting requirements, including automatic approval of applications;
- introducing universal service high-cost support portability for non-rural carriers to promote competitive entry in high-cost areas;
- promoting participation of new carriers in rural health care services through relaxation of eligible telecommunications carrier requirements;

[3] *See* In the Matter of Section 257 Proceeding To Identify and Eliminate Market Entry Barriers For Small Businesses, *Report*, GN Docket No. 96-113, 12 FCC Rcd 16802 (1997) ("*1997 Report*"). The *1997 Report* was released on May 8, 1997.

- increasing incentives to target services at unserved Native American communities and increasing telephone service support to low-income Native Americans;

- using Section 253 preemption powers to benefit entrance by small businesses into telecommunications markets;

- using the 1996 Act's authority to forbear from imposing unnecessary and otherwise burdensome regulatory requirements on small or new carriers that provide new services; and

- assessing and promoting the availability of competitive broadband xDSL services to residential and small business customers.

5. In wireless services, the Commission undertook the following initiatives.

- allocating spectrum, through competitive bidding rules, to small businesses and rural telephone companies, including businesses owned by members of minority groups or women;

- seeking innovative methods to make spectrum available for new services, such as promoting Guard Band Managers and the development of spectrum secondary markets;

- targeting incentives to provide services to "unserved" and "underserved" areas, particularly to Native American communities;

- easing construction requirements, including certain requirements for small businesses, to create greater flexibility to meet requirements for the licensed wide-area buildout of providers;

- streamlining the application for and processing of wireless licenses, the filing of reports and rulemaking comments, and providing public viewing of licensing data; and

- enhancing the ability of new and small wireless carriers to interconnect with established providers of services, to partition and disaggregate licenses, and to resell wireless services.

6. In cable services, the Commission undertook the following initiatives.

- relieving small cable entities from many regulatory burdens;

- enhancing business opportunities for programmers by adopting a formula to calculate maximum levels of compensation for accessing the cable system;

- promoting business opportunities for video providers to serve multiple dwelling units through cable systems;

- reducing filing and record keeping requirements, and facilitating compliance with cable television rules for small cable entities; and

- exempting small cable carriers from the closed captioning requirements.

7. In mass media services, the Commission undertook the following initiatives.

- streamlining filing requirements and easing filing of reports through an electronic reporting system;

- providing information on how to start a new broadcast station, apply for low power or micro stations, and other important information for new broadcast business opportunities;

- authorizing licensing of two new classes of noncommercial low power FM radio stations, with rules to ease record keeping and filing burdens;

- revising local television and radio-television cross-ownership rules to enable small stations to combine operations and reduce expenses, thereby perhaps diversifying programming and promoting competition;

- modifying television service rules to allow certain low-power television stations to qualify as primary broadcasters (Class A service) and therefore become providers of new services; and

- amending multichannel multipoint distribution rules to facilitate the provision of new, enhanced services, including new digital and two-way communications services.

8. In international services, the Commission undertook the following initiatives.

- granting earth stations a new authorization to communicate with foreign satellites, thus lowering the cost for earth station owners

and establishing procedures that permit routine licensing of earth stations seeking to use satellites;

- construing liberally financial qualification requirements to remove barriers limiting smaller and new entity participation in satellite licensed services;

- streamlining procedures for licensing applications and reducing paperwork obligations and tariff requirements for non-dominant international carriers; and

- coordinating international policy with the International Telecommunications Union to find additional spectrum to use for advanced wireless services, new equipment and software development, and provision of new services.

9. The Office of Engineering and Technology undertook the following initiatives.

- streamlining and simplifying authorization of equipment and experimental licenses;

- promoting new and innovative services by small entities and entrepreneurs in the unlicensed spectrum market, including services that promote application of wireless internet, wireless local area network and ultra-wideband technologies;

- supporting the development of dedicated short-range communications systems in the Intelligent Transportation System radio service and fixed wireless access services; and

- developing a policy to guide the Commission's future reallocation of spectrum to enable a broad range of new radio services and business opportunities, including software-defined radios.

10. Recently, the Commission created two new bureaus that help facilitate implementation of the Section 257 mandate. Specifically, the new Consumer Information Bureau disseminates to the public, including entrepreneurs and other small businesses, information about Commission rulemakings, policy statements, adjudicative decisions, technical studies, transfers, mergers, and licensing matters. The consolidation of agency-wide consumer information functions provides consumers a one-stop shop for obtaining the information they need to make choices in a robust and competitive marketplace. In addition, the new Enforcement Bureau provides the Commission with a centralized office from which to conduct most of the enforcement and compliance activities of the Commission. The bureau also promotes the rapid processing of formal complaints. Consolidation of enforcement responsibilities allows the Commission to

streamline compliance activities and employ innovative means to expedite problem solving among industry participants.

11. Part IV of this Report addresses Commission efforts to:

- improve access to telecommunications licenses;
- overcome unique obstacles faced by minority- and women-owned small businesses;
- institute a regular process to review the agency's regulations and decide whether to retain, modify, or eliminate them through the auspices of the agency-wide Biennial Review;
- review the impact of all Commission's rules on small businesses under the Regulatory Flexibility Act and the Small Business Act;[4]
- implement a Commission-wide system for electronic filing of applications for licenses, comments on rule-makings, and other submissions to the Commission that are important for participation in the telecommunications market;
- sponsor an historic seminar in September 2000 providing valuable information to tribal communities about telecommunications technologies, regulatory framework, available resources, and options for enhancing services to tribal residents;
- promote equal employment opportunities in licensed broadcast and cable services;
- provide vital information on business opportunities for entrepreneurs and small businesses;
- support access to advanced services to facilitate educational opportunities through the Commission's educational universal services program; and
- evaluate market entry barriers through sponsored studies.

12. Part V proposes legislative initiatives that either directly lower market entry barriers faced by entrepreneurs and other small businesses seeking to participate in the telecommunications marketplace or enhance the Commission's ability to remove such barriers.

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[4] Regulatory Flexibility Act of 1980, *as amended*, 5 U.S.C. § 601 *et seq.*; Small Business Act, 15 U.S.C. § 632.

## II. INTRODUCTION

### A. SECTION 257

13. Section 257(c) of the Communications Act requires the Commission to report triennially to Congress on the steps it has taken to eliminate market entry barriers identified in the Commission's proceeding entitled *In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*.[5]

14. Section 257 is entitled "Market Entry Barriers Proceeding." Section 257(a), "Elimination of Barriers," requires that, within 15 months after the enactment of the 1996 Act, the Commission complete a proceeding to identify and eliminate "market entry barriers for entrepreneurs and other small businesses" in telecommunications. Section 257(a) focused the proceeding on two areas: (1) "the provision and ownership of telecommunications services and information services"; and (2) "the provision of parts or services to providers of telecommunications services and information services." Pursuant to that mandate, the Commission adopted a report ("*1997 Report*").

15. Section 257(b), "National Policy," established guidelines for the Commission's proceeding that resulted in the *1997 Report*. Specifically, Section 257(b) instructs the Commission "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."

16. Pursuant to Section 257(c), "Periodic Review," the Commission, on the third anniversary of the issuance of the *1997 Report*, is required to review and report to Congress on

> (1) any regulations prescribed to eliminate barriers within its jurisdiction that are identified [in the *1997 Report*] and that can be prescribed consistent with the public interest, convenience, and necessity; and
>
> (2) the statutory barriers identified [in the *1997 Report*] that the Commission recommends be eliminated, consistent with the public interest, convenience and necessity.[6]

This Report fulfills this requirement.

### B. A REVIEW OF THE *1997 REPORT*

17. Pursuant to the requirements of Section 257(a), the Commission, in 1996, initiated a proceeding to identify market entry barriers. In May 1996 a Notice of Inquiry

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[5] *1997 Report*, *supra*, at note 3.

[6] 47 U.S.C. § 257(c).

("NOI")[7] was issued in the proceeding that culminated in the *1997 Report*. In the NOI, the Commission made several inquiries of the public, including how to define small businesses; specifics about market entry barriers for small businesses; and whether small businesses owned by women and minorities faced unique market entry barriers.

18. Over 80 entities filed comments in response to the NOI. The commenters represented virtually every industry and interest group within the field of telecommunications, including individual entrepreneurs, small businesses, large businesses, large communications companies, associations, federal and state government representatives, telecommunications policy groups, women's organizations, and minority interests. Also in conjunction with the NOI, the Office of the General Counsel and the Office of Communications Business Opportunities held a public forum in September 1996.

19. In preparing the *1997 Report*, the Commission followed the definition of market entry barriers found in the NOI which included:

> obstacles that deter individuals from forming small businesses, barriers that impede entry into the telecommunications market by existing small businesses, and obstacles that small telecommunications businesses face in providing service or expanding within the telecommunications industry . . ..[8]

Also, the Commission framed its discussion of market entry barriers by referencing the policy objectives set forth in Section 257(b), and described a variety of measures taken to fulfill those policies.

20. First, in furtherance of the policy favoring "vigorous economic competition," the Commission noted that efforts to eliminate market entry barriers must be undertaken in a manner that "facilitates entry by small businesses yet avoids unwarranted regulatory intervention that could distort a competitive marketplace." Thus, by recognizing that economically unjustified intervention might make it difficult to promote vigorous competition, the Commission defined "market entry barrier" to include only those impediments that would "significantly distort competition and harm consumer welfare."[9]

21. Second, to promote the policy of expediting technological advancement, the Commission disseminated information to small entities and entrepreneurs about (1) improving access to Commission decision makers and (2) Commission processes and

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[7] *See* In the Matter of Section 257 Proceeding To Identify and Eliminate Market Entry Barriers For Small Businesses, *Report*, GN Docket No. 96-113, 12 FCC Rcd 16802 (1997).

[8] *See* In the Matter of Section 257 Proceeding To Identify and Eliminate Market Entry Barriers For Small Businesses, *Notice of Inquiry*, GN Docket No. 96-113, 11 FCC Rcd 6280, 6183 (1996).

[9] *1997 Report* at para. 3.

communications opportunities. The *1997 Report* also noted that the Commission had made additional spectrum available to spur technological advancement.[10]

22. Third, to implement the policy of supporting diversity of media voices, the Commission continued its review of ownership rules in broadcast and other contexts, and continued to evaluate issues relating to small businesses owned by women or minorities.[11]

23. Fourth, the Commission stated its belief that it had promoted the public interest, convenience and necessity by combining its Section 257 efforts, *i.e.* preparation and issuance of the *1997 Report*, with its ongoing commitment to enhance opportunities for small business.[12]

24. In addition to the foregoing, the *1997 Report* also listed various initiatives that the Commission had undertaken in response to the comments received in the NOI. The Commission adopted many of the principal proposals set forth in the comments received. It also acted on its own initiative to introduce other measures. As described in the *1997 Report*, some of the key new measures adopted to implement Section 257 were: (1) using service-specific definitions of small businesses rather than adopting a general definition; (2) planning initiatives that enable small businesses more easily to file comments and otherwise participate in Commission proceedings; (3) requiring the Commission's bureaus and offices to be thorough and timely in preparing, for each rulemaking or policy statement issued to the public, fully detailed statements that explain the impact of the rules on small businesses; (4) instituting rulemaking proceedings intended to ensure effective and prompt enforcement of Communications Act provisions and Commission rules; (5) reducing information-filing and other burdens that created obstacles to entry for small businesses; and (6) ensuring that the Commission fully consider the interests of small telephone carriers in proceedings to determine funding mechanisms for universal service support.[13]

25. Other measures reported in 1997 included: (1) adopting initiatives to facilitate small business participation in spectrum auctions; (2) proposing and adopting policies that permit geographic partitioning and spectrum disaggregation in various wireless communications services; (3) adopting spectrum initiatives to encourage technological innovation by equipment manufacturers and others; (4) speeding resolution of complaints; (5) sponsoring conferences on telecommunications services and related financing options; (6) increasing public access to the Commission by creating accessible, interactive FCC sites on the World Wide Web and by establishing the National Call Center to field inquiries from the public; and (7) making continued efforts to ensure that

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10 *Id*. at para. 4.

11 *Id.*

12 *Id.*

13 *1997 Report* at para. 8.

the Telecommunications Development Fund ("TDF" or "Fund") becomes an effective vehicle for removing financial obstacles to entry.[14]

## III. REGULATORY INITIATIVES TO REMOVE IMPEDIMENTS IN SPECIFIC SERVICES

### A. COMMON CARRIER SERVICES

#### 1. Interconnection and Resale Barriers

26. The 1996 Act added Section 251 of the Communications Act. Section 251 of the Communications Act 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 the pro-competitive goals and policies of the 1996 Act. Section 251 establishes the general interconnection obligations for all telecommunications carriers; delineates further obligations for local exchange carriers ("LECs"); and prescribes additional requirements for incumbent LECs ("ILECs"). Section 252 generally sets forth the procedures that state commissions, ILECs and new entrants must follow to implement the requirements of Section 251 and to establish specific interconnection arrangements. In its 1996 *Local Competition Order*,[15] the Commission imposed new obligations on telecommunications carriers in order to implement Section 251. The Commission prescribed certain minimum points of interconnection necessary to permit competing carriers to choose the most efficient points at which to interconnect with the ILEC's network. In addition, the Commission prescribed a minimum list of unbundled network elements that ILECs must make available to new entrants, upon request. The Commission expects that these obligations will promote small businesses' entry into the market for competitive local service by removing barriers to interconnection with ILECs' facilities.

27. As stated in the *1997 Report*, the Commission continues to ensure carrier compliance with the rights and obligations set forth in Section 251.[16] At the time of the *1997 Report*, the Commission's regulations implementing the local interconnection and resale provisions of the 1996 Act had been partially stayed by the United States Court of Appeals for the Eighth Circuit.[17] In particular, the Eighth Circuit questioned the Commission's jurisdiction to impose national pricing rules.[18] In January 1999, however, the Supreme Court reversed that decision and remanded the case to the Eighth Circuit for

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14 *Id.*

15 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, *First Report and Order*, FCC 96-325, 11 FCC Rcd 15499 (1996) (*"Local Competition Order").*

16 *1997 Report* at para. 85.

17 *Iowa Utils. Bd. v. FCC,* 120 F. 3d 753 (8th Cir. 1997).

18 *Id*. at 793-800.

further proceedings.[19] One of the Commission's rules that the Supreme Court reinstated requires each state commission to deaverage rates for interconnection and unbundled network elements across at least three defined geographic areas within the state to reflect cost differences. As a result of the Eighth Circuit decision, some states had not established deaveraged rates for interconnection and unbundled network elements. Following the Supreme Court's decision, therefore, the Commission stayed the effectiveness of that rule to allow states to bring their rules into compliance.[20] The stay was terminated by its own terms on May 1, 2000. The introduction of deaveraged rates for interconnection and unbundled network elements will make it easier for competitors to enter and serve new markets.

28. The Supreme Court also held in its January 1999 decision that the Commission has general jurisdiction to implement the 1996 Act's local competition provisions, and the Commission's rulemaking authority extends to Sections 251 and 252. The Court also determined that the Commission's rules governing unbundled access are, with the exception of identifying unbundled network elements under Section 251(d)(2), consistent with the 1996 Act. The Court did find, however, that the Commission did not adequately consider the "necessary" and "impair" standards of Section 251(d)(2) when it determined which network elements ILECs are required to unbundle pursuant to Section 251(c)(3). Accordingly, the Court concluded that the Commission's rule, which set forth a list of the minimum network elements that must be unbundled, should be vacated.

29. On September 15, 1999, in response to the Supreme Court's decision, the Commission adopted a *Third Report and Order and Fourth Notice of Proposed Rulemaking* in the Local Competition docket.[21] The *Third Report and Order* sets forth a new standard for determining whether ILECs must unbundle network elements. The *Third Report and Order* also identifies a minimum set of network elements that ILECs must provide to new entrants and other competing carriers under Section 251(c)(3). They include: loops, subloops, network interface devices, circuit switching (except for larger customers in major urban markets), dedicated and shared transport, signaling and call-related databases, and operation support systems. The *Fourth Notice of Proposed Rulemaking* seeks comments on issues surrounding the ability of carriers to use certain unbundled network elements as a substitute for the ILECs' special access services. Again, the Commission hopes that these new rules will promote small businesses' entry into the market for competitive local service by removing barriers to interconnection with ILECs' facilities.

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19 *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999).

20 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Deaveraged Rate Zones for Unbundled Network Elements, CC Docket No. 96-98, *Stay Order*, 14 FCC Rcd 8300 (1999).

21 Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, CC Docket No. 99-238, FCC 99-238 (rel. Nov. 5, 1999) ("*Third Report and Order*").

### 2. Information Filing and Accounting Burdens

30. Pursuant to the Biennial Review of Commission regulations required by the 1996 Act, the Commission reviewed its tariff filing rules so as to reduce burdens on carriers.[22] In particular, we eliminated the requirement that carriers make their tariffs accessible to the public during normal business hours in favor of less onerous options such as posting rates on an Internet web site. This will make information more readily available to new entities in the marketplace. We also simplified and clarified the requirements for filing tariffs by nondominant carriers so that more options are available without requesting a waiver of the rules.

31. The Commission also, in the *Streamlined Contributor Reporting Requirements Order*,[23] simplified the filing requirements for communications service providers by replacing four different -- but largely duplicative -- forms with one consolidated form, the Telecommunications Reporting Worksheet. In addition to a reduction in the number of forms filed, the Commission, to further ease the burden of filing for these four programs, adopted a single filing location and took additional steps to ensure that the various administrators have the ability to coordinate the sharing of information submitted on the Telecommunications Reporting Worksheet. The adoption of this process resulted in a one-third reduction in time necessary to comply with the filing requirements of these various programs.[24] The Commission believes that this action not only reduces regulatory burdens on small carriers and service providers, but will also reduce the costs to administrators and the public cost of regulation by conserving Commission resources associated with auditing and crosschecking data submissions.

32. In the *Accounting Reductions Order*[25] and the *ARMIS Reporting Reductions Order*,[26] the Commission streamlined the accounting requirements for mid-

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[22] 1998 Biennial Regulatory Review -- Part 61 of the Commission's Rules and Related Tariffing Requirements, CC Docket No. 98-131, and Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, CC Docket No. 96-187, *Report and Order and First Order on Reconsideration*, 14 FCC Rcd 12293 (1999).

[23] *See* In the Matter of 1998 Biennial Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, *Report and Order*, CC Docket No. 98-171, FCC 99-175 (rel. July 14, 1999) ("*Streamlined Contributor Reporting Requirements Order*").

[24] Based on the annual burden estimates of the four forms, the estimated annual burden was 12.5 hours. With the single Telecommunications Reporting Worksheet, the estimated annual burden is only 8 hours.

[25] 1998 Biennial Regulatory Review -- Review of Accounting and Cost Allocation Requirements, CC Docket No. 98-81, *Report and Order in CC Docket No. 98-81*, 14 FCC Rcd 11396 (1999) ("*Accounting Reductions Order*").

[26] 1998 Biennial Regulatory Review -- Review of ARMIS Reporting Requirements, CC Docket No. 98-117, *Report and Order in CC Docket No. 98-117*, 14 FCC Rcd 11443 (1999) ("*ARMIS Reporting Reductions Order*").

sized ILECs based on the aggregate revenues of the ILEC and any ILEC that it controls, is controlled by, or with which it is under common control. In addition, small carriers (*i.e.* those with under $112 million in yearly operating revenues) do not file ARMIS reports.

33. Section 64.903 of the Commission's Rules requires ILECs with $112 million or more in annual operating revenues to file cost allocation manuals ("CAMs") setting forth the cost allocation procedures they use to allocate costs between regulated and nonregulated services.[27] Small carriers are exempted from filing CAMs with the Commission. The Commission also adopted rules to streamline the cost allocation regulations by permitting mid-sized ILECs to submit their CAMs based on the Class B system of accounts. Specifically, ILECs with annual revenues in excess of $112 million are eligible for streamlined reporting if the ILEC, together with its ILEC affiliates, had aggregate annual revenues of less than $7 billion. Allowing mid-sized LECs to submit their CAMs based on the Class B system of accounts reduces the reporting burden of the nonregulated activity matrix and the cost apportionment section of the CAM. Carriers required to file CAMs are also required to perform an independent audit of reported cost allocation data. The Commission also allowed mid-sized ILECs to obtain an attestation audit every two years instead of an annual financial statement audit. Such attestation would cover the previous two years. Small carriers are not required to perform audits of cost allocation data, nor are they required to obtain an attestation audit.

34. The Commission also reduced the filing burden on mid-sized ILECs by eliminating the requirement to file 21 tables from the ARMIS 43-02 USOA Report. Mid-sized ILECs are now required to file only six tables in the ARMIS 43-02 Report. In streamlining the accounting and cost allocation rules for mid-sized carriers, the Commission hopes to reduce any unnecessary burdens and remove regulations that are no longer needed to meet regulatory demands.

35. In 1999, the Commission adopted rules under Section 214 that deregulate domestic market entry and streamline domestic exit requirements. Specifically, the rules (1) confer "blanket" certification for new lines of all domestic carriers; (2) exempt line extensions and video programming services from Section 214 in accord with the 1996 Act; and (3) provide that all applications to discontinue domestic service will be automatically granted unless the Commission notifies the applicants otherwise.[28] This action will reduce the burden on small carriers by eliminating, in most instances, the Section 214 authorization process.

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[27] 47 C.F.R. § 64.903.

[28] Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, *Report and Order and Second Memorandum Opinion and Order,* CC Docket No. 97-11, 14 FCC Rcd 11364 (1999).

#### 3. Treatment of Small ILECs Under the Regulatory Flexibility Act

36. A "small business" under the Regulatory Flexibility Act ("RFA") is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[29] In the *1997 Report*, the Commission stated that it did not believe that small ILECs qualified as small businesses under the RFA because such businesses appeared to be "dominant in their field of operation due to their current control of bottleneck facilities."[30] We also noted that, since 1996, the Commission had nonetheless addressed in its regulatory flexibility analyses the impact of its rules on such ILECs.[31] During 1999, following a letter on this subject from the Office of Advocacy[32] and a meeting between agency staffs, the Commission decided to revise the language of its decisions to make clear that small ILECs are among the small businesses included in its analyses under the RFA.[33] We also expect that this change will encourage a more consistent focus on small business alternatives when our common carrier proposals are drafted.

#### 4. Universal Service

37. The Commission, through its universal service programs, has taken several steps to eliminate market barriers and promote competition. Specifically, in the *18th Order on Reconsideration*,[34] the Commission implemented a new high-cost universal service support mechanism for non-rural carriers. The support provided by this mechanism is portable, *i.e.*, competing carriers are entitled to the same amount of support for serving a customer that the incumbent receives. This portability provision is designed to encourage competitive entry in high-cost areas by lowering the most significant barrier to entry in such areas -- the high cost of providing service. In conjunction with the Federal-State Joint Board on Universal Service, the Commission has also established a Rural Task Force[35] to recommend reforms to the high-cost support mechanism for rural

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29 5 U.S.C. § 601(3); 15 U.S.C. § 632(a); OMB, Standard Industrial Classification Manual (1987), SIC code 4813; 13 C.F.R. § 121.902, SIC code 4813.

30 *1997 Report* at para. 94.

31 *Id.*; *see, e.g.*, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499, 16144-45 (1996).

32 Letter *from* Jere W. Glover, Chief Counsel for Advocacy, SBA, *to* William E. Kennard, Chairman, FCC (May 27, 1999).

33 This change did not effect Commission analyses and determinations in other, non-RFA contexts.

34 Federal-State Joint Board on Universal Service, *Ninth Report & Order and Eighteenth Order on Reconsideration*, FCC 99-306, 14 FCC Rcd 20432 (1999) ("*Eighteenth Order on Reconsideration*").

35 *See* Federal-State Joint Board on Universal Service Announce the Creation of a Rural Task Force; Solicits Nominations for Membership on Rural Task Force, *Public Notice*, FCC 97J-1, 12 FCC Rcd 15752 (1997).

carriers. The Rural Task Force will be guided by the universal service principles in the 1996 Act and the Commission's stated objective that universal service should be portable and competitively neutral.

38. In the *14th Order on Reconsideration*,[36] the Commission determined that a broader group of telecommunications carriers, not just eligible telecommunications carriers, as defined by § 214(e), may participate in the Commission's rural health care support mechanism. This should give rural health care providers greater choice among service providers.

39. The Commission has also undertaken initiatives to remove barriers to entry for carriers serving unserved, underserved, tribal, and insular areas. In a *Twelfth Report and Order, Memorandum Opinion and Order, and Second Further Notice of Proposed Rulemaking* adopted June 8, 2000, the Commission adopted various ways to increase the telephone penetration rate in tribal areas by expanding or modifying our universal service programs.[37] Additionally, in an *Order* released in December 1999, the Common Carrier Bureau waived certain rules to allow tribal carriers to derive greater benefit from the federal Lifeline support program.[38]

#### 5. Impartial Administration of Telecommunications Numbers

40. The Commission has promulgated rules to implement Section 251(e)(1), which requires the Commission to create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. Commission rules requiring the impartial administration of numbering resources assures that small carriers, to the same extent as large carriers, are able to access numbering resources in a timely manner in order to offer communications services to their customers. The rules provide, in part, that if the Commission delegates to the states or to other entities any portion of its authority over telecommunications numbering, those states or entities must perform their delegated functions in a manner consistent with certain guidelines, which require that the numbering administration: (1) facilitate entry into the telecommunications marketplace by making telecommunications numbering resources available on an efficient, timely basis to telecommunications carriers; (2) not unduly favor or disfavor any particular industry segment or group of telecommunications consumers; and (3) not unduly favor one telecommunications technology over another.[39]

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[36] Federal-State Joint Board on Universal Service, *Fourteenth Order on Reconsideration*, FCC 99-256, 14 FCC Rcd 20106 (1999).

[37] In the Matter of Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, *Twelfth Report and Order, Memorandum Opinion and Order, and Second Further Notice of Proposed Rulemaking*, CC Docket No. 96-45, FCC 00-208 (adopted June 8, 2000).

[38] Federal-State Joint Board on Universal Service, *Order*, CC Docket 96-45, DA 99-2970 (rel. December 23, 1999).

[39] 47 C.F.R. § 52.9.

41. To ensure the impartial administration of numbering resources, the rules further provide that: (1) the North American Numbering Plan Administrator ("NANPA") may not be an affiliate of any telecommunications service provider; (2) the NANPA or its affiliate may not issue a majority of its debt to, nor derive a majority of its revenues from, any telecommunications service provider; and (3) notwithstanding (1) and (2), the NANPA may or may not be determined to be subject to undue influence by parties with a vested interest in the outcome of numbering administration activities.[40] Previously, the ILEC within each geographic area performed central office ("CO") code administration.[41] In response to a request by the Commission to the North American Numbering Council ("NANC") to recommend a neutral entity to serve as the NANPA, the NANC selected Lockheed Martin IMS. In October 1997, the Commission affirmed the selection of Lockheed Martin IMS as the new NANPA, noting that it would perform the numbering administration functions previously performed by Bellcore, as well as area code relief planning and CO code administration. In November 1999, the Commission approved the transfer of the NANPA functions to NeuStar for the remainder of the current NANPA appointment term, finding that NeuStar was in compliance with the neutrality criteria.[42]

42. Recently, the Commission took steps to optimize the use of numbering resources through various administrative and regulatory efforts. In seeking to establish a uniform national strategy for numbering resource optimization, the Commission had the goal of, among other things, ensuring that all carriers -- including new entrants and small carriers -- have the numbering resources they need to compete in the rapidly growing telecommunications marketplace. In the *Numbering Resources Optimization Report and Order*,[43] the Commission adopted several technical measures and reporting requirements designed to make more efficient use of, and make carriers more accountable for, telecommunications numbering resources. We note, however, that the Commission took steps to reduce the reporting requirement for certain small, rural carriers by allowing them to report required telephone number utilization data at a less granular level than other carriers will. The Commission will continue to seek additional ways to optimize number utilization to ensure that no carrier is barred from entry into telecommunications markets because of the unavailability of numbering resources.

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40 47 C.F.R. § 52.12(a)(1).

41 *See 1997 Report* at paras. 101, 103.

42 Administration of the North American Numbering Plan, *Third Report and Order*; Toll Free Service Access Codes, *Third Report and Order*, CC Docket No. 95-155, 12 FCC Rcd 23040, 23048 (1997); Request of Lockheed Martin Corporation and Warburg, Pincus & Co. For Review of the Transfer of the Lockheed Martin Communications Industry Services Business, *Order*, CC Docket No. 92-237, 14 FCC Rcd 19792 (1999).

43 Numbering Resources Optimization, CC Docket No. 99-200, *Report and Order and Further Notice of Rule Making*, FCC 00-104 (rel. Mar. 31, 2000) ("*Numbering Resources Optimization Report and Order*").

### 6. Preemption of Onerous State Requirements

43. The 1996 Act created Section 253 of the Communications Act,[44] which expressly empowers the Commission to preempt state and local laws under certain specified conditions. Section 253(a) sets forth a general proscription of any state or local legal requirement that "prohibit[s] or ha[s] the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[45] Under Section 253(d), if after notice and an opportunity for public comment, the Commission finds that a state or local statute, regulation, or legal requirement falls within the proscription of Section 253(a) and outside the shelter of Section 253(b) or (c), the Commission must "preempt enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency."

44. Below we give examples of the Commission's use of its preemption power to benefit small businesses entering into telecommunications markets. The Commission stands ready to enforce the general prohibition set forth in Section 253 of the 1996 Act. Since issuance of the *1997 Report*, the Commission has issued orders preempting a number of state and local legal requirements, which it found violated Section 253. For example, in the *Silver Star Preemption Order,* released on September 24, 1997, the Commission granted a LEC's petition for preemption of the enforcement of (i) a provision of the Wyoming Telecommunications Act of 1995 that gives ILECs serving fewer than 30,000 access lines veto power over the certificate applications of potential competitors, and (ii) a decision of the Wyoming Public Service Commission enforcing that provision of the Wyoming statute.[46] In the *Hyperion Preemption Order*, released on May 27, 1999, the Commission granted a petition for preemption filed by Hyperion of Tennessee, L.P. ("Hyperion").[47] Hyperion had asked the Commission to issue an order preempting a decision by the Tennessee Regulatory Authority denying Hyperion's application for a Certificate of Public Convenience and Necessity to provide service in an area of Tennessee served by a carrier with less than 100,000 access lines within the state and a related provision of the Tennessee Code.

45. Finally, in an order released December 23, 1999 (the "*Arkansas Preemption Order*"), the Commission preempted three provisions of the Arkansas Telecommunications Regulatory Reform Act of 1997, concluding that they unlawfully

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44 47 U.S.C. § 253.

45 47 U.S.C. § 253(a).

46 Silver Star Telephone Company, Inc. Petition for Preemption and Declaratory Ruling, *Memorandum Opinion and Order,* FCC 97-336, 12 FCC Rcd 15639 (1997) ("*Silver Star Preemption Order*").

47 AVR, L.P. d/b/a Hyperion of Tennessee, L.P., Petition for Preemption of Tennessee Code Annotated § 65-4-201(d) and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Areas, *Memorandum Opinion and Order*, FCC 99-100, 14 FCC Rcd 11064 (1999) ("*Hyperion Preemption Order*").

erect barriers to entry into local telephone service markets in Arkansas.[48] First, the *Arkansas Preemption Order* preempted a Section of the Arkansas Act that permitted an incumbent company to make bundled retail service offerings unavailable to competing carriers at wholesale rates. The Commission concluded that this provision conflicted with the rules governing resale in the 1996 Act. The Commission also preempted a provision that concerned the standards that the Arkansas Public Service Commission used to review local telephone companies' interconnection arrangements with competitive carriers. Third, the Commission preempted a provision that appeared to be designed to shield rural telephone companies from entry by competitors.

#### 7. Forbearance Authority

46. The Commission has exercised the forbearance authority granted by the 1996 Act[49] to eliminate or reduce burdens imposed by our regulations. For example, in response to a petition for forbearance filed by an organization of mid-sized ILECs that serve fewer than two percent of the nation's access lines, we granted forbearance from our Part 69 rules to allow these carriers to introduce new services without first requesting a waiver.[50] This allows these carriers to introduce new services used by small businesses and consumers more quickly and enhances competition among providers of telecommunications services.

47. In addition, the Commission remains committed to eliminating or streamlining tariff filing and other reporting requirements applicable to entities providing common carrier services. Such streamlining is particularly helpful to small businesses, as it may cut back on the number of person-hours that such entities must devote to filing tariffs. As we noted in the *1997 Report*, the Commission's order eliminating tariff filing requirements for interstate, domestic, interexchange services offered by nondominant interexchange carriers was stayed by the United States Court of Appeals for the D.C. Circuit.[51] Recently, that court affirmed the Commission's decision prohibiting non-dominant long distance companies from filing tariffs to offer their interstate services, subject to a transition period, and subject to certain mass-marketing arrangements, dial-around services, casual calling rates, and rates applied to new customers until an account

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[48] American Communications Services, Inc., MCI Telecommunications Corp. Petitions for Expedited Declaratory Ruling Preempting Arkansas Telecommunications Regulatory Reform Act of 1997 Pursuant to Sections 251, 252, and 253 of the Communications Act of 1934, as Amended, *Memorandum Opinion and Order*, FCC 99-386, 14 FCC Rcd 21579 (1999) ("*Arkansas Preemption Order"*).

[49] *See* 47 U.S.C. § 10.

[50] Petition for Forbearance of the Independent Telephone & Telecommunications Alliance, AAD File No. 98-43, *Sixth Memorandum Opinion and Order*, 14 FCC Rcd 10840 (1999).

[51] *See* Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, *Second Report and Order*, 11 FCC Rcd 20730 (1996), *stay granted sub nom. MCI Telecommunications Corp. v. FCC*, No. 96-1459 (D.C. Cir. Feb. 13, 1997).

can be established.[52] The court's decision vindicates an effort by the Commission to remove tariffing from its regulation of non-dominant long distance carriers.

#### 8. Pricing Flexibility

48. The Commission adopted an order establishing a framework to grant ILECs progressively greater flexibility in the pricing of interstate access services as competition develops for these services.[53] By allowing ILECs to introduce new interstate access services on a streamlined basis, without prior approval or cost support, for example, we made it easier for the LECs, both small and large, to respond to the needs of both customers and competitors that purchase these services.

#### 9. Customer Proprietary Network Information Requirements

49. The 1996 Act created Section 222 of the Communications Act, which establishes Consumer Proprietary Network Information ("CPNI") requirements that apply to all telecommunications carriers.[54] The Commission had previously defined CPNI to encompass any information about customers' basic network services and the customers' use of those services. This encompassed information that a telephone company possesses because it provides those network services. Under Section 222, all telecommunications carriers are subject to CPNI requirements. Absent customer approval or a legal requirement, telecommunications carriers may use or disclose individually identifiable CPNI only in the provision of the telecommunications service from which such information is derived, or in the provision of services necessary to or used in the provision of such telecommunications services, such as directory publishing. Telecommunications carriers must disclose CPNI to any person upon the customer's affirmative written request.

50. Although challenges to portions of the Commission's CPNI rules have been sustained by the Tenth Circuit Court of Appeals,[55] the Commission issued several orders and enacted rules prior to that decision which had a positive impact on small businesses. In the *CPNI Report and Order* released on February 26, 1998, the

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52 *MCI Telecommunications Corp. v. FCC*, No. 96-1459, Slip. Op. (D.C. Cir. April 28, 2000).

53 Access Charge Reform, CC Docket No. 96-262, Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, CCB/CPD File No. 98-63, Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, CC Docket No. 98-157, *Fifth Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 14221 (1999).

54 47 U.S.C. § 222.

55 The U.S. Court of Appeals for the Tenth Circuit issued its opinion vacating the Commission's CPNI rules based upon its conclusion that the CPNI rules violate the First Amendment. *US West v. FCC*, 182 F.3d 1224 (10th Circuit 1999). On October 1, 1999, the Commission filed a petition for rehearing of that decision. The Tenth Circuit denied the petition on November 30, 1999, and officially vacated the Commission's CPNI rules on December 8, 1999. The Competition Policy Institute has filed a petition for certiorari, seeking review of the Tenth Circuit decision by the United States Supreme Court.

Commission promulgated rules to implement Section 222.[56] Those rules permitted carriers to use CPNI, without customer approval, to market offerings that are related to, but limited by, the customer's existing service relationship with the carrier. On September 3, 1999, the Commission released an *Order on Reconsideration* that lessened the regulatory burden of various CPNI safeguards for both wireline and wireless companies, while continuing to require that carriers protect customer privacy.[57] Specifically, the Commission reduced the restriction on telecommunications companies' use of CPNI to market services and equipment to their own customers. The Commission allowed wireline telephone carriers to use CPNI without customer approval to market related information services. Wireless carriers were awarded broader discretion to use CPNI without customer approval to market all information services that are necessary to, or used in the provision of, their telecommunications services. The Commission also allowed telecommunications companies to use CPNI in their efforts to win back customers lost to competitors, reasoning that win-back campaigns are good for competition and consistent with the 1996 Act. The Commission also modified its requirement that carriers develop and implement software that indicates a customer's CPNI approval status within the first few lines of the first screen of a customer's service record. Now, carriers must clearly establish the status of a customer's CPNI approval prior to the use of CPNI, but the specific details of compliance are left to the carriers. In so doing, the Commission allowed the carriers the flexibility to adapt their record-keeping systems in a manner most conducive to their individual size, capital resources, culture, and technological capabilities.

51. The Commission also eliminated the requirements that carriers maintain an electronic audit mechanism that tracks access to customer accounts. Instead, the Commission required carriers to maintain a record of their sales and marketing campaigns that use CPNI. The Commission also modified the CPNI "flagging" rule to state that carriers must implement a system by which the status of a customer's CPNI approval can be clearly established prior to use of CPNI -- a number of small and rural carriers had stated their concern that these requirements were particularly burdensome for carriers of their size. These modifications will permit all carriers to develop and implement a system for auditing and flagging that is suitable to, among other things, their unique size, capital resources, culture, and technological capabilities.

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[56] 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, *Second Report and Order and Further Notice of Proposed Rulemaking*, FCC 98-27, 13 FCC Rcd 8061 (1998) ("*CPNI Report and Order*").

[57] Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information, Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as Amended, *Order on Reconsideration and Petitions for Forbearance*, FCC 99-223, 14 FCC Rcd 14409 (1998) ("*Order on Reconsideration*").

#### 10. Provision of Advanced Services

52. On December 9, 1999, the Commission released the *Advanced Services Third Report and Order*.[58] In that order, the Commission adopted measures to promote the availability of competitive broadband xDSL-based services, especially to residential and small business customers. The Commission amended its unbundling rules to require ILECs to provide unbundled access to a new network element, the high frequency portion of the local loop. This will enable competitive LECs to compete with larger ILECs to provide to consumers xDSL-based services through telephone lines that the competitive LECs can share with ILECs. The provision of xDSL-based service by a competitive LEC and voiceband service by an ILEC on the same loop is frequently called "line sharing." The Commission believes that line sharing is vital to the development of competition in the advanced services market, especially for residential and small business consumers. The Commission also believes that unbundled access to the high frequency portion of the loop can be implemented rapidly and in an equitable manner that balances the needs of both potential competitors and ILECs.

#### 11. The E-Rate Program and the Potential for Market Participation

53. The Universal Service[59] Schools and Libraries program, popularly known as the "E-rate" program, is regarded as a program that will help close the "digital divide" between the technology "haves" and "have-nots" in America. Established by the 1996 Act, and funded at up to $2.25 billion per year by contributions from telecommunications companies, the E-rate provides discounts of 20 percent to 90 percent on the cost of telecommunications services, Internet access, and internal connections to schools and libraries. The discounts are paid directly to the companies that provide schools and libraries with these technology services.[60]

54. The E-rate program helps to bridge the "digital divide" in access to information technology between the affluent and non-affluent in America by providing greater discounts for poorer and rural schools.[61] The E-rate thus helps to ensure that all children, including those without computers or Internet access at home, will have the

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58 Deployment of Wireline Services Offering Advanced Telecommunications Capability, and Implementation of The Local Competition Provisions of The Telecommunications Act Of 1996, Third Report and Order in CC Docket No. 98-147 Fourth Report and Order in CC Docket No. 96-98, FCC 99-355, 14 FCC Rcd 20912 (1999) ("*Advanced Services Third Report and Order*").

59 1996 Act, § 254, *supra*.

60 The E-rate is administered by the Universal Service Administrative Corporation ("USAC").

61 For example, in the past year, 54 percent of E-rate dollars were provided to economically disadvantaged students and library patrons (*i.e.*, schools, or libraries near them, where a substantial percentage of the students are eligible for the Federal school lunch program).

high-tech tools necessary to compete in the new digital economy.[62] This will help to remove the market entry barriers to those disadvantaged segments of our society.

### B. WIRELESS SERVICES

#### 1. Spectrum Assignment Policies

55. The Omnibus Budget Reconciliation Act of 1993 (the "Budget Act")[63] added Section 309(j) to the Communications Act. 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 the summer of 1997, Congress revised 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.[64] Section 309(j) 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 or women.

56. Since the 1993 mandate to ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups or women are given the opportunity to participate in the provision of spectrum-based services, Congressional and Supreme Court actions have narrowed our options for fulfilling this mandate. In 1994, Congress repealed Section 1071 of the Internal Revenue Code, voiding the Commission's tax certificate program.[65] In 1995, the Supreme Court held in *Adarand Constructors, Inc. v. Peña* that "all racial classifications . . . must be analyzed by a reviewing court under strict scrutiny."[66] The Court ruled that any federal program that imposes racial classifications must serve a compelling governmental interest and must be narrowly tailored to serve that interest. In 1996, the Supreme Court held in *United States v. Virginia* that a state program that makes distinctions on the basis of gender must be supported by an "exceeding[ly] persuasive justification" in order to withstand constitutional scrutiny.[67] Because the record developed in promulgating rules to promote

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62 Schools, both public and private, and public libraries may now apply for the 1999-2000 funding round via the E-rate web site: www.universalservice.org.

63 Pub. L. No. 103-66, Title VI, § 6002(a), 107 Stat. 312, 387 (1993).

64 *See* 47 U.S.C. § 309(j)(1) (as amended by the Balanced Budget Act of 1997, § 3002).

65 H.R. 831, 104th Cong., 1st Sess. § 2.

66 115 S. Ct. 2097, 2113 (1995).

67 116 S. Ct. 2264, 2274-76 (1996).

Section 309(j)'s objectives did not assume application of a "strict scrutiny test," the Commission limited its available provisions to those benefiting small business. The Commission continues to encourage the participation of a variety of entrepreneurs in the provision of wireless services, believing that innovation by small businesses will result in a diversity of service offerings which, in turn, will increase customer choice and promote competition.

57. In the *1997 Report* proceeding, commenters indicated that our spectrum assignment decisions, specifically the assignment of spectrum for large geographic service areas and in large spectrum blocks, create a barrier to entry for small businesses.[68] They stated that wide-area geographic systems are more capital intensive to construct and operate than other types of systems and that these costs are often too expensive for a small business and thus constitute a substantial market entry barrier for small businesses. Commenters expressed concern that the Commission's allocation of spectrum in larger blocks in some services reflected a bias in favor of larger commercial carriers, while ignoring the needs of small businesses operating site-specific systems.

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[68] *1997 Report* at paras. 110-112. The Commission has adopted or is considering wide-area geographic licensing, *inter alia*, in the following proceedings: The 4.9 GHz Band Transferred From Federal Government Use, WT Docket No. 00-32, *Notice of Proposed Rulemaking*, 15 FCC Rcd 4778, 4797-4799, para. 41-47 (2000) (*"4.9 GHz NPRM"*); Service Rules for the 746-764 and 776-794 MHz Bands and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *First Report and Order*, 15 FCC Rcd 476, 500-502, para. 56-61 (2000) (*"746-764 and 776-794 First Report and Order"*); Amendment of the Commission's Rules Regarding Multiple Address Systems, WT Docket No. 97-81, *Report and Order*, FCC 99-415 (rel. Jan. 19, 2000); Rule Making to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, To Reallocate the 29.5-30.0 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Fourth Report and Order*, CC Docket No. 92-297, 13 FCC Rcd. 11, 655 (1998) (*"LMDS Fourth Report and Order"*); Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), *Report and Order*, 12 FCC Rcd 10785 (1997) (*"WCS Report and Order"*); Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220-222 MHz Band by the Private Land Mobile Services, PR Docket No. 89-552, *Third Report and Order and Fifth Notice of Proposed Rulemaking*, FCC 97-57 (1997) (*"220 MHz Third Report and Order"*); Amendment of the Commission's Rules Regarding Multiple Address Systems, *Notice of Proposed Rulemaking*, WT Docket No. 97-81, FCC 97-58 (rel. Feb. 27, 1997) (*"MAS NPRM"*); Implementation of Section 309(j) of the Communications Act -- Competitive Bidding; Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 2732 (1997) *("Paging Second Report and Order")*; Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, Implementation of Sections 3(n) and 322 of the Communications Act -- Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Implementation of Sections 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 12 FCC Rcd 19079, 19127-19153, para. 138-227 (1997) (*"800 MHz SMR Second Report and Order"*); 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 Notice of Proposed Rulemaking*, 11 FCC Rcd 1463 (1996) (*"800 MHz SMR Order and NPRM"*); Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639 (1996) (*"900 MHz SMR Order"*); Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, *Report and Order*, 10 FCC Rcd 9589 (1995) (*"MDS Report and Order"*).

58. At the outset, we note that not all Commission wireless licensing is for large geographic areas in large spectrum blocks. For example, the Commission's rules provide for certain shared, non-exclusive use of private land mobile radio ("PLMR") spectrum.[69] 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.[70] 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.[71] Additionally, a given licensee, 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.[72] Finally, we note that we have encouraged partnering between PLMR licensees, such as public safety entities and utilities.[73] Each of these sharing paradigms promotes conservation of capital, operational efficiency, and cost reduction for the small business entity.

59. The Commission continues to seek innovative policies to make spectrum available for services and thereby create additional market opportunities for small businesses. Recently, the Commission released its *Second Report and Order* in the 700 MHz proceeding, establishing service and auction rules for the 6 MHz of Guard Band spectrum (746-747/ 776-777 MHz and 762-764/ 792-794 MHz).[74] Licenses in the Guard Bands will be assigned only to Guard Band Managers, a new class of commercial licensee that will be engaged solely in the business of leasing spectrum to third parties on a for-profit basis. The Guard Band Manager 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. Guard Band Manager licensing will have many potential benefits, including: (1) Guard Band Managers will

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69 *See generally* 47 C.F.R. Part 90.

70 *See* Implementation of Sections 309(j) and 332 of the Communications Act of 1934 as Amended, *Notice of Proposed Rule Making*, WT Docket No. 99-87, 14 FCC Rcd 5206, 5217, para. 14 (1999) ("*Balanced Budget Act Proceeding*").

71 *See* 47 C.F.R. § 90.185. We are currently exploring, however, whether multiple licensing constitutes commercially available communications services. *See Balanced Budget Act Proceeding* at paras. 45-51.

72 *See* 47 C.F.R. § 90.179.

73 *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 14029 (WTB PSPWD 1999); Central and South West Services, Inc., *Order* , 13 FCC Rcd 16162 (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).

74 *See* Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *Second Report and Order*, FCC 00-90 (rel. Mar. 9, 2000).

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) spectrum users, including small businesses, will have 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) development of a "free market" in spectrum could result in more efficient use of this limited resource; and (4) this licensing approach will streamline the day-to-day management of this spectrum. As a result, in this band many spectrum-related functions ordinarily carried out by the Commission will be handled by Guard Band Managers.

60. We remain mindful of the challenges that small businesses face in their efforts to acquire geographic area licenses generally, and have taken several steps to alleviate these possible difficulties. First, our decisions defining the service areas and spectrum blocks by which licenses for wireless services are to be assigned have taken into account the needs of small businesses. For example, in some services we have adopted band plans that included licenses for small geographic areas and spectrum blocks. These plans will promote economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies and businesses owned by minorities or women.[75] Moreover, in many of our auctionable services, we have adopted special provisions, such as bidding credits and partitioning and disaggregation, to assist small businesses, including minority- and women-owned businesses and rural telephone companies, in acquiring spectrum assigned in geographic service areas and spectrum blocks.

61. We believe that rules and policies that permit geographic partitioning[76] and spectrum disaggregation[77] also address the concerns raised regarding geographic area licensing. In a series of rulemakings, we have adopted rules that permit geographic partitioning and spectrum disaggregation in certain services including: Broadband and Narrowband PCS,[78] Cellular,[79] Multipoint Distribution Service ("MDS"),[80] 800 MHz and

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[75] For example, in the 800 MHz Specialized Mobile Radio ("Upper 10 MHz"), 220 MHz, General Wireless Communications Service and Location and Monitoring Service auctions, we used EAs to license the services. In the Local Multipoint Distribution Service ("LMDS") auction, we used BTAs to license the service.

[76] Geographic partitioning is the assignment of geographic portions of a license along geopolitical or other boundaries (*e.g.*, county lines).

[77] Spectrum disaggregation is the assignment of discrete portions or "blocks" of a spectrum license from the existing licensee to a geographic licensee or qualifying entity.

[78] Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Service Licensees, WT Docket No. 96-148, Implementation of Section 257 of the Communications Act -- Elimination of Market Entry Barriers, GN Docket No. 96-113, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 21831 (1996) (allowing partitioning of broadband PCS licenses).

[79] Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, WT Docket No. 96-148, Implementation of Section 257 of the Communications Act -- Elimination of Market Entry Barriers, GN Docket No. 96-113, *Second Report and Order*, FCC 00-141 (rel. May 19, 2000).

900 MHz Specialized Mobile Radio ("SMR"),[81] 39 GHz fixed point-to-point microwave,[82] Wireless Communications Services ("WCS"),[83] Local Multipoint Distribution Service ("LMDS"),[84] Maritime Services,[85] Paging,[86] the commercial service in the 700 MHz band (formerly allocated to broadcast channels 60-69),[87] and the 218-219 MHz service.[88] We believe that such provisions will help to: (1) remove potential impediments to entry thereby increasing competition in the wireless telecommunications marketplace; (2) encourage parties to use spectrum more efficiently; and (3) speed service to unserved and underserved areas. Parties that are unsuccessful bidders or that do not participate in auctions will be able to benefit from partitioning and disaggregation as methods to acquire spectrum rights after the auctions. Smaller or newly formed entities, for example, might choose to enter the market for the first time through partitioning or disaggregation.

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[80] Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, MM Docket No. 94-131, and Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, *Report and Order*, 10 FCC Rcd 9589, 9614-15, para. 46-47 (1995) (allowing partitioning of MDS licenses).

[81] Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, Implementation of Sections 3(n) and 322 of the Communications Act -- Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Implementation of Sections 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 12 FCC Rcd 19079, 19127-19153, para. 138-227 (1997) ("*800 MHz SMR Second Report and Order*") (adopting flexible partitioning and disaggregation rules for all 800 MHz and 900 MHz SMR licensees).

[82] Amendment of the Commission's Rules Regarding the 37.0 - 38.6 GHz and 38.6 - 40.0 GHz Bands, ET Docket No. 95-183, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 37.0 - 38.6 GHz and 38.6 - 40.0 GHz, PP Docket No. 93-253, *Report and Order and Second Notice of Proposed Rule Making*, 12 FCC Rcd 18600, 18634-18636, para. 70-74 (1997) (adopting partitioning and disaggregation rules for licenses in the 39 GHz band).

[83] *See* Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), *Report and Order*, 12 FCC Rcd 10785, 10834-10839, para. 92-103 (1997) (adopting partitioning and disaggregation rules for WCS licensees).

[84] *See LMDS Fourth Report and Order*, 13 FCC Rcd 11655 (1998) (adopting partitioning and disaggregation rules for LMDS licensees).

[85] Amendment of the Commission's Rules Concerning Maritime Communications, PR Docket No. 92-257, *Third Report and Order and Memorandum Opinion and Order*, FCC 98-151, 13 FCC Rcd 19853, paras. 37-43 (1998).

[86] *Paging Second Report and Order*, 12 FCC Rcd 2732, 2817, para. 192 (1997).

[87] 746-764 and 776-794 MHz Bands, *First Report and Order*, 15 FCC Rcd at 506-508, para. 74-78.

[88] In the Matter of Amendment of Part 95 Of The Commission's Rules to Provide Regulatory Flexibility In the 218-219 MHz Service, WT Docket No. 98-169, RM-8951, *Report and Order and Memorandum Opinion and Order*, FCC 99-239, 1999 WL 705096 (FCC), 17 Communications Reg. (P&F) 222.

62. The Commission has also recently adopted a *Report and Order and Further Notice of Proposed Rulemaking*, in which it adopts terrestrial wireless and satellite policy initiatives to address telecommunications needs on tribal lands.[89] As we have stated previously, the 1996 Act instructed the Commission to help ensure that all Americans have access to affordable telecommunications services.[90] Because many tribal lands, particularly those in the western United States, are geographically isolated,[91] 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 PCS, and fixed "wireless local loop" services. In this order, the Commission provides bidding credits to successful bidders who agree to provide service to unserved areas on tribal lands.[92]

#### 2. Construction Requirements

63. In recent years, with the auctioning of geographic-area licenses, the Commission has adopted longer, more flexible construction requirements for various wireless licensees, including small businesses, than it had previously imposed on site-by-site licensees. In the 220 MHz and Paging services, the Commission has adopted either population-based coverage requirements or substantial service requirements for geographic licenses that are purchased at auction.[93] In the 800 MHz SMR service, the Commission in 1991 began granting certain 800 MHz licensees extended implementation ("EI") authority to construct their systems, whereby the licensee had up to five years to construct all of the facilities within the licensed wide-area "footprint." At the end of the

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89 In the Matter of Extending Wireless Telecommunications Services to Tribal Lands, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 99-66, FCC 00-209 (adopted June 8, 2000).

90 *See, e.g.*, Truth-in-Billing and Billing Format, CC Docket No. 98-170, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 99-72, para. 51 (rel. May 11, 1999). *See also* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 706 (1996).

91 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.

92 *See, Report and Order and Further Notice of Proposed Rulemaking, supra,* note 89.

93 *See* In the matter of Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private land Mobile Radio, *Third Report and Order*, 12 FCC Rcd 10943 (1997) (220 MHz EA licensees must meet population-based standards or show substantial service); *See also, e.g., Paging Systems Reconsideration Order*, 14 FCC Rcd 10030 (1999) (paging geographic licensees must meet population-based standards or show substantial service); In the matter of Construction Requirements For Metropolitan Trading Area-Based ("MTA") Licensees in the 896-901/935-940 MHz Band, *Order*, 14 FCC Rcd. 13223 (WTB 1998) (the Bureau waived the requirement that all 900 MHz MTA licensees must provide a plan at the three-year coverage deadline showing how they would meet substantial service at the five-year construction deadline).

EI period, any frequency licensed at a specific site within the footprint that was not fully constructed and in operation would cancel automatically.[94]

64. In December 1995, the Commission adopted a new wide-area licensing scheme by creating geographic-area licenses (Economic Area, or "EA," licenses) for the upper 200 channels of the 800 MHz SMR band.[95] The Commission also required licensees who had previously obtained EI authorizations to rejustify their authorizations by demonstrating that continuing to maintain their extended time to construct their facilities was warranted and in the public interest. In May and November 1997, the Wireless Telecommunications Bureau acted on the rejustification submissions filed by thirty-seven wide-area licensees, including many small businesses.[96] In July 1997, the Commission generally affirmed the EA licensing system and decided that rejustified EI licensees would receive a maximum of two years to complete construction of their facilities. Any site-specific license within a licensee's wide-area "footprint" that was not constructed by the two-year deadline would be automatically cancelled.[97]

65. In February 1999, in *Fresno Mobile Radio, Inc. v. FCC*,[98] the United States Court of Appeals for the District of Columbia remanded the Commission's decision regarding the construction requirements for EI licensees. The court directed the Commission to explain why these SMR licensees were not allowed to apply more liberal coverage requirements similar to those adopted for 800 MHz EA licensees, cellular licensees, and PCS licensees, given that they are substantially similar CMRS providers. On December 23, 1999, the Commission released a *Remand Order*[99] responding to the *Fresno* decision. In the *Remand Order*, the Commission adopted more liberal construction periods for incumbent wide-area 800 MHz SMR licensees who were within their construction periods at the time of the *Fresno* decision. These incumbents must

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94 *See* 47 C.F.R. § 90.629(e).

95 *800 MHz Report and Order*, 11 FCC Rcd. at 1479-80. The "upper 200 channels" consist of 200 paired channels (Channel Nos. 401-600) at 816-821/861-866 MHz. The "lower 230 channels" are a combination of the 150 General Category channels and "lower 80" channels. The General Category channels consist of 150 paired channels (Channel Nos. 1-150) at 806-809.750/851-854.750 MHz. The "lower 80" channels consist of 80 paired channels at 811-815.700/856-860.700 MHz (Channels Nos. 201-208, 221-228, 241-248, 261-268, 281-288, 301-308, 321-328, 341-348, 361-368, and 381-388).

96 *See* Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, Implementation of Sections 3(n) and 322 of the Communications Act -- Regulatory Treatment of Mobile Services, GN Docket No 93-252, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, *Order*, 13 FCC Rcd. 1533, *recon* 12 FCC Rcd 18349 (*"WTB 1997"*).

97 *See 800 MHz Reconsideration Order* at 9997, para. 81.

98 165 F.3d 965 (D.C. Cir. 1999).

99 *See* Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Memorandum Opinion and Order on Remand*, FCC 99-399 at para. 19 (rel. December 23, 1999), 65 Fed. Reg. 7749 (pub. Feb. 17, 2000) (*"Remand Order"*).

satisfy population-based construction requirements similar to those given to Economic Area licensees in the 800 MHz band (*i.e.*, 1/3 population at 3 years, 2/3 population at 5 years) on the upper 200 channels or show substantial service for the lower 230 channels of the 800 MHz band. The Commission has requested further comment on whether the relief afforded by the *Remand Order* should also be extended to SMR licensees who operate wide-area systems on non-SMR channels through inter-category sharing.[100] This proceeding is currently pending.

#### 3. Application Processing and Filing

66. The Commission has taken several steps since the *1997 Report* to ensure that its application processing and filing rules and policies do not present barriers for small businesses. In this regard, the Commission has revised its rules and policies to bring competition to the frequency coordination process, unify its administrative rules for filing applications, and implement 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 radio (wireless) licenses.

67. **Coordination.** In the Part 90 (47 C.F.R. Part 90) private land mobile radio ("PLMR") services, 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. The frequency coordinator makes a recommendation to the Commission regarding the best available frequency for the applicant's proposed operations.[101] Frequency coordinators are most frequently utilized for shared PLMR spectrum. In the bands below 512 MHz, which are mostly shared (non-exclusive) PLMR spectrum, the Commission, in the *Refarming* proceeding, consolidated twenty radio services into two broad frequency pools: Public Safety and Industrial/Business.[102]

68. In the Commission's *Refarming* docket[103] we adopted rules to inject competition into the frequency coordination process.[104] Previously, frequency coordinators had sole control over the frequencies within their respective radio services.[105] Now, we generally allow coordination of any Industrial/Business pool

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100 *See* Commission Requests Comment, Pursuant to Fresno Mobile Radio v. FCC, on the Construction Requirements for Commercial, Wide-Area 800 MHz Licensees Operating on Non-SMR Channels Through Inter-Category Sharing, *Public Notice*, FCC 00-95, 15 FCC Rcd 5436 (2000).

101 *See Balanced Budget Act Proceeding*, at 5217 para. 14 (1999).

102 *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*, PR Docket No. 92-235, 14 FCC Rcd 14307, 14317 (1997).

103 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*, PR Docket No. 92-235, FCC 97-61 (rel. Mar. 12, 1997) ("*Refarming Second Report and Order"*).

104 *Id.* at para. 40.

105 *Id.*

frequency by any of the coordinators of the services that were consolidated into the pool, who notify the other in-pool frequency coordinators within one business day. This competitive coordination is intended to lessen market entry barriers by reducing prices, improving coordination services, and providing more flexibility to the small businesses that constitute the bulk of private land mobile radio licensees.

69. **Unified Filing Rules and Policies.** Since the *1997 Report*, the Commission has taken significant steps to simplify its application filing rules and policies. Specifically, the Commission found that its administrative rules for the filing and treatment of commercial, private, and personal radio services were contained under various sections in Parts 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules,[106] and that these rules differed slightly for the various radio services. This approach complicated the regulatory process for small businesses that held licenses in multiple radio services. For example, a small business holding a cellular license may also hold licenses in the microwave and private land mobile services in order to facilitate backhaul communications and communications among its employees, respectively. In this example, the licensee would need to be familiar with application filing procedures under Parts 22, 90, and 101 in order to remain in compliance with our rules. To remedy this situation, the Commission adopted a unified set of procedural rules governing the filing of all wireless applications in its *Universal Licensing System Report and Order*.[107] Today, small businesses can find a single set of procedures in Part 1 of the Commission's Rules,[108] simplifying the process of filing wireless license applications with the Wireless Telecommunications Bureau ("WTB").

70. **Electronic Filing.** We noted in the *1997 Report* that one commenter, the Small Business in Telecommunications Association, had suggested that the Commission 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 which are not interconnected. Since that time, the Commission's goal has been to ensure 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. The Commission has achieved this goal for the wireless radio services by implementing its Universal Licensing System ("ULS").

71. The ULS is an online, interactive application filing system and research facility allowing wireless applicants to file applications electronically, as well as view license information and applications online. ULS eliminates the need for wireless carriers to file duplicative applications, increases the accuracy and reliability of licensing

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106 *See generally* 47 C.F.R. Parts 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101.

107 *See generally* Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, WT Docket Nos. 98-20, Report and Order, 13 FCC Rcd. 21027 (1998) (*"ULS Report and Order"*).

108 *See, e.g.* 47 C.F.R. § 1.913 (Application Forms; electronic and manual filing).

information, and increases the speed and efficiency of the application process. Significantly, ULS benefits licensees who are small businesses in three ways.

72. First, electronic filing is now easily accessible. Licensees may file applications electronically via ULS using inexpensive computer equipment, a standard telephone line, and web browser software that is available free via the Internet. As a result, licensees need only learn to use a single software program in order to file applications with the WTB. Today, license and application searches are available via the Internet, while application filing is available through a toll-free dial-up connection. The WTB has made application filing available via the Internet in May 2000.

73. Second, electronic filing is simple. When filing through ULS, applicants do not need to determine which forms and schedules to file, which questions must be answered, or which fees are due. Instead, ULS determines what questions need to be answered based on the applicant's radio service and application purpose, checks the applicant's answers and provides feedback before the application is submitted, and calculates the fee for the applicant.

74. Third, application, license, and Public Notice information is available online. Licensees can view license information (*e.g.*, administrative and technical data) and applications via ULS using a web browser. In this connection, the WTB 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 WTB web site (www.fcc.gov/wtb) provides the public with on line 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. This provides instant access to applications that have been accepted for filing, as well as actions taken by the staff. Small businesses benefit from this approach by having the capability to quickly review Commission actions and proposed actions in a consistent format without having to obtain paper copies.

75. Today, the Commission has nearly completed its ULS implementation for the wireless services. In June 1998, the WTB implemented ULS for commercial wireless services such as Paging, Cellular, PCS, and all other auctioned radio services. This was followed in August 1999 with the implementation of the microwave radio services and will conclude in 2000 with a phased implementation of the Part 90 Land Mobile Radio Services.

#### 4. Outreach Efforts

76. The WTB operates a booth at many industry trade shows, including those regularly attended by representatives of small businesses. The booth provides hands-on training regarding use of the Commission’s ULS and auction bidding software over the Internet. The Commission’s outreach program also includes a Web Page and the Telemarketing Hot Line.[109] Members of the Commission and its staff have spoken at

[109] The Auctions Hotline telephone number is 1-888-225-5322.

numerous industry, trade association, public interest organization, and telecommunications user group conferences on opportunities in wireless services licensed by the Commission, and will continue to do so. In addition, prior to the start of each service-specific Commission auction, the WTB routinely holds seminars for bidders to provide additional information about auction procedures. These seminars are offered 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. After each auction, the WTB conducts a customer survey of auction participants regarding their experiences in the auction and the auction process generally.

77. 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 WTB conducted numerous interactive demonstrations for licensees and their representatives on the proper use of the system for filing license applications and conducting database research. Demonstrations were announced by public notice and, in 1999, approximately sixty sessions were held on certain topics of interest, including: (1) finding information in ULS for license and application searches; (2) filing and researching license transfers and assignments; and (3) general application filing procedures. As stated above, implementation of ULS has resulted in substantial benefits to all applicants, including small businesses. The WTB periodically updates its "ULS Newsletter" on the WTB web site to provide the public with current information on ULS and related topics of interest. The WTB has held public forums and has issued numerous public notices to educate the public on ULS procedures and benefits and to obtain public input on ULS issues.[110] The WTB maintains an electronic mail list of interested parties, which are provided with updated ULS information free of charge. The WTB also maintains a toll-free phone line[111] to assist with licensing questions during the ULS transition and has established a technical support hotline (and e-mail address)[112] to assist the public with computer-related issues, including set-up and configuration.

78. The Commission's Antenna Structure Registration ("ASR") program was also revised in conjunction with the implementation of 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 has 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

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[110] A list of FCC Public Notices concerning ULS is available on the WTB ULS Homepage at www.fcc.gov/wtb/uls.

[111] The toll-free number regarding ULS questions is 1-888-CALL-FCC.

[112] The Technical Support telephone no. is 202-414-1250 and the e-mail address for ULS technical questions is ulscomm@fcc.gov.

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.

79. The WTB has also developed a wireless facility-siting page that, among other things, provides current information about Commission rules and procedures. The web page provides access to fact sheets, rules and regulations regarding local government and environmental issues related to wireless facility siting. The web site 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.

80. Further, in autumn of 2000, the Commission will offer a seminar aimed at providing information to Native American tribal leaders and other interested parties to help increase telecommunications services to tribal residents. The Commission will bring 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.[113]

#### 5. Interconnection and Resale

81. The *1997 Report* addressed concerns about obstacles that small businesses may face in their abilities to resell, interconnect, or benefit from economies of scale.[114] It noted that the Commission had taken steps to overcome market entry and expansion barriers to small businesses by facilitating resale and interconnection agreements with established providers of Commercial Mobile Radio Services ("CMRS"). First, the *1997 Report* noted that in the *CMRS Resale Order*, the Commission prohibited certain CMRS providers from restricting the resale of their services during a five-year, transitional period in order to promote competition and accelerate the entry of new service providers.[115] The Commission also stated that it intended to enforce actively the requirements of Sections 201 and 202 of the 1996 Act,[116] as well as other provisions of the 1996 Act and the Commission's Rules, to resolve complaints that were pending regarding resale and interconnection obligations.[117] Finally, the *1997 Report* noted that, by

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113 *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.

114 *1997 Report*, 12 FCC Rcd at 16873-16876, paras. 133-136.

115 Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *First Report and Order*, 11 FCC Rcd 18455 (1996) ("*CMRS Resale Order"*), *aff'd sub nom. Cellnet Communications v. FCC*, 149 F.3d 429 (6th Cir. 1998).

116 47 U.S.C. §§ 201, 202.

117 *1997 Report*, 12 FCC Rcd at 16875, para. 136.

establishing geographic partitioning and spectrum disaggregation of channels in CMRS service rules, the Commission was providing existing licensees and new entrants, including resellers, with a fair opportunity to compete and develop their businesses.

82. Since the release of the *1997 Report*, the Commission has continued to address resale and interconnection issues in order to ensure that such issues are not market barriers for small wireless businesses. On reconsideration, the Commission generally affirmed the resale rule adopted in the *CMRS Resale Order* as an important means to facilitate CMRS market entry by small businesses consistent with the goals of Congress and Section 257.[118] The five-year effective period of the rule was retained in recognition that new entry and increasing competition will obviate the need for the rule within the next few years, but that under current conditions the rule continues to confer benefits upon the public.[119] To ensure compliance with the rule, the Commission adopted a stepped-up mediation program to resolve formal and informal complaints filed by a reseller and avoid delays or other practices by CMRS carriers covered by the rule that may prevent resale arrangements.[120]

83. The Commission took additional action in the *CMRS Resale Reconsideration Order*[121] to promote competition by small wireless businesses. The scope of the resale rule was modified to exclude certain smaller or limited CMRS providers, inasmuch as imposing the obligations of the resale rule on such providers was neither necessary nor useful in securing the benefits intended from providers with excess capacity or extensive market share.[122] The exclusion from the rule was applied to certain C, D, E, and F block PCS licensees and, in addition, the Commission exempted all CMRS providers that do not utilize in-network-switching facilities. Finally, as discussed above, the Commission continues to adopt CMRS service rules that enable smaller or newly formed wireless entities to enter the service market for the first time through partitioning and disaggregation.

#### 6. Definition of "Covered SMR"

84. Our definition of covered SMR services has changed since the *1997 Report*. In the *CMRS* proceeding, the Commission determined that an SMR licensee

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118 Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services: CC Docket No. 94-54, Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services and Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers: WT Docket No. 98-100, and Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Services: GN Docket No. 94-33, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 16340 (1999) ("*CMRS Resale Reconsideration Order"*).

119 *Id.* at 16345-16352 para. 12-25.

120 *Id.* at 16351-16352 para. 25.

121 *See* note 118, *supra.*

122 *CMRS Resale Reconsideration Order,* 14 FCC Rcd at 16355-16364 paras. 31-52.

offering interconnected service falls within the statutory definition of a CMRS provider.[123] In several other proceedings, however, the Commission determined that certain CMRS rules should apply only to a subset of SMR licensees that can realistically compete with traditional cellular and broadband PCS services. The *1997 Report* noted that requests were pending to modify the definition of SMR licensees covered by these rules as overly inclusive and a market entry barrier for certain small businesses that do not compete in the mobile telephony mass market.[124] In response, the Commission has agreed that its former definition of covered SMR services subject to certain CMRS-related regulations was too broad and has changed the rule to exclude certain providers that have limited capacity and services. Specifically, the Commission decided to exclude SMR providers that do not utilize in-network switching facilities from the obligations imposed on CMRS providers by (1) the resale rule,[125] (2) the Enhanced 911 transmissions ("E911") rule,[126] and (3) the number portability rule.[127] The modified definitions also were extended to exclude cellular and broadband PCS providers that similarly do not utilize an in-network switching facility. The Commission found that, unless CMRS providers have in-network switching facilities, they are likely to be offering only geographically or functionally limited services (such as dispatch) that those particular rules were not intended to cover, and that application of these rules to those services would not benefit the public.

#### 7. Competitive Bidding Incentives

85. As noted above, Section 309(j) of the Communications Act, like Section 257, fulfills Congress' intent to facilitate opportunities for small businesses in telecommunications. In enacting Section 309(j), Congress found that "unless the Commission is sensitive to the need to maintain opportunities for small businesses, competitive bidding could result in a significant increase in concentration in the telecommunications industries"[128] and that small businesses should "continue to have opportunities to become Commission licensees."[129] To this end, Section 309(j) requires

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123 Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services, *Second Report and Order*, 9 FCC Rcd 1411 (1994) (*"CMRS Second Report and Order"*).

124 *1997 Report*, 12 FCC Rcd at 16876 para. 137.

125 *CMRS Resale Reconsideration Order*, 14 FCC Rcd at 16361 para. 45-46.

126 Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, *Memorandum Opinion and Order*, 12 FCC Rcd 22665, 22703-22704 para. 78 (1998).

127 Telephone Number Portability, CC Docket No. 95-116, *Second Memorandum Opinion and Order on Reconsideration*, 13 FCC Rcd 21204, 21228-30 (paras. 52-57) (1999). Petitions for reconsideration seeking a similar modification of the Commission's roaming rule remain pending. *See* Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *Second Report and Order and Third Notice of Proposed Rulemaking*, 11 FCC Rcd 9462 (1996).

128 H.R. Rep. No. 111, 103rd Cong., 1st Sess. 254 (1993).

129 *Id.* at 255.

the Commission to establish competitive bidding rules and other provisions to ensure that small businesses, businesses owned by minorities and women, and rural telephone companies have an opportunity to participate in the wireless telecommunications industry. Section 309(j) requires that in designing systems of competitive bidding, the Commission "promot[e] economic opportunity and competition . . . by disseminating licenses among a wide variety of applicants, including small businesses . . . and businesses owned by members of minority groups and women."[130] 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."[131]

86. The Commission has designed a number of incentives to encourage the participation of small businesses, rural telephone companies, and businesses owned by members of minority groups or women in the wireless spectrum-based services. For example, in the broadband PCS auctions, the Commission 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.[132] In the past, incentives have included reduced upfront payments,[133] bidding credits,[134] installment payment plans with favorable interest rates,[135] and reduced down payments on winning bids. As noted above, we have recently adopted rules to provide bidding credits to applicants that intend to provide service to tribal lands or other unserved areas.[136]

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130 47 U.S.C. § 309(j)(3)(B).

131 47 U.S.C. § 309(j)(4)(D). Subsequent to Section 309(j)'s enactment, Congress eliminated the Commission's minority tax certificate program. Self-Employed Health Insurance Act of 1995, Pub L. No. 104-7, § 2, 109 Stat. 93 (1995).

132 *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5537. *See also Competitive Bidding Sixth Report and Order*, 11 FCC Rcd 136.

133 *See Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5599-5600 (25% reduction for all broadband PCS C block small business applicants).

134 *See, e.g., D, E & F Block Competitive Bidding Report and Order*, 11 FCC Rcd at 7875-7876 (25% bidding credit for small businesses and 15 percent bidding credit for very small businesses); *Competitive Bidding Sixth Report and Order*, 11 FCC Rcd at 161 (25 percent bidding credit for small businesses in broadband PCS C block auctions); *900 MHz SMR*, 11 FCC Rcd at 1705-06 (15 percent bidding credit for very small businesses and 10 percent bidding credit for small businesses).

135 *See, e.g., 800 MHz SMR Order and NPRM*, 11 FCC Rcd at 1574; Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, *Second Report and Order*, 11 FCC Rcd 624, 662-663 (1996) ("*GWCS Second Report and Order*").

136 *See* notes 89 and 92 and accompanying text, *supra*.

87. As we noted in the *Third Report and Order* in our proceeding concerning general auction rules (the *"Part 1 Proceeding"*), the Commission has found that obligating licensees to pay for their licenses as a condition of receipt requires greater financial accountability from applicants.[137] Therefore, we determined to eliminate installment payments. We noted that Congress had not required the use of installment payments in all auctions, but rather recognized them as one means of promoting the objectives of Section 309(j)(3).[138] In light of the decision to eliminate the installment payment program, we adopted a schedule of tiered bidding credits that, coupled with providing bidders with sufficient time to raise financing, will provide adequate opportunities for small businesses, including minority- and women-owned businesses, to compete successfully in spectrum auctions.

88. In addition, our policies regarding geographic partitioning and spectrum disaggregation should aid small businesses and other entrepreneurs through the creation of smaller, less capital intensive license authorizations that are more easily within the reach of smaller entities. Moreover, such policies may increase access to capital that can be used to construct and maintain wireless systems.[139] We note that small businesses have both participated in and been successful bidders in the majority of spectrum auctions we have conducted to date. Specifically, in our simultaneous multiple-round spectrum auctions, 82 percent[140] of the high bidders were small businesses (as defined for each respective service).

### C. CABLE SERVICES

89. Since the *1997 Report*, we have relieved small cable entities of additional regulatory burdens. In the *1997 Report*, it was noted that the Commission had already

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137 *See* In the Matter of Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, *Third Report and Order and Second Further Notice of Proposed Rule Making*, FCC 97-413, 13 FCC Rcd 374, 398 (1998), para. 40 ("*Part I Proceeding Third Report and Order*").

138 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) ("Omnibus Consolidated Appropriations Act").

139 *See* Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, *Notice of Proposed Rulemaking*, 11 FCC Rcd at 10195-10196 (1996).

140 Since the inception of auctions for wireless licenses, 793 of 971 license winners were small businesses. In total licenses issued, small businesses won 56 percent of all wireless licenses auctioned, 4,743 out of 8,439 licenses. Our auctions have demonstrated that small businesses, as well as minority- and women-owned businesses, have benefited from our competitive bidding procedures. Of the over 971 bidders who have won licenses thus far, 82 percent were small businesses, 18 percent were minority-owned businesses, 14 percent were women-owned businesses, and 12 percent were rural telephone companies.

taken significant steps to minimize the impact of the Commission's cable television regulations on small business, and that effort has continued. We have increased the number of small entities that qualify for relief from rate regulation. In addition, we have amended our "leased access" regulations to make access by an independent programmer to a cable system more affordable. We have adopted new "inside wiring" rules that enhance the ability of a new competitor, whether large or small, to enter a multi-dwelling unit and provide service. And we have reduced the record keeping requirements of small entities, thus lowering their costs.

#### 1. Deregulation of Small Cable Companies

90. Prior to the *1997 Report*, we had adopted regulations that substantially relieved small cable systems and small cable companies from the burdens of rate regulation. The 1995 *Small System Order* extended relief from cable rate regulation to approximately 7,000 small cable systems.[141] While the small system relief did not constitute complete deregulation, the practical effect was to reduce significantly the impact of rate regulation on small cable systems. At the time, we regarded the regulatory initiative adopted in the *Small System Order* as the most important action the Commission had taken on behalf of small cable systems since Congress had directed the imposition of rate regulation pursuant to the 1992 Cable Act.[142] Then, with the implementation of additional regulatory relief provided by Congress in the 1996 Act, "small cable operators," as that term was defined in the 1996 Act, were wholly exempted from a significant portion of rate regulation.[143] The combination of the Commission's small system initiative and the relief afforded "small cable operators" under the 1996 Act, effectively removed most small cable companies from the burdens of rate regulation.

91. More specifically, pursuant to the 1992 Cable Act, the Commission recognized "small cable companies" and "small systems" as deserving of special regulatory treatment. A "small cable company" was defined as one serving fewer than 400,000 subscribers nationwide.[144] At the time of adoption, we estimated that there were approximately 1,440 cable companies that qualified as small cable companies.[145] We defined a "small [cable] system" as a cable system with 15,000 or fewer subscribers.[146]

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141 Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, *Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995) ("*Small System Order*").

142 Cable Television Consumer Protection and Competition Act of 1992, P.L. 102-385, 106 Stat. 1482 (1992).

143 1996 Act, P.L. 104-104, 110 Stat. 56 (1996).

144 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determination in the *Small System Order* that a small cable company is one with annual revenues of $100 million or less.

145 Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

146 47 C.F.R. § 76.901(c). We do not collect information concerning systems serving fewer than 15,000 subscribers and so are unable to estimate the number of small systems affected by our decision.

As a result of this Commission initiative, both "small cable companies" and "small systems" were subject to significantly less rate regulation than larger cable companies. Then, with enactment of the 1996 Act, we adopted regulations recognizing an additional class of cable provider to be afforded regulatory relief under that legislation. Congress had created another category of cable company which it defined as a "small cable operator" and which was measured by the number of subscribers served (no more than one percent of all cable subscribers) and gross revenues earned (no more than $250 million annual gross revenues), and freed such "small cable operators" from rate regulation of their "upper tiers" of service or, if they had only one tier, from rate regulation entirely.[147] At the time, based on available data, we concluded that approximately 1,450 cable operators were relieved from the regulatory burdens of upper tier rate regulation with the enactment of the 1996 Act.

92. In the *1997 Report*, we also discussed our efforts towards implementing the small operator rate deregulation provided in the 1996 Act; in particular, how we proposed to define the term "affiliate" in measuring whether a small operator is eligible for the rate deregulation provided in the 1996 Act. The 1996 Act provided certain rate deregulation for operators with less than $250 million gross revenues. Subsequent to release of the *1997 Report*, we adopted a definition of "affiliate" in the *Cable Act Reform Order*[148] under which an ownership of 20 percent or greater of one cable operator by another entity would require the combination of the gross revenues of both companies in calculating whether the cable operator was eligible for rate deregulation under the 1996 Act. We set our ownership threshold of 20 percent at a point where a large entity would be able to make a significant enough stake in a small operator to permit it to extend financial resources to the small operator to meet the operator's needs -- and not subject the small operator to more comprehensive rate regulation.[149] In addition, we concluded that if two or more unaffiliated entities each holds less than a 20 percent interest in the cable operator, neither is deemed "affiliated" for purposes of the gross revenue test.

#### 2. Leased Access

93. The *1997 Report* also discussed the concept of "leased access" through which independent programmers are provided access to local cable operators. The 1992 Cable Act requires that a certain percentage of channels be "accessible" to programmers as a way of enhancing diversity and promoting small business. Soon after enactment, we adopted a formula to be used for calculating the maximum level of compensation that the cable operator could demand from a programmer, typically a small business, seeking access to the cable system. In 1997 we revised that formula to lower the maximum rates, thereby enhancing the likelihood that a small business could afford leased access. In addition, we established special provisions for small cable operators, excusing small systems from having to respond to leased access requests unless the programmer provides

147 *See* 47 C.F.R. § 76.1403.

148 Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, *Report and Order*, 14 FCC Rcd 5296 (1999) (*"Cable Act Reform Order").*

149 *Id.* at 5326-7.

specific information and also allowing the small operator twice as much time to respond to the programmer.[150] Together, the changes are intended to assist both the independent programmer and the small operator in meeting the leased access requirements.

#### 3. Multiple Dwelling Units

94. Another issue raised in the *1997 Report* involved the pending rulemaking addressing access of competitive video providers to multiple dwelling units ("MDUs"). That issue was subsequently addressed affirmatively in our *Cable Home Wiring Order*.[151] In that order we adopted "home run wiring " rules for MDUs setting forth guidelines for use by a video provider of cable wiring already installed in an MDU and owned by a provider whose contract with the MDU owner has terminated and who is no longer entitled to remain in the MDU. The intent of the home run wiring rules was to promote competition, especially by new market entrants. In addition, in a pending proceeding, we are considering whether to limit the use of exclusive and perpetual contracts between MDU owners and cable operators.[152] Perpetual contracts enable an incumbent cable provider to remain in an MDU indefinitely. Such contracts, it is alleged, frustrate competition or entry by competitive video providers, whether large or small. Exclusive contracts give Multichannel Video Programming Distributors ("MVPDs") the exclusive right to serve MDUs. Some commenters allege that exclusive contracts frustrate competition by allowing only one provider to serve a building; others state that alternative MVPDs need exclusive contracts to enable them to serve MDUs and thereby compete with the incumbent cable operators.

#### 4. Filing and Record Keeping

95. Since release of the *1997 Report*, we have adopted a number of small entity-friendly rules for the cable industry beyond those discussed above. One involves the relief afforded small cable systems with regard to the filing of the Annual Report of Cable Television Systems Form (Form 325). Form 325 serves as the Commission's annual reporting requirement for the cable television industry. In 1998, in the *Form 325 Order*,[153] the Commission considered whether to retain the requirement that cable systems file Form 325. The Commission concluded it would not eliminate the Form 325 information collection process, but that it would reduce the administrative burden of completing the information request and filing the form by drastically reducing the

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150 Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Leased Commercial Access, *Second Report and Order and Second Order on Reconsideration*, CS Docket No. 96-60, FCC 97-27, 12 FCC Rcd 5267 (1997).

151 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) ("*Cable Home Wiring Order*").

152 *Id.*

153 1998 Biennial Regulatory Review -- Annual Report of Cable Television Systems, Form 325, filed Pursuant to Section 76.403 of the Commission's Rules, *Report and Order*, 14 FCC Rcd 4720 (1999) ("*Form 325 Order"*).

number of cable systems required to file it. Instead of requiring all cable systems to file, the *Form 325 Order* requires that only systems with 20,000 or more subscribers file and devised a sampling methodology to gather information from cable systems with fewer than 20,000 subscribers.[154] Thus, the filing requirement was completely eliminated for almost 90 percent of cable systems. The *Form 325 Order* also replaced the old four-part Form 325 with a streamlined two-part form. The *Form 325 Order* further reduced the burden on those cable systems still required to file the form by modifying it so information now will be collected on a system-wide basis rather than on a community-by-community basis.

96. In another effort to reduce the regulatory burden on all entities and particularly small businesses, we have revised and streamlined the public file and notice requirements set forth in the Commission's Part 76 cable television rules.[155] The public file requirements provide consumers with information about the services they receive and the rates they pay for those services. For example, cable operators must notify subscribers before increasing rates and must maintain records demonstrating compliance with certain safety standards.[156] The 1999 *Streamlining Order*[157] reduced the regulatory burden faced by cable operators of all sizes with regard to public file requirements by: (1) reorganizing the public file requirements; (2) providing cable operators with an alternative to maintaining a paper public file; (3) eliminating outdated public file requirements; and (4) expanding the definition of small cable systems for purposes of the public inspection rules. With respect to the record-keeping requirement of small cable systems, our previous rules exempted cable systems serving fewer than 1000 subscribers from certain public file requirements. In the *Streamlining Order*, we granted cable systems serving 1000 to 5000 subscribers relief from certain public file requirements as well. Pursuant to that order, we adopted an amendment to Section 76.305(a) providing that, except for the political file requirements contained in Section 76.207, the information that was to be maintained under Section 76.305(a) would no longer have to be maintained in a file and could be provided only upon request.[158] The maintenance of the political file requirements by cable systems with 1000 to 5000 subscribers was continued. The relief granted constituted an exemption from the public inspection rules for approximately 79 percent of all cable systems serving approximately 12 percent of

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154 Until 1998, all of the approximately 11,000 cable systems in the country were required to file Form 325. The *Form 325 Order* reduces the number of filing systems to the 700 systems, approximately, that have 20,000 or more subscribers. Those 700 systems serve 70 percent of all cable subscribers.

155 47 C.F.R. §§ 76.1-76.1514 .

156 *See* 47 C.F.R § 76.601(c) and §§ 76.922(b), (c), (e).

157 1998 Biennial Regulatory Review -- Streamlining of Cable Television Services Part 76 Public File and Notice Requirements, CS Docket No. 98-132, FCC 99-12, 14 FCC Rcd 4653 (1999) ("*Streamlining Order*").

158 47 C.F.R. § 76.305(a) and 47 C.F.R. § 76.207.

subscribers.[159] The amendment provides regulatory relief while ensuring that the public continues to have access to important information.

#### 5. Closed Captioning Exemption

97. Still another area of small business activity given special consideration by the Commission in the cable industry involved our adoption of rules generally requiring closed captioning of video programming as required by the 1996 Act.[160] In the *Closed Captioning Order*, we adopted several exemptions for small operators where we concluded a captioning requirement would impose an economic burden. The 1996 Act permitted exemptions of "programs, classes of programs, or services" for which the Commission determined that "the provision of closed captioning would be economically burdensome."[161] With statutory authority to adopt exemptions, we did so, some of which provided relief to small businesses. For example, we adopted a four-year exemption from the captioning requirements for all new networks on grounds that we did not intend the captioning requirements to inhibit new sources of programming, which we recognized as being provided by, among others, small entities.[162] We also adopted two revenue-based exemptions from the captioning requirements. Under the first exemption, a video programming provider is not required to spend any money to caption any channel of video programming that produced less than $3 million in annual gross revenues in the previous year.[163] That exemption is intended to address the problems of small providers that are not in a position to devote significant resources towards captioning. Also, no programming provider will be required to spend more than 2 percent of its annual gross revenues from any channel on any such captioning.[164]

### D. MASS MEDIA SERVICES

98. The Mass Media Bureau ("MMB") has endeavored to keep constant the goal of eliminating market entry barriers in the broadcast and wireless cable sectors. In a number of rulemaking proceedings and policy initiatives, the MMB has developed regulations that should help sustain small, minority- and women-owned businesses, as well as encourage their entry into the telecommunications marketplace. Developments in this regard have occurred particularly in the areas of low power radio, Class A television, wireless cable, and our local television and radio/television cross ownership rules. For

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159 *See* Warren Publishing, Inc., *Television & Cable Factbook*, Cable Services Volume No. 53, 1985, p. 1385: Services Volume No. 65, 1997, p. 1-81.

160 Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, *Report and Order*, 13 FCC Rcd 3272 (1997) ("*Closed Captioning Order*"); *Order on Reconsideration*, 13 FCC Rcd 19973 (1998).

161 47 U.S.C. § 613(d)(1).

162 *Closed Captioning Order* at 3346.

163 *Id.* at 3350.

164 *Id.*

example, in creating a new low power FM radio service, the Commission is advancing its goal of encouraging diverse voices on the nation's airwaves and creating opportunities for new entrants in broadcasting. Our new TV ownership rule ensures that small stations may combine operations, reduce expenses, and perhaps diversify programming. The modified radio/TV cross-ownership rule will allow stations, including small stations, to realize economies of scale. Further, pursuant to new rules, certain low-power television stations will be accorded Class A status, which is a "primary" status similar to full power television broadcasters. We believe these new regulations will facilitate the acquisition of capital needed by these stations -- which comprise a large variety of licensees, including minorities and women -- to provide locally originated programming to their communities. Additionally, the MMB amended several of its MDS[165] rules to facilitate the provision of new, enhanced services, including new digital and two-way communications services. Our modified rules will simplify our licensing system and provide greater flexibility in the use of the allotted spectrum to licensees. It is expected that such changes will further eliminate market entry barriers for small entities.

99. Since the *1997 Report*, the Commission has launched a number of initiatives that have helped small broadcasters to file applications, find information at the Commission, and participate in the rulemaking process. The MMB's web page provides many self-service functions that greatly assist small entities, including those owned by minorities and women, who often have fewer financial and business resources. By accessing the MMB web page (http://www.fcc.gov.mmb), licensees may utilize an on-line retrieval system of broadcast radio and television station and application information; as well as an online call sign reservation and authorization service. Other MMB web page services include links to obtain information on subjects such as, "How to Start a New Broadcast Station," "Details on Low Power or 'Micro' Stations," and "Digital Television Tower Siting Fact Sheet and Frequently Asked Questions." Additionally, the web pages for the Policy and Rules Division and the Audio Services Division of the MMB include information on how to participate in the rulemaking process. Moreover, the MMB has implemented an electronic filing capability. Users can access the Radio and Television Broadcast Station Consolidated Database System ("CDBS") via the Internet from the MMB web site. This new Internet-based electronic forms filing system enables radio and television broadcast station applicants to file electronically with the Commission several license, transfer of control, and assignment forms. These initiatives have benefited small entities by helping them to obtain Commission authorizations and approvals more easily, access information more readily, and make their concerns known to the Commission. Below are additional initiatives to reduce market entry barriers.

#### 1. Low Power Radio

100. In January of 2000, in the *LPFM Report and Order*, the Commission authorized the licensing of two new classes of noncommercial low power FM ("LPFM") radio stations.[166] One class of stations will operate at a maximum power of 100 watts

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165 *See* note 176, *infra* and accompanying text for definition.

166 In the Matter of Creation of Low Power Radio Service, *Report and Order,* MM Docket No. 99-25, RM-9208, RM-9242, 15 FCC Rcd 2205 (2000) (*"LPFM Report and Order"*).

with power from 50-100 watts and a service radius of approximately 3.5 miles ("LP100"), and the other class of stations will operate at a maximum power of 10 watts with power from 1-10 watts and a service radius of about 1 to 2 miles ("LP10"). In so doing, the Commission continues to advance its goal of encouraging diverse voices on the nation's airwaves and creating opportunities for new entrants in broadcasting. Many of the LPFM rules adopted are designed to create significant opportunities for small entity new entrants. In addition, the Commission has taken steps to minimize the impact on existing small business. For example, LP100 and LP10 stations will be noncommercial, educational stations, and so will not compete with small business commercial broadcasters for advertising revenue.

101. The *LPFM Report and Order* adopted ownership rules to assist small entities to construct LPFM stations. Parties with attributable interests in any full power broadcast facilities are not eligible to have any ownership interest in any low power radio stations. This will prevent owners of full-power stations, including large group owners, from obtaining licenses for LPFM facilities that might otherwise be available to new entrants. The local and national ownership restrictions of one station per community and, initially, one station, and ultimately, 10 stations, nationwide are intended to ensure that authorizations for LPFM stations are dispersed among many new entrants. One of the most important purposes of establishing this service is to afford community-based organizations an opportunity to communicate over the airwaves and thus expand diversity of ownership -- a purpose inconsistent with common ownership of LPFM stations and existing broadcast facilities or other media interests.

102. Further, the Commission minimized the regulatory burdens imposed on LPFM stations. LPFM stations are not required to maintain a public file, although they must maintain a political file. They also need not create quarterly issues and programming lists or maintain a main studio. In addition, while full power and LPFM stations both must participate in the Emergency Alert System ("EAS") and have decoding equipment, LPFM stations need not purchase encoding equipment. These decisions will reduce administrative burdens and costs for small business licensees.

103. The *LPFM Report and Order* also adopts filing requirements that should help small businesses. The Commission declined to mandate electronic filing for LPFM stations because it recognized that there might be a disparity among applicants for LP100 licenses in terms of computer resources and skills. This result should help small businesses without more advanced technological resources to participate in the LP100 application process. The *LPFM Report and Order* adopts a filing window process, as opposed to a first-come, first-served process, so as not to disadvantage applicants based solely on the quality of their Internet connection.

#### 2. Local Television Ownership/Radio-Television Cross Ownership

104. The 1996 Act directed the Commission to make a number of significant revisions to its broadcast ownership rules. Specifically, Section 202 required the Commission to: (1) complete a rulemaking proceeding concerning the retention,

modification, or elimination of the local television ownership rule[167] and (2) extend the radio-television cross-ownership waiver policy formerly applicable only in the top 25 markets to the top 50 markets, "consistent with the public interest, convenience, and necessity."[168] Under our modified local television ownership rule,[169] adopted in the 1999 *Ownership Report and Order*, we relaxed the television duopoly rule by narrowing its geographic scope from the current Grade B contour approach to a Designated Market Areas ("DMAs") test. The new test allows common ownership of two television stations without regard to contour overlap if the stations are in separate Nielsen DMAs. In addition, we will allow common ownership of two TV stations in the same DMA if (1) their Grade B contours do not overlap (a continuation of the current rule) or (2) if eight independently owned, full-power and operational television stations (commercial and noncommercial) will remain, provided that one of the commonly-owned stations is not among the top four-ranked stations in the market.[170]

105. The new TV ownership rule ensures that small stations may combine operations, reduce expenses, and perhaps diversify programming. At the same time, both the market rank and the voice count components of the rule further our goal of fostering diversity of voices. The market rank test ensures that the two largest TV stations cannot combine to dominate and exercise market power in advertising and programming markets in which TV stations compete; the voice count test ensures that more than eight competitors must exist in the market before any two of them may combine.

106. Additionally, we have revised our radio/TV cross-ownership rule to permit common ownership of either (1) one or two TV stations and up to six radio stations, provided 20 independent voices will remain in the market; (2) one TV station and seven radio stations, provided 20 independent voices will remain; (3) one or two TV stations and up to four radio stations, provided at least ten voices will remain in the market; or (4) one or two TV stations and one radio station regardless of the number of voices that will remain in the market. As with our amended TV duopoly rule, the modified radio/TV cross-ownership rule will allow stations, including small stations, to realize economies of scale, while ensuring that no market will become concentrated to such an extent that any one or more combinations will dominate the markets in which broadcasters compete, or monopolize the media and sources of information for their audiences.

107. The Commission also determined three specific criteria by which we would evaluate a request for waiver of our local television ownership rule. We will presume a waiver of the rule is in the public interest to permit common ownership of two

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[167] Section 202(c)(2) of the 1996 Act.

[168] Section 202(d) of the 1996 Act.

[169] In the Matter of Review of the Commission's Regulations Governing Television Broadcasting, Television Satellite Stations Review of Policy and Rules, *Report and Order*, MM Docket No. 91-221, MM Docket No. 87-8, 14 FCC Rcd 12903 (1999) ("*Ownership Report and Order*").

[170] This is based on audience share, as measured by Nielsen or any comparable professional and accepted rating service, at the time the application is filed.

television stations in the same market where one station is a "failed station," where one of the merging stations is a "failing station," or where the applicants can show that the combination will result in the construction and operation of an authorized but as yet "unbuilt" station. We will continue to grant waivers of our radio-television cross-ownership rule, on a presumptive basis, in situations involving a failed station. In order to qualify as "failed," a station must be dark for at least four months or involved in court-supervised involuntary bankruptcy or involuntary insolvency proceedings.

108. Our waiver policies accommodate small stations, while protecting our competition and diversity goals. Each of these waiver policies was designed to ensure that only truly financially distressed (which are typically smaller) stations could benefit from them. The waiver policies also ensure that more financially successful in-market stations (which are typically larger and would likely value same-market broadcast assets more highly than out-of-market stations) cannot foreclose out-of-market buyers. The in-market buyer must demonstrate that it is the only purchaser ready, willing, and able to operate the station, and that sale to an out-of-market buyer would result in an artificially depressed price.[171] We will monitor the effects of the modifications of our ownership rules on new entry.

#### 3. Class A Television Service

109. In its *Class A TV Report and Order*,[172] the Commission established a Class A television service and provided that certain qualifying low-power television ("LPTV") stations will be accorded Class A status.[173] This action implemented the Community Broadcasters Protection Act of 1999 ("CBPA"),[174] which sets out certain certification and application procedures for low-power television licensees seeking to obtain Class A status, prescribes the criteria low-power stations must meet to be eligible for a Class A license, and outlines the interference protection Class A applicants must provide to analog (or NTSC), digital ("DTV"), LPTV, and TV translator stations. Class A licensees will have "primary" status as television broadcasters, thereby gaining a measure of protection from full-service television stations, even as those stations convert to digital

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171 We also believe that our grandfathering policies for conditional radio/TV cross-ownership waivers and TV Local Marketing Agreements ("LMAs"), may help small stations. A television local marketing agreement or time brokerage agreement is a type of contract that generally involves the sale by a licensee of discrete blocks of time to a broker that then supplies the programming to fill that time and sells the commercial spot announcements to support the programming. In this regard, the record suggested that TV LMAs may have helped smaller, struggling stations to remain on or return to the air, and to diversify and expand their programming. The *Ownership Report and Order* grandfathers all LMAs entered into prior to November 5, 1996, and therefore permits them to remain in full force and effect, subject to further review in the Commission's Biennial Review in 2004.

172 In the Matter of Establishment of a Class A Television Service, *Report and Order*, MM Docket No. 00-10, FCC 00-115 (rel. Apr. 4, 2000) ("*Class A TV Report and Order*").

173 *Id.*

174 Community Broadcasters Protection Act of 1999, Pub. L. No 106-113, 113 Stat. Appendix I at pp. 1501A-594 -- 1501A-598 (1999), *codified* at 47 U.S.C. § 336(f) ("CBPA").

format. We believe this change in regulatory status will positively affect the ability of LPTV stations to raise necessary capital.

110. The LPTV stations eligible for Class A status provide locally-originated programming, often to rural and certain urban communities that have either no or little access to such programming. LPTV stations are owned by a wide variety of licensees, including minorities and women, and often provide "niche" programming to residents of specific ethnic, racial, and interest communities. These new provisions will facilitate the acquisition of capital needed by these stations to continue to provide free, over-the-air programming, including locally originated programming to their communities. By improving the commercial viability of LPTV stations that provide valuable programming, the Commission's action is consistent with its fundamental goals of ensuring diversity and localism in television broadcasting.

111. The LPTV service has significantly increased the diversity of broadcast station ownership. Stations are operated by such diverse entities as community groups, schools and colleges, religious organizations, radio and TV broadcasters, and a wide variety of small businesses. The service has also provided first-time ownership opportunities for minorities and women.

112. The CBPA, and our implementing regulations, protect the future of low-power television licensees. LPTV stations have secondary spectrum status, and, as such, they can be displaced by full-power TV stations that seek to expand their own service area, or by new full-power stations seeking to enter the same market. This regulatory status has impaired the ability of LPTV stations to raise capital. In addition, Congress recognized that the conversion to digital television further complicates the uncertain future of LPTV stations. Many of these issues have now been addressed by Congress' actions. Class A licensees are now subject to the same license terms and renewal standards as full-power television licensees. Class A licensees are accorded primary status as television broadcasters as long as they continue to meet the eligibility requirements.[175]

#### 4. Multichannel Multipoint Distribution Service

113. In 1998, the Commission adopted its *Multichannel Multipoint Distribution Service ("MDS") Report and Order*, which amended several of its MDS[176] rules to facilitate the provision of new, enhanced services, including new digital and two-way

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175 LPTV stations that convert to Class A status are exempt from certain rules applicable to full power TV stations which cannot apply, either due to technical differences in the operation of low-power and full-power stations, or for other reasons.

176 "Wireless cable," is a service permitting delivery of video programming to subscribers utilizing spectrum allocated to the Multipoint Distribution Service and the Multichannel Multipoint Distribution Service (collectively referred to as "MDS"), as well as leased channels from the Instructional Television Fixed Service ("ITFS"). Wireless cable resembles cable television, but instead of coaxial or fiber optic cable, wireless cable uses over-the-air microwave radio channels to deliver programming to subscribers.

communications services.[177] Specifically, the *MDS Two-way Report and Order*: (1) permitted both MDS and Instructional Television Fixed Service ("ITFS") licensees to provide two-way services on a regular basis; (2) permitted increased flexibility on permissible modulation types; (3) permitted increased flexibility in spectrum use and channelization, including combining multiple channels to accommodate wider bandwidths, dividing 6 MHz channels into smaller bandwidths, and channel swapping; (4) adopted a number of technical parameters to mitigate the potential for interference among service providers and to ensure interference protection to existing MDS and ITFS services; (5) simplified and streamlined the licensing process; and (6) modified the ITFS programming requirements. The modifications in our rules were in keeping with the mandate of Section 257, which requires the Commission to identify and eliminate market entry barriers for entrepreneurs and other small businesses to promote diversity of media voices, vigorous economic competition, technological advancement, and the public interest.

114. The rule changes adopted in the *MDS Two-way Report and Order* to allow two-way operations for MDS and ITFS will simplify our licensing system and provide greater flexibility to licensees in the use of the allotted spectrum. It is expected that such changes will help eliminate market entry barriers for small entities. Further, by allowing for subchannelization,[178] the rules will enable small entity licensees to respond to the demands of the market and create an unlimited number of channels to carry their current and future communications needs. Allowing superchannelization[179] will permit small entity licensees to combine their spectrum with other small entity licensees and create larger systems to meet their particular operations and to operate at greater speeds.

115. To permit small entity ITFS licensees with limited resources adequate time to evaluate a two-way applicant's proposed service plan, we adopted a certification procedure whereby applicants are required to certify that they have met all requirements regarding interference protection to existing and prior proposed facilities. The applicant

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[177] In the Matter of Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, *Report and Order*, MM Docket No. 97-217, File No. RM-9060, 13 FCC Rcd 19112 (1998) ("*MDS Two-way Report and Order*"). This proceeding was commenced in response to a petition for rulemaking filed by a group of over one hundred participants in the wireless cable industry who requested that the Commission amend its rules to facilitate the provision of two-way communication services by MDS and ITFS licensees. *See also* Pleading Cycle Established for Comments on Petition for Rulemaking to Amend Parts 21 and 74 of the Commission's Rules to Enhance the Ability of Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, *Public Notice*, RM 9060, DA 97-637 (rel. Mar. 31, 1997).

[178] By subchannelization, we mean the division of a standard channel of fixed bandwidth into multiple (but not necessarily equal) channels of lesser bandwidth. For example, a 6 MHz channel could be divided into four subchannels of 1.5 MHz bandwidth, each of which might carry a video and associated audio signal.

[179] By superchannelization, we mean the aggregation of multiple contiguous channels of standard bandwidth into channels of larger bandwidth. For example, three 6 MHz channels could be combined to form a single channel with an 18 MHz bandwidth.

will also be required to certify that it has served all potentially affected parties with copies of its application and with its engineering analysis supporting its interference compliance claim.

116. In an effort to minimize the impact of our new rules on educational ITFS, many of whom are small entities, we determined not to restrict ITFS eligible use to the downstream video/audio paradigm because that would preclude flexibility in service offerings for an ITFS licensee which leases excess channel capacity. We provided educational entities with additional flexibility to define what ITFS usage they regard as educational in an effort to permit such entities to further their educational mission. We did not expand our minimum educational usage requirement for digital ITFS transmissions, and we added a requirement that 5 percent of an ITFS station's capacity be set aside for instructional purposes only.

#### 5. Equal Employment Opportunity

117. Commenters in the *1997 Report* expressed concerns about enforcement of equal employment opportunity ("EEO") rules in the broadcast marketplace. However, certain aspects of the EEO rules in effect at that time were struck down in 1999 on constitutional grounds by the U.S. Court of Appeals for the D.C. Circuit Court in the *Lutheran Church* decision.[180] Since then, the Commission has adopted its new *EEO Report and Order*.[181] In the *EEO Report and Order*, the Commission adopted new EEO program requirements that are free of the constitutional infirmities identified in the *Lutheran Church* decision. The Commission also addressed the concerns raised in the *Lutheran Church* opinion regarding the Commission's authority to promulgate an employment nondiscrimination rule.

118. We believe that the new EEO rules serve an important, constructive function in deterring discrimination in employment and fostering greater diversity of viewpoints and programming that is responsive to the interests of a diverse community. In addition, the new rules and policies provide a way for all individuals, including minorities and women and those with little or no communications experience, to be informed of job opportunities and enter the broadcast and cable industries. This, in turn, could lead in some cases to higher-level positions of greater responsibility that could affect programming and/or provide the experience desired by financial institutions to finance ownership in the broadcast and cable industries.

119. The new EEO rules require wide dissemination of information about all job vacancies by broadcasters, cable operators, and other multichannel video

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180 *Lutheran Church -- Missouri Synod v. FCC*, 141 F.3d 344 (D.C. Cir. 1998), *pet. for reh'g denied* 154 F.3d 487, *pet. for reh'g en banc denied* 154 F.3d 494 (D.C. Cir. 1998) ("*Lutheran Church*").

181 *See* In the Matter of Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding, *Report and Order*, MM Docket No. 98-204, MM Docket No. 96-16, 15 FCC Rcd 2329 (2000) ("*EEO Report and Order*").

programming distributors.[182] Additionally, these entities may select either to implement supplemental recruitment measures or an alternative recruitment program. Pursuant to the supplemental recruitment option, entities must select and implement a number of non-vacancy-specific recruitment measures from a menu of options. They must also, upon request, send vacancy notices to community groups who provide employment information to those seeking jobs. Broadcast and cable entities who select the alternative recruitment program may use recruitment sources of their own selection, and must maintain records concerning the composition of their applicant pool, to ensure that vacancy notices are reaching all segments of the community. All broadcasters and cable entities are required to assess periodically the effectiveness of their outreach efforts and make any needed modifications in order to reach qualified applicants in their community, including minorities and women.

120. Entities must also maintain records reflecting their outreach efforts and, annually, place a summary of their overall EEO efforts in their public files. The new rules and policies afford broadcasters and cable operators flexibility in designing their EEO programs. The Commission also sought to address the unique circumstances of stations with fewer employees. Recognizing that often fewer staff resources are available to these stations, the Commission provided relief from EEO requirements and recordkeeping. Thus, stations with five to ten full-time employees are required to undertake fewer of the non-vacancy specific recruitment measures than larger stations employing more than ten full-time employees.[183] The Commission has also maintained its previous policy whereby broadcast station employment units with fewer than five full-time employees and cable employment units with fewer than six full-time employees will not be required to demonstrate compliance with the EEO program requirements.

### E. OTHER SERVICES

#### 1. International Bureau

121. The International Bureau has taken actions in a number of areas to remove barriers to entry for small businesses. In addition to addressing concerns discussed in the *1997 Report*, the International Bureau has several programs that provide particular benefits for small businesses. First, streamlining of the international Section 214 process has substantially lowered costs and eliminated delays in the authorization of entry, increased the availability of capital by eliminating unnecessary limits on foreign investment, and reduced reporting burdens. Second, through participation in International Telecommunication Union ("ITU") activities, the Commission addresses one of the most vexing issues for small businesses interested in innovative telecommunications enterprises -- spectrum availability. Third, the International

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[182] Religious broadcasters may establish religious belief as a job qualification for all radio station employees. With respect to television station employees, we will continue to allow religious broadcasters to establish religious belief or affiliation as a qualification, as a policy, rather than a rule, due to limitations imposed by Section 334 of the Communications Act. 47 U.S.C. § 334(a)(1).

[183] Cable employment units with six to ten full-time employees will also be relived of some outreach and recordkeeping requirements.

Bureau's consolidated licensing and application processing system has been designed to lower costs for applicants, and thereby lower barriers to entry for small business. This system also provides easier availability of data for small business.

122. **Satellite Licensing**. In the *1997 Report*, the Commission discussed two concerns raised by industry regarding the impact of Commission regulations on small businesses in the international arena. First, the Commission addressed a concern regarding the Commission's policy of not granting earth station authorizations to communicate with satellites that have not yet been authorized, specifically, a request filed by TelQuest for an earth station that would communicate with a Canadian satellite. Second, the Commission addressed concerns raised about its financial qualification policy for satellite licensing.[184]

123. With respect to TelQuest, we stated in the *1997 Report* that nothing in the International Bureau policy reflected in that case imposes burdens uniquely or predominantly on small businesses.[185] We note, however, that we have taken actions with respect to earth station licensing that may facilitate use of foreign licensed satellites, and lower the cost for individual earth station owners of using those facilities. Specifically, we have adopted a new procedure that permits operators of foreign-licensed satellites to obtain a ruling that would permit the subsequent routine licensing of earth stations seeking to use that satellite.[186]

124. With respect to financial qualification requirements, since the *1997 Report*, the Commission has continued to construe liberally the requirements. Since that time, no applicant has been denied a license because it was considered financially unqualified. On a number of occasions, applicants have been granted licenses, pursuant to a waiver.[187] The waivers were granted after it was found that the available radio frequency spectrum could accommodate all otherwise qualified applicants then before the Commission, as well as, potential future applicants.[188]

125. **Streamlining Procedures.** The Commission has implemented numerous streamlining procedures to reduce administrative regulatory barriers to entry into the US international telecommunications service market, many of which benefit small businesses. As early as 1985, the Commission began a process of streamlining its

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184 *1997 Report* at para. 200, *supra.*

185 *Id*.; *see also* TelQuest Ventures L.L.C. and Western Telecommunications, Inc. for a License for a Fixed-Satellite Transmit/Receive Earth Station to Communicate with Transponders on Canadian DBS Satellite, etc., *Report and Order*, 11 FCC Rcd 8151 (1996), *recon*. 11 FCC Rcd 13943 (1996), *applications for recon. pending.*

186 Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, *Order*, IB Docket No. 96-111, FCC 99-325 (rel. Oct. 29, 1999) (*"DISCO II First Reconsideration Order"*).

187 *Id.* at para. 24.

188 *Id.*

Section 214 international telecommunications licensing procedures.[189] 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.[190] Specifically, the Commission created global Section 214 authorizations, reduced paperwork obligations, and streamlined tariff requirements for non-dominant international carriers. The new regulations facilitated entrance by businesses of all sizes into the international telecommunications market.

126. In 1999, the Commission continued its efforts to reduce possible barriers to entry by further streamlining its Section 214 licensing process and increasing the number of applications to provide international service eligible for streamlined processing.[191] Approximately 99 percent of applications to provide U.S. international telecommunications services are now processed on a streamlined basis, being granted within 14 days after each application is accepted for filing and placed on public notice. The Commission has 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,[192] and by reducing regulatory and reporting requirements on companies doing business with foreign carriers. These deregulatory efforts significantly reduce barriers to entry of small businesses seeking to attract foreign capital or to provide U.S. international telecommunications.

127. **Spectrum.** Wireless mobile telecommunications in the United States, aided by the ongoing 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 has been inundated with correspondence from manufacturers and service providers pointing out the impending crisis of the spectrum shortage. Internationally, within the schedule of ITU activities, the Commission has focused on trying to find additional spectrum that can be used for advanced wireless services.

128. New entities seeking to enter the terrestrial or satellite mobile marketplace immediately encounter the obstacle of spectrum that is already saturated by incumbent

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189 47 U.S.C. § 214. *See* International Competitive Carrier Policies, CC Docket No. 85-107, *Report and Order*, 102 FCC2d 812 (1985), *recon. denied* 60 RR2d 1435 (1986); *modified*, Regulation of International Common Carrier Services, CC Docket No. 91-360, *Report and Order*, 7 FCC Rcd 7331 (1992).

190 *See* Streamlining the International Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95-118, *Report and Order*, 11 FCC Rcd 12884 (1996).

191 *Id*.; s*ee* 1998 Biennial Regulatory Review-Review of International Common Carrier Regulations, IB Docket No. 98-118, *Report and Order*, 14 FCC Rcd 4909 (1999).

192 *See*, In the Matter of Market Entry and Regulation of Foreign-affiliated Entities, *Report and Order*, 11 FCC Rcd 3873, 3881 (1995).

licensees. Additional opportunities can be made available either through efficiencies brought about by further advances in technology, *i.e.*, by compressing existing user requirements into less bandwidth, or by the designation of additional spectrum via domestic or global reallocation processes. The International Bureau is heavily involved in activities using both approaches.

129. The Commission works closely with wireless industry representatives within the context of ITU study groups in both the radio communication and telecommunication sectors. Here, experience has proven that advances in technology and standardization will ultimately lead to significant growth in business opportunities whether it is in equipment design and manufacture, new software development, creative applications of existing intellectual property, or the provision of new services.

130. The other, more direct, approach to alleviating the shortage of spectrum for the purpose of providing new opportunities is to address the matter before the World Radio Conference. The International Bureau is fully committed to making every effort to optimize spectrum utility to facilitate the entry of new users and to promote new and innovative uses.

131. **Electronic Initiatives.** In an effort to reduce paper filings and make use of new Internet technologies to improve processing efficiency, the International Bureau has 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. IBFS allows for electronic filing of applications for International Bureau service areas, facilitating the following applications and filings: space station authorization and special temporary authority, earth station authorization and special temporary authority, space and earth station application for modification of current authorization, Section 214 international authorization and special temporary authority, cable landing license, accounting rate change, recognized operating agency, international signaling point code, request for data network identification code, and foreign carrier affiliation notification filings.

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

133. Moreover, IBFS has "demystified" 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 Commission will soon make IBFS filing even easier. Within

the next year, the Commission will begin to accept credit card payment of application fees associated with IBFS filings.

134. IBFS also provides access to valuable processing and technical data for new entrants and the general public alike. For example, applicants can check the status of their application by accessing IBFS from their personal computer. In addition, users are easily able to identify the competitors in a service area using IBFS's powerful search engine, from any web-ready location.

135. The International Bureau strongly encourages electronic filing via IBFS, but applicants can still opt for paper filing. At this time, IBFS is a voluntary filing alternative. The Commission, however, is working towards a five-year goal that calls for 100 percent electronic filing of applications to the extent that applicants have access to electronic media.[193]

#### 2. Office of Engineering and Technology

136. The Commission has adopted several measures to streamline and simplify the processes for authorization of equipment and experimental licenses. In April 1998, the Commission simplified the equipment authorization process by creating a single authorization procedure and made many types of equipment subject to manufacturers' self-approval, thereby reducing by half the number of applications required to be filed with the Commission.[194] In December 1998, the Commission further streamlined the equipment authorization process by allowing designated private parties in the US to issue equipment authorizations.[195] The Commission has also worked diligently to implement Mutual Recognition Agreements ("MRAs") which permit designated parties in other countries to issue equipment authorizations.[196] Most recently, in May 2000, the Commission proposed to streamline the process of developing technical criteria for customer premises equipment and to privatize the customer premises equipment approval process.[197] These measures promote competition in the provision of telecommunications

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

194 Amendment of Parts 2, 15, 18, and Other Parts of the Commission's Rules to Simplify and Streamline the Equipment Authorization Process for Radio Frequency Equipment, ET Docket No. 97-94, *Report and Order*, FCC 98-58, 13 FCC Rcd 11415 (1998).

195 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 Global Mobile Personal Communications by Satellite Arrangements, GN Docket No 98-68, *Report and Order*, FCC 98-338, 13 FCC Rcd 24687 (1998).

196 *See* FCC Provides Further Information On The Accreditation Requirements For Telecommunication Certification Bodies, *Public Notice*, DA 99-1640 (Aug. 17, 1999), 1999 W.L. 618038 (FCC).

197 2000 Biennial Review Regulatory Review of Part 68 of the Commission's Rules and Regulations, CC Docket No. 99-216, *Notice of Proposed Rulemaking*, FCC 00-171 (adopted May 15, 2000).

products and electronic equipment, speed delivery of products to the public and ensure market access in other countries. These measures also enhance market opportunities for small business, such as those that engage in compliance testing of equipment, and manufacturers who supply parts and services to telecommunications service providers.

137. In October 1998, the Commission also streamlined the regulations governing the Experimental Radio Service, many of the applicants and licensees of which are small entities.[198] The Commission eliminated unnecessary and burdensome regulations, and reorganized the service to promote greater technical innovation and new services. The Commission also encouraged experiments and increased opportunities for manufacturers, inventors, entrepreneurs and students to experiment with new radio technologies, equipment designs, characteristics of radio wave propagation and new radio service concepts using the radio spectrum.

138. Within the past three years, the Commission has both adopted and instituted procedures for the electronic filing, processing and tracking of equipment authorizations[199] and for experimental licenses and special temporary authorizations in the licensed services.[200] These measures reduce processing time, eliminate delays, and facilitate opportunities for small businesses and entrepreneurs.

139. Through various spectrum management efforts, the Commission has endeavored to facilitate new and innovative services and to encourage the involvement of small entities and entrepreneurs in telecommunications. Specifically, the Commission has facilitated the proliferation of unlicensed services through the allocation of spectrum for the Unlicensed National Information Infrastructure ("UNII") and authorization of UNII devices. These devices provide short-range, high-speed wireless digital communications that support wireless local area networks and facilitate wireless access to the national information infrastructure.[201] The Commission has also allocated millimeter wave spectrum for unlicensed devices that provide short-range communications. These unlicensed devices can be used for such diverse services as vehicle radar systems for collision avoidance, computer-to-computer wireless connections, and improved access to libraries and information databases.[202] The Commission has proposed to revise its rules

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198 Amendment of Part 5 of the Commission's Rules to Revise the Experimental Radio Service Regulations, ET Docket No. 96-256, *Report and Order*, FCC 98-283, 13 FCC Rcd 21391 (1998).

199 Amendment of Parts 2, 15, 18, and Other Parts of the Commission's Rules to Simplify and Streamline the Equipment Authorization Process for Radio Frequency Equipment, ET Docket No. 97-94, *Report and Order*, FCC 98-58, 13 FCC Rcd 11415 (1998).

200 Amendment of Part 5 of the Commission's Rules to Revise the Experimental Radio Service Regulations, ET Docket No. 96-256, *Report and Order*, FCC 98-283, 13 FCC Rcd 21391 (1998).

201 Amendment of Part 15 of the Commission's Rules to Provide for Unlicensed National Information Infrastructure Devices at 5 GHz, ET Docket 96-102, *Report and Order*, FCC 97-5, 12 FCC Rcd 1576 (1997); *Memorandum Opinion and Order*, FCC 98-121, 13 FCC Rcd 14355 (1998).

202 Amendment of Parts 2 and 15 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHz for New Radio Applications, ET Docket 94-124, *Third Report and Order*, 13 FCC Rcd 15074 (1998); *recon*., FCC 00-161 (rel. May 11, 2000).

for spread spectrum devices to facilitate the development of new and innovative technology that is often used for high data rate wireless applications.[203] In 1998, the Commission began investigating the possibility of permitting operation of one of the newest innovative wireless technologies, ultra-wideband technology.[204] This new technology can be used for a variety of applications such as radar imaging of objects under the ground or behind walls, and for wireless communications such as short-range high-speed data transmissions suitable for broadband access to the Internet.

140. In addition to unlicensed spectrum, the Commission allocated spectrum for Dedicated Short Range communications systems operating in the Intelligent Transportation System radio service.[205] These services and systems can provide short range wireless information links between vehicles and roadside systems, and can improve traveler safety, decrease traffic congestion, facilitate the reduction of air pollution and help conserve fossil fuels. The Commission also proposed allocating spectrum for fixed wireless access service that could be used to provide wireless local exchange and exchange access service.[206] The Commission also recently issued a *Policy Statement*[207] articulating the principles that will guide the Commission's reallocation of approximately 200 MHz of spectrum over the next three to five years. This spectrum will enable a broad range of new radio communications services, such as expanded wireless services, advanced mobile services, new spectrum-efficient private land mobile systems, and medical telemetry.

141. With these new spectrum allocations, rules and 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.

142. The Commission very recently began an inquiry to obtain more information about software defined radios.[208] In a software-defined radio, functions

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[203] Amendment of Part 15 of the Commission's Rules Regarding Spread Spectrum Devices, ET Docket 99-231, *Notice of Proposed Rulemaking*, FCC 99-149, 14 FCC Rcd 13046 (1999).

[204] Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems, ET Docket No. 98-153, *Notice of Inquiry*, FCC 98-208, 13 FCC Rcd 16376 (1998); *Notice of Proposed Rulemaking*, FCC 00-163 (adopted May 15, 2000).

[205] Amendment of Parts 2 and 90 of the Commission's Rules to Allocate the 5.850-5.925 GHz Band to the Mobile Service for Dedicated Short Range Communications of Intelligent Transportation Services, ET Docket 98-95, *Report and Order*, FCC 99-305, 14 FCC Rcd 18221 (1999).

[206] Amendment of the Commission's Rules with Regards to the 3650-3700 MHz Government Transfer Band, ET Docket 98-237, *Notice of Proposed Rulemaking*, FCC 98-337, 14 FCC Rcd 1295 (1998).

[207] Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium, *Policy Statement*, FCC 99-354, 14 FCC Rcd 19868 (1999).

[208] Inquiry Regarding Software Defined Radios, ET Docket No. 00-47, *Notice of Inquiry*, FCC 00-103 (Mar. 21, 2000).

formerly performed solely in hardware, are performed by software. This innovation, which makes a radio programmable, could facilitate interoperability between radio services, improve efficient use of spectrum, expand opportunities for broadband communication access for all persons, increase competition among telecommunications service providers, decrease equipment costs for consumers, and increase worldwide market opportunities for US manufacturer of all sizes.

143. The Commission has also continued its efforts to provide accessible information to the public, small businesses, local governments, manufacturers and telecommunications service providers on radio frequency emission requirements and safety guidelines. Through the Office of Engineering and Technology, the Commission updated OET Bulletin No. 56, which provides answers to commonly asked questions regarding radio frequency energy.[209] OET Bulletin No. 65 was also revised and updated and Supplement A was created to provide guidelines for radio frequency safety requirements and to assist broadcasts in determining compliance with the 1997 guidelines for evaluating the environmental effects of radio frequency emissions from FCC regulated transmitters.[210] The Commission established a three year transition period for existing radio transmitting facilities and devices to become compliant with the 1997 guidelines,[211] in part, to address compliance concerns expressed by small businesses. Through a recently issued public notice, licensees and manufacturers were reminded of the upcoming September 1, 2000 compliance deadline.[212]

#### 3. Enforcement Bureau

144. Commenters in the *1997 Report* expressed a concern that the Commission takes too long to resolve formal complaints. As we noted in the *1997 Report*, "effective enforcement of the Communications Act and existing Commission rules and policies is imperative if small businesses are to participate fully in the telecommunications marketplace."[213] The creation of the Commission's new Enforcement Bureau in November 1999 represents the agency's commitment to making enforcement a priority.[214] The Commission anticipates that this renewed focus will result in faster enforcement

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209 FCC's Office of Engineering and Technology Issues Revised Bulletin on Biological Effects of Radiofrequency Electromagnetic Fields: Questions and Answers About Biological Effects and Potential Hazards of Radiofrequency Electromagnetic Fields, OET Bulletin No. 56 (Fourth Edition, August 1999), *Public Notice*, September 2, 1999. *See also* www.fcc.gov/oet/rfsafety.

210 FCC Releases Revised Bulletin on Compliance with New Guidelines for Exposure to Radiofrequency Electromagnetic Fields, *Public Notice* (Aug. 25, 1997), 1997 WL 521693 (FCC).

211 Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, ET Docket No. 93-62, *Second Memorandum Opinion and Order*, FCC 97-303, 12 FCC Rcd 13494 (1997).

212 Year 2000 Deadline for Compliance with Commission's Regulations Regarding Human Exposure to Radiofrequency Emissions, DA 00-912, *Public Notice*, (April 27, 2000), 2000 WL 217572 (FCC).

213 *1997 Report* at para. 88.

214 In the Matter of Establishment of the Enforcement Bureau and the Consumer Information Bureau, *Order*, FCC 99-172 (rel. Oct. 27, 1999).

action than in the past, thereby reducing some of the obstacles for small businesses that were identified in the *1997 Report*.

145. With the creation of the Enforcement Bureau, the traditional enforcement functions and personnel from the former enforcement divisions of the Wireless Telecommunications Bureau, Mass Media Bureau, and Common Carrier Bureau, as well as, the enforcement and field staff of the former Compliance and Information Bureau have been consolidated. By dedicating significant resources solely to the enforcement of the Communications Act and the Commission's Rules, the Commission can respond more quickly and more clearly to industry problems, a result that will benefit all carriers, including small ones.

146. Consolidation provides the Commission with more flexible and efficient use of its enforcement expertise and resources when responding to industry problems and priorities. Enforcement consolidation also promotes greater consistency and predictability of enforcement efforts. Furthermore, separating enforcement functions from rulemaking responsibilities improves the Commission's ability to set enforcement priorities and coordinate enforcement activities, unencumbered by the often lengthy and resource-intensive rulemaking process.

147. In an effort to expedite problem solving among common carrier industry participants, the Market Disputes Resolution Division of the Enforcement Bureau engages in informal mediation of most formal complaints. This type of alternative dispute resolution facilitates a private resolution, obviating the need for a labor- and time-intensive Commission investigation and costly litigation. A subset of this mediation effort involves the Accelerated Docket, which the Commission created to address selected carrier-to-carrier disputes. One of the requirements of the order establishing the Accelerated Docket is to provide for the disposition of complaints within 60 days of the filing of the complaint. Significantly, before any complaint is accepted onto the docket, the parties must participate in staff-supervised settlement discussions. This type of mediation often results in the dispute being resolved before a complaint is filed, which substantially reduces litigation costs for the parties involved and allows the Commission to dedicate its often scarce resources to the resolution of disputes that do not settle. The Commission anticipates that, through informal mediation and the Enforcement Bureau's ongoing efforts to reduce the backlog of formal complaints, the average amount of time that it takes the Commission to decide formal complaints will be greatly reduced over the course of time.

148. In addition, the Enforcement Bureau's Investigations and Hearings Division investigates informal complaints and allegations of anticompetitive or discriminatory conduct by telecommunications carriers, which could result in barriers to market entry by small competitors. The function of such investigations is to identify, correct, and deter violations of the Communications Act and the Commission's Rules, through the issuance of monetary forfeitures and other enforcement tools. Such investigations also enable the Enforcement Bureau to spot significant industry problems and identify bad actors, without the filing of formal complaints. This new function complements the dispute resolution functions that existed prior to the Enforcement

Bureau's inception. Using investigative and other enforcement tools, the Enforcement Bureau is moving beyond the formal litigation process and solving problems with creative, flexible solutions.

#### 4. Consumer Information Bureau

149. In the *1997 Report*, the Commission noted that several parties claimed difficulties in obtaining access to information about new communications services and related regulated matters. The creation of the Consumer Information Bureau ("CIB") (which was created in November 1999 along with the new Enforcement Bureau)[215] addressed those difficulties, emerging as a significant step to ensure the availability of information about new services and regulatory proceedings. Competitive markets work only when consumers have the information required to make informed choices. The CIB, being a consolidation of the agency-wide consumer information functions, enhances efficiencies in providing consumers a one-stop shop for obtaining the information they need to make wise choices in a robust and competitive marketplace. CIB's offices develop, recommend, coordinate and administer the Commission's consumer information program to enhance the public's understanding of the Commission's policies, goals, objectives, and regulatory requirements, in order to facilitate public participation in the Commission's decision-making processes.

150. The CIB's Reference Information Center ("RIC") serves as the official Commission custodian for designated records, and handles the intake processing, organization and maintenance, reference services, retirement, and retrieval of these records. The RIC is responsible for managing and maintaining the Electronic Comment Filing System. Thus, the RIC provides a convenient one-stop shop for consumers and industry alike to research and obtain relevant and available information to make informed choices.

151. The CIB has two consumer information centers, namely, the Gettysburg Consumer Information Center and the Portals Consumer Information Center. Both of these centers respond to inquiries on telecommunications issues to provide comprehensive information, and handle complaints received telephonically, over the web site, via e-mail, facsimile, and by postal mail. Moreover, CIB is in the process of streamlining its informal complaint procedures, so that informal complaints are resolved more efficiently to benefit consumers and the market. CIB's Strategic Information Office ("SIO") is charged with collecting and analyzing information received in the bureau from incoming consumer complaints and inquiries, consumer forums, and other industry sources. Thus, the SIO serves as an early warning system to the Commission.

152. In furtherance of CIB's mission to educate the public about important Commission regulatory programs, CIB's Consumer Education Office ("CEO") and its Disabilities Rights Office ("DRO") have been uniquely active in conducting consumer and industry forums and workshops. Additionally, DRO ensures that individuals with disabilities have access to Commission processes by providing Commission material in

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215 *Id.*

accessible formats. In February of 2000, the DRO held a Telecommunications Relay Services ("TRS") Exposition where carriers exhibited to demonstrate available new technologies that assist persons with disabilities. In addition, in March of 2000, DRO conducted a TRS Forum, in which state relay providers from all over the country provided input on relay operations. These forums provided an awareness of available technologies that may increase consumer demand. It is expected that demand will open the doors of opportunity to new suppliers. More recently, the CEO held a workshop to facilitate discussions between industry groups, state agencies, and consumer groups to make billing practices more consumer friendly. Both DRO and CEO are developing, in conjunction with other Commission bureaus and offices, consumer alerts and public service announcements to give consumers general information about their rights and information so that they can protect themselves from unscrupulous individuals and business entities.[216]

153. Finally, CIB has coordinated with other Commission bureaus and offices to further the Commission's mission to ensure that telecommunications services are available to "all the People" of the United States. Specifically, CIB staff has assisted on the Commission's tribal initiatives to address the problem of limited availability of basic and advanced services to many tribal regions, and to ensure that basic and advanced telecommunications services are made available in those geographical areas.

## IV. OTHER REGULATORY INITIATIVES TO REMOVE IMPEDIMENTS

154. The Commission has undertaken numerous efforts to address the unique market entry barriers to the telecommunications industry for minority- and women-owned businesses.

### A. ACCESS TO THE TELECOMMUNICATIONS INDUSTRY

155. Commenters in the *1997 Report* expressed concerns about access to telecommunications licenses.[217] The Commission responded by providing small business bidding credits, streamlined applications procedures, enhanced bidding mechanisms, and public online license databases to facilitate partitioning and disaggregation opportunities for small businesses, including minority- and women-owned businesses, in telecommunications services.[218]

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[216] For example, CEO has, in conjunction with the MMB, designed and edited a brochure for distribution that would provide applicants information for LPFM stations. The LPFM service is expected to provide opportunity to the smaller, community-oriented broadcaster, so as to give a significant number of new voices access to the nation's airwaves. Similarly, to assist in the Commission's efforts to further deregulate telecommunications markets and determine the state of broadband deployment, CEO has assisted other bureaus and offices in posting a web page and in organizing the links to provide up-to-date information to the community at large, and is coordinating with the appropriate bureaus and offices to hold two public workshops on the broadband issue.

[217] *See 1997 Report* at paras. 215-217, *supra.*

[218] The information regarding minority and women's participation in the Commission's auctions is generated from the short-form applications (FCC Form 175) on which the Commission requests, on a

156. In addition, the Commission is planning a two-day Communications and Technology Opportunity Summit. This summit is scheduled tentatively for autumn of 2000 in Washington, D.C. and is designed to be an interactive forum for minorities, women, entrepreneurs, and small-business owners interested in the communications industry. The Commission, beginning in October 2000, will be publishing all public information documents in Spanish.

### B. TRIBAL INITIATIVES

157. In 1999, the Commission began an historic regulatory effort to open the telecommunications market for Native American reservations and identify barriers to providing telecommunications services to tribal reservations. Based on the record gathered from two field hearings,[219] the Commission adopted two orders in 2000 to create regulatory incentives to address telecommunications underservice to tribal reservations,[220] as well as a policy statement promoting the government-to-government relationship between the Commission and the tribes.[221]

158. In addition, this fall the Commission will sponsor a 4-day tribal leadership telecommunications training seminar called Indian Telecom Training Initiative '2000[222] ("ITTI '2000"). This training seminar will provide important information to tribal leaders on telecommunications technologies, provide information on private and public resources available to assist tribal nations, and provide forums on how to assist tribal nations to develop strategies to improve telecommunications services on reservations. ITTI '2000 has already attracted a broad coalition of interested cosponsors.

### C. ACCESS TO CAPITAL

159. Commenters in the *1997 Report* were also concerned about access to capital as a general barrier to small, minority- and women-owned businesses.[223]

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voluntary basis, that the applicant check its minority and/or women status. *See* Section III.B. (Wireless Industry) and Section III.D. (Mass Media Industry), *supra*.

219 The Commission held field hearings, *Overcoming Obstacles to Telephone Service to Indians on Reservations*, at Albuquerque, New Mexico, January 29, 1999 and at Gila River Tribal Reservation, March 23, 1999.

220 In the Matter of Extending Wireless Telecommunications Services to Tribal Lands, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 99-66, FCC 00-209 (adopted June 8, 2000); In the Matter of Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, *Twelfth Report and Order, Memorandum Opinion and Order, and Second Further Notice of Proposed Rulemaking*, CC Docket No. 96-45, FCC 00-208 (adopted June 8, 2000).

221 In the Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, *Policy Statement*, FCC 00-207 (adopted June 8, 2000).

222 ITTI '2000 is scheduled for September 2000 in St. Paul, MN.

223 *See 1997 Report, at* paras. 215, 216.

Additional funding mechanisms for small telecommunications businesses have become available since the *1997 Report*.[224]

160. The Telecommunications Development Fund ("TDF"),[225] which was described in the *1997 Report*, was created by the 1996 Act as a private fund to promote access to capital for small businesses, including minority- and women-owned businesses. TDF's mandate is to make investments to: "(1) enhance competition in the telecommunications industry, (2) stimulate new technology development and promote employment and training, and (3) support universal service and promote delivery of telecommunications services to underserved rural and urban areas."[226] The TDF currently has approximately $25 million[227] and has invested in minority-owned small business projects that increase wireless and software capacity to serve competitive local exchange carriers and to provide wireless service to local communities. The TDF anticipates an increased pace of investments in promising small telecommunications companies for this upcoming year.

### D. OFFICE OF COMMUNICATIONS BUSINESS OPPORTUNITIES

161. The Office of Communications Business Opportunities ("OCBO") was created in 1994 to promote business opportunities for entrepreneurs and small businesses, including minority- and women-owned small businesses. OCBO maintains a database of roughly 2700 small and minority-owned businesses and mails information on Commission notices and new service opportunities to the businesses on that list. OCBO recently introduced a web site that maintains vital information about Commission rulemakings and service opportunities for small businesses and entrepreneurs. OCBO also hosts annual auction seminars to inform the public about new licensing opportunities, seminars to provide information on new technology business opportunities in the unlicensed spectrum, and has led two field hearings on obstacles to service on tribal reservations.[228] In addition, OCBO oversees the administration of the Commission's obligations under the Regulatory Flexibility Act and the Small Business Act,[229] including agency regulatory review provisions. OCBO staff participates in

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[224] For example, the broadcast industry, which has seen an increase in consolidation in the mass media arena, has taken the voluntary initiative to create an investment fund to assist minority and female mass media ownership by providing financing. Known originally as the "Prism Fund," and since renamed "Quetzal/Chase Communications Partners, L.P," the fund was started with approximately $175 million in contributions from industry.

[225] 1996 Act, Section 714, *supra*.

[226] *Id.*

[227] Funding for the TDF is generated by interest earned on funds deposited as up-front payments for participation in Commission-sponsored auctions for service licenses.

[228] *See* para. 157, *supra.*

[229] Regulatory Flexibility Act of 1980, *as amended*, 5 U.S.C. § 601 et seq.; Small Business Act, 15 U.S.C. § 632.

conferences and seminars throughout the country to inform the public about small business and entrepreneurial business opportunities in the telecommunications industry.

### E. BIENNIAL REGULATORY REVIEW

162. The 1996 Act added Section 11 to the Communications Act.[230] It requires the Commission to review all of its regulations that affect the operations and activities of telecommunications service providers and determine whether any of them can be repealed or modified if they are no longer in the public interest because of the development of competition. In addition, Section 202(h) of the 1996 Act requires the Commission to review its broadcast ownership rules biennially as part of the review conducted pursuant to Section 11. There was little legislative history associated with these provisions, but it is clear that Congress intended that the Commission regularly evaluate its rules to determine whether they could be modified or eliminated in light of the rapidly changing, and increasingly competitive, market conditions that the 1996 Act sought to produce.

163. In 1998, the Commission undertook a broad, comprehensive internal review of all Commission regulations, and did not limit itself to those rules covered by Section 11.

164. As part of this process, the Commission sought and received substantial public input. Each of the five operating bureaus, together with the Office of General Counsel, hosted a series of public forums to receive ideas from the public, including organizations representing small carriers, regarding Commission regulations that were thought to be potential candidates for repeal or modification during the 1998 Biennial Regulatory Review.

165. The 1998 Biennial Regulatory Review proceedings that were initiated involved a wide range of deregulatory and streamlining proposals. For example, in the common carrier area, the Commission initiated 32 proceedings and modified or eliminated hundreds of rules, particularly ones that affected the operations and activities of telecommunications service providers. The Commission has already begun its 2000 Biennial Regulatory Review.

### F. REGULATORY FLEXIBILITY ACT AND SMALL BUSINESS ACT INITIATIVES

166. **RFA Analyses and Certifications.** Since enactment of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA") amendments[231] to the Regulatory Flexibility Act ("RFA"),[232] the Commission has worked diligently to make

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230 47 U.S.C. § 161. *See,* note 2, *supra*.

231 The "Small Business Regulatory Enforcement Fairness Act of 1996" ("SBREFA") was signed into law as Title II of the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) ("CWAAA").

232 *See* 5 U.S.C. §§ 601-612.

its RFA analyses more extensive, precise, and helpful, including a focus on plain language. For instance, because the agency typically writes rulemakings tailored to the various and numerous communications "services" it regulates (*e.g.*, FM Radio, Paging, Satellite Services, etc.), the agency has undertaken numerous RFA analyses describing each service and the extent of the small entity participation within each. This has required constant revision of the service sector analyses, as new services are created and additional licenses for traditional services are issued. In this way, the agency attempts to ensure full and accurate analyses and certifications in the agency's 150 or more rulemaking items per year.

167. Special initiatives have included internal training sessions for Commission staff on the RFA process and, most recently, a series of presentations by the Small Business Administration's ("SBA's") Office of Advocacy to train Commission staff. The first presentation was held on October 12, 1999, and featured the SBA's Chief Counsel for Advocacy. Also, as noted previously,[233] another 1999 initiative was the resolution of the Commission's treatment of small ILECs under the RFA. In the *1997 Report*, the Commission stated that it did not believe that small ILECs qualified as small businesses under the RFA because such businesses appeared to be "dominant in their field or operation due to their current control of bottleneck facilities."[234] Following a letter on the subject from the Office of Advocacy and a meeting between agency staffs, the Commission decided to revise the language of its decisions to make clear that small ILECs are among the small businesses included in its analyses under the RFA.[235]

168. **Annual "Ten-Year Review of Rules," 5 U.S.C. § 610**. During 1999, the Commission completed and published an updated, comprehensive listing of Commission rule sections subject to review under the RFA's annual "ten-year review of rules" provision, 5 U.S.C. § 610. Section 610 requires that agencies 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 recent Commission plan lists hundreds of rules to assist the public in identifying rules that might be amended or rescinded in the public interest. In addition, the Commission has explored the creation of a computer software program that, utilizing historical Code of Federal Regulations data, would track rules over a ten-year period and significantly reduce the administrative work currently required to undertake a Section 610 review. If the Commission were to accomplish this goal, it could share the computer program with other federal agencies subject to Section 610 obligations, thereby assisting those programs as well.

169. **Special Small Business Size Standards, 15 U.S.C. § 632**. Federal agencies or departments promulgating regulations relating to small businesses usually use SBA size criteria. To ensure that the Commission's initiatives accurately target small

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233 *See* para. 36, *supra*.

234 *1997 Report* at para. 94.

235 Since 1996, the Commission had consistently included small ILECs in its analyses, but had stated that it was doing so out of an abundance of caution concerning the status of ILECs.

entity participation in the telecommunications industry, the Commission works closely with the SBA's Office of Size Standards to create new telecommunications small business size standards. In particular, in recent years, the agency has coordinated extensively with both the SBA Office of Size Standards and the Office of Advocacy to create informal guidelines to keep the SBA apprised of size standard initiatives. The Commission's policy is to send SBA descriptions and analyses of proposed size standards prior to adoption of the Notice of Proposed Rulemaking in such proceedings, and thereafter to send to the SBA additional comments and documentation at each step of the way. At the end of the process, the Commission sends a formal request for approval to the SBA Administrator, prior to final Commission consideration of the new size standard. This close coordination has particularly helped the Commission to initiate radio spectrum auctions, where the goals are to make efficient use of the spectrum, give all Americans access to telecommunications services, and promote economic growth.

170. **Semi-Annual "Unified Agenda," 5 U.S.C. § 602**. The Commission participates in the semi-annual publication of the "Unified Agenda of Federal Regulatory and Deregulatory Actions," which provides information, in a uniform format, about regulations that the government is considering or reviewing.[236] The Unified Agenda has appeared in the Federal Register twice each year since 1983. It helps agencies comply with certain obligations under the RFA, other statutes, and Executive Orders. As a part of the October 1999 Unified Agenda compilation, the Commission listed and described 128 ongoing rulemaking proceedings. These descriptions assist the public in becoming involved in the regulatory process, and assist the regulated community to comply with existing regulation.

### G. ELECTRONIC INITIATIVES

171. In an effort to create a model agency for the digital age, the Commission has undertaken concrete proposals to increase small business access to the market and to the Commission by implementing several electronic filing initiatives. The Commission developed the Electronic Comment Filing System ("ECFS") which is available to the public for the filing, searching, and viewing of comments and documents pertaining to notice-and-comment rulemaking proceedings. The system also covers the docketed proceedings that are adjudicatory in nature. The ECFS gives access to Commission rulemakings and docketed proceedings via the World Wide Web. The system includes data and images going back to 1992.

172. The Commission also implemented electronic filing capabilities in the Common Carrier, International, Mass Media, and Wireless Telecommunications Bureaus, and in the Office of Engineering and Technology. All routine common carriers' Local Access Transport modifications are now immediately placed on public notice and are accessible electronically through the Commission's Digital Index.

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[236] *See, e.g.*, 64 Fed. Reg. 63881, 65368 (Nov. 22, 1999). The Unified Agenda is typically published in April and October of each year. The Unified Agenda project is overseen by the Government Services Administration's Regulatory Information Service Center.

173. The Commission implemented an electronic tariff filing system that permits ILECs to submit federal tariffs and associated documents via the Internet. The International Bureau designed and implemented the International Bureau Electronic Filing System,[237] which is accessible through any computer with Internet access.

174. The Commission is nearing completion of its implementation of a Universal Licensing System[238] that provides streamlined electronic filing capabilities for most wireless services, provides application and tracking status information, and reduces the number of wireless applications from 40 to four.

### H. ADVANCED TELECOMMUNICATIONS CAPABILITIES

175. In Section 706 of the 1996 Act,[239] Congress charged the Commission with monitoring and encouraging the deployment, on a reasonable and timely basis, of advanced telecommunications capabilities to all Americans. In February 1999, the Commission issued its Report on Advanced Telecommunications Capability in response to the statutory mandate.[240] In the report, the Commission concluded that the consumer broadband market was in the early stages of development and that it was too early to reach definitive conclusions. However, aggregate data suggested that broadband was being deployed in a reasonable and timely fashion. The Commission also compared broadband to other communications-related technologies and found that, in terms of actual users, deployment of broadband is exceeding that of these other technologies at a similar point in their development. The Commission stated that it would not hesitate to reduce barriers to competition and infrastructure investment to ensure that market conditions are conducive to investment, innovation, and meeting the needs of all consumers. The Commission noted, however, that it lacked sufficient information to determine whether high-speed services were reaching rural and inner-city users and persons with disabilities.

176. As a result, the Commission began a targeted information- and data-gathering program to ascertain the extent of actual facilities-based broadband deployment and local telecommunications competition.[241] A Federal-State Joint Conference on Advanced Telecommunications Services was convened on October 8, 1999, to identify and disseminate information on successful community efforts to promote deployment of

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237 *See* paras. 131-135, *supra.*

238 *See* paras. 70-75, *supra.*

239 1996 Act, Section 706 ("Advanced Telecommunications Incentives"), usually reproduced in the notes to 47 U.S.C. § 157.

240 Inquiry Concerning the Deployment of Advanced Telecommunications Capabilities to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, *Report*, CC Docket No. 98-146, FCC 99-5, 14 FCC Rcd 2398 (1999).

241 Local Competition and Broadband Reporting, *Report and Order*, CC Docket No. 99-301, FCC 00-114 (rel. Mar. 30, 2000).

advanced telecommunications capabilities and to monitor ongoing deployment of advanced services, and a series of six hearings were scheduled for March through June, 2000.[242] The Commission also initiated a Notice of Inquiry into the status of deployment of advanced telecommunications capabilities,[243] including a data collection on the broadband deployment to business and residential customers, to various geographic areas, and to various socio-economic groups. The Commission sought comment on additional actions that might be taken to accelerate deployment, if such were necessary to achieve deployment to all Americans in a reasonable and timely fashion.

## V. PROPOSED LEGISLATIVE INITIATIVES TO REMOVE IMPEDIMENTS

177. As noted in the Introduction to this Report, Section 257(c)(2) requires the Commission to identify statutory market entry barriers which it recommends be eliminated, consistent with the public interest, convenience and necessity. Below, we have itemized a list of statutory proposals, which, if adopted, would reduce certain market entry barriers.

178. **Expedite Processing of Routine Satellite Applications.** This proposal would amend Sections 309(c)(2)(G) and (H), and would add Section 309(c)(2)(I) of the Communications Act. Specifically these changes would authorize the Commission to exempt non-controversial, routine satellite earth station applications from the usual 30-day public notice period. This would, in turn, speed up the processing of routine satellite applications which in 1998 totaled 600, and thus remove a barrier to entry for small businesses that are hampered by the current procedure.

179. **Remove Entry Barriers for Information Delivery Technologies.** This proposed legislation would add a new Section 716 to the Communications Act and amend Section 207 of the 1996 Act. The proposal would reduce entry barriers and expand consumer access to competing providers of multichannel video programming and non-video telecommunications and information services. The changes would require the Commission to ensure increased access by consumers in multiple dwelling units ("MDUs") and commercial buildings to providers transmitting data, video, audio, or other digital services over one-way and two-way communications systems, including broadband systems. Any legislative proposal would provide a mechanism to compensate property owners for the use of their property and to reimburse owners for any damage that results from the installation or removal of facilities.

180. **Increase the Statute of Limitations for Forfeiture Proceedings Against Non-Broadcasters.** An amendment of Section 503(b)(6)(B) of the Communications Act

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[242] Federal-State Joint Conference On Advanced Services: Field Hearing Schedule, *Public Notice*, DA 00-240 (Feb. 11, 2000); *see* Federal-State Joint Conference On Advanced Services, *Order*, CC Docket No. 99-294, FCC 99-293 (Oct. 8, 1999).

[243] Inquiry Concerning the Deployment of Advanced Telecommunications Capabilities to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, *Notice of Inquiry*, FCC 00-57, CC Docket No. 98-146 (rel. Feb. 18, 2000)

would change the statute of limitations on forfeitures against common carriers and other non-broadcasters from one to three years. This would strengthen the effectiveness of the Commission's enforcement program by increasing the time period within which the Commission may issue a notice of apparent liability for a forfeiture to a telecommunications carrier or other non-broadcast entity. This change would facilitate the ability of market competitors to enforce violations of the Commission's Rules by incumbents.

181. **Reform General Forfeiture Authority.** This proposal would amend Sections 504(a) and (b) of the Communications Act. It would authorize the Commission to prosecute to recover forfeitures in federal district court if the U.S. Attorney General has not initiated such action within six months of written notice of an unpaid forfeiture penalty, or, alternatively, initiate a Commission adjudicatory hearing under Section 503(b). The measure would streamline and increase the effectiveness of the Commission's enforcement program by aiding in the recovery of forfeitures payable to the Treasury of the United States.

182. **Expand General Forbearance Authority.** This proposal would amend Section 10(a) of the Communications Act to expand the Commission's authority to forebear from regulation regarding any and all Commission-regulated services rather than regulation of only telecommunications services. This would benefit small businesses by providing the Commission the needed flexibility to implement deregulatory proposals that reduce or eliminate unnecessary regulation for all its services, not just common carrier services. This would further allow the Commission to apply the same pro-competition, deregulatory benefits from common carrier forbearance to other sectors of the communications market, and would conserve government resources to a greater extent than is permissible today.

183. **Exempt Instructional Television Fixed Service Applications from Competitive Bidding.** This proposal adds a new Section 309(j)(2)(D) to the Communications Act. It would exempt applications for licenses or construction permits for Instructional Television Fixed Service ("ITFS") stations from the Commission's competitive bidding authority. This would enhance the ability of educational institutions and governmental entities, especially those with limited funds, to utilize ITFS channels for the benefit of their students and the public. An exemption for such institutions and entities from a requirement to bid at auction for spectrum reserved for instructional use would also further broaden access to important communications services and technology.

184. **Create New Tax Incentive Program.** The measure would benefit small businesses by permitting 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. In addition, it would provide a tax credit for sellers who offer financing on sales to small telecommunications firms, thereby facilitating sales to small businesses. It would 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.

185. **Protect Commission Licenses from Bankruptcy Litigation.** One measure would add a new Section 309(j)(8)(D) to the Communications Act. It would clarify that certain provisions of the Bankruptcy Code are not applicable to any Commission license on which payment is owed. The proposal does not relieve any licensee from payment obligations, and does not affect the Commission's authority to revoke, cancel, transfer or assign such licenses. The measure would benefit small businesses, and their customers, by preventing auctioned Commission licenses from being tied up in bankruptcy court, thus allowing the Commission to assign licenses to entities that are best able to deploy the spectrum in a timely manner. This would also strengthen the integrity of the Commission's auction process.

186. **Authorize *Pro Forma* Transfer of Licenses.** An amendment of Section 310 of the Communications Act would authorize the Commission to adopt a notification procedure for *pro forma* assignments and transfers of licenses and construction permits. The amendment would streamline the Commission's administrative processing of assignment and transfer applications, thereby reducing an administrative burden for small businesses.

187. **Streamline Construction Permit Requirements.** By amending Section 319 of the Communications Act, the current two-step construction permit/license process could be replaced at the FCC's discretion with a single-step, license-only process. This measure would benefit small businesses seeking to enter the broadcasting industry, by simplifying the application process and reducing both legal fees and the pre-license waiting period. This result would promote competition.

## VI. CONCLUSION

188. This Report demonstrates our continuing commitment to implement the spirit and mandate of Section 257 to promote policies "favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity."[244] The Commission takes seriously the mandate to remove market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications and information services, or in the provision of parts or services to providers of telecommunications and information services.[245]

189. The Commission recognizes that rules that enhance ownership opportunities are critical to providing small businesses and entrepreneurs the opportunity to participate. Finally, through internal monitoring and institutionalized policies such as

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[244] 1996 Act, Section 257(b).

[245] 1996 Act, Section 257(a).

the Biennial Review process, the Regulatory Flexibility Act review process, and open policy and mission forums, we hope to generate regular feedback and gain quality control over the services provided by the Commission to the small business and entrepreneurial communities.

190. The Federal Communications Commission hereby submits its triennial Report to Congress.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

**Separate Statement of Commissioner Harold W. Furchtgott-Roth**

**In the Matter of Section 257 Report to Congress Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Small Businesses**

I did not, of course, vote in favor of many of the regulatory actions described in this Report. But I vote to adopt this Report in so far as it is an accurate description of certain Commission actions over the last three years, which I believe that it is.

As for the legislative recommendations in Part V regarding market entry barriers identified in the 1997 document, section 257(c) expressly requires a report on this topic. I do not subscribe to the substance of many of these recommendations, however, and thus cannot vote to adopt this part of the Report. I think our recommendations would have been better focused on strengthening our implementation of those statutory provisions that provide tools for deregulation, such as sections 10, 11, and 202(h) of the 1996 Telecommunications Act, rather than ranging into areas such as bankruptcy and tax law.

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