

FEDERAL COMMUNICATIONS  
COMMISSION

1998

64<sup>TH</sup> ANNUAL REPORT

## **Commissioners**

*Members of the Federal Communications Commission  
during fiscal year 1998*

William Kennard, Chairman  
(Sworn in Nov. 3, 1997, term ends June 30, 2001)

Susan Ness  
(Sworn in May 23, 1994, term ends June 30, 1999)

Harold Furchtgott-Roth  
(Sworn in Nov. 3, 1997, term ends June 30, 2000)

Michael Powell  
(Sworn in Nov. 3, 1997, term ends June 30, 2002)

Gloria Tristani  
(Sworn in Nov. 3, 1997, term ends June 30, 2003)

Reed E. Hundt, Chairman  
(Resigned Nov. 3, 1997)

James H. Quello  
(Resigned Nov. 3, 1997)

Rachelle B. Chong  
(Resigned Nov. 3, 1997)

**Letter of Transmittal**

**Federal Communications Commission  
Washington, DC 20554**

*To the Congress of the United States*

We submit for your consideration the 64rd Annual Report of the Federal Communications Commission for fiscal year 1998. It includes information required by the Communications Act of 1934, as amended, and the Communications Satellite Act of 1962.

The report contains a comprehensive review of key events in the Commission's areas of regulatory concern: broadcasting, cable television, common carrier, international communications, wireless telecommunications, spectrum management, and frequency allocations.

It also covers major administrative matters, engineering, legal and legislative activities.

Respectfully,

William E. Kennard  
Chairman

## **Commissioners**

### **William E. Kennard (Democrat) Chairman**

Nominated to the Commission and designated to serve as Chairman by President Clinton; confirmed October 29, 1997; sworn in November 3, 1997; term ends June 30, 2001. Chairman Kennard had been General Counsel of the Federal Communications Commission since December 8, 1993. Previously, he was a partner and member of the board of directors of the Washington, D.C. law firm of Verner, Liipfert, Bernhard, McPherson and Hand. At Verner, Liipfert, specialized in communications law, with an emphasis on regulatory and transactional matters for communications companies, including broadcasters, cable television operators, programmers and cellular telephone providers. Served as Assistant General Counsel and as Legal Fellow for the National Association of Broadcasters. Born in Los Angeles, CA. Graduated Phi Beta Kappa from Stanford University and received J.D. from Yale Law School. Member of the California and District of Columbia Bars.

### **Susan Ness (Democrat)**

Nominated to the Commission by President Clinton; confirmed May 19, 1994; sworn in May 23, 1994; term ends June 30, 1999. Previously, Commissioner Ness served as Vice President and Group Head of the Communications Industries Division of American Security Bank. Her portfolio included companies providing cable television, radio and television broadcast, satellite telecommunications, cable programming, rural telephone, and wireless communications. Earlier, she founded and directed the Judicial Appointments Project of the National Women's Political Caucus to increase the representation of women on the federal bench. She also served as Assistant Counsel to the Committee on Banking, Currency and Housing of the U.S. House of Representatives. Her prior civic activities include chair of the Montgomery County Charter Review Commission, vice chair of the Montgomery County Task Force on Community Access Television, and president of the Montgomery County Commission for Women and a member of Leadership Washington. Born in Elizabeth, N.J, she holds a B.A. from Douglass College (Rutgers University), an MBA from the Wharton School (University of Pennsylvania) and a J.D., cum laude from Boston College Law School. Member of the District of Columbia Bar.

### **Harold W. Furchtgott-Roth (Republican)**

Nominated to the Commission by President Clinton; confirmed October 28, 1997; sworn in November 3, 1997; term ends June 30, 2000. Prior to joining Commission, he was the Chief Economist for the U.S. House Committee on Commerce. He was a Senior Economist for Economists Incorporated from 1988-1995 and, before that, he served as a Research Analyst for

the Center for Naval Analyses. Born in Knoxville, TN, Commissioner Furchtgott-Roth holds an S.B. in Economics from the Massachusetts Institute of Technology and a Ph.D. in Economics from Stanford University. He is a member of the American Economics Association and the Econometrics Society.

**Michael K. Powell (Republican)**

Nominated to the Commission by President Clinton; confirmed October 28, 1997; sworn in November 3, 1997; term ends June 30, 2002. Was the Chief of Staff of the Antitrust Division in the Department of Justice since December 1996. Served as an Associate with the law office of O'Melveny & Myers, LLP, where he practiced in the areas of telecommunications, antitrust, and employment law. Served as a judicial clerk to the Honorable Harry T. Edwards, Chief Judge of the U.S. Court of Appeals for the District of Columbia Circuit. Was a policy advisor to the Secretary of Defense for matters involving the United States-Japan security relationship. Served as a cavalry officer in the U.S. Army from 1985 to 1988. Born in Birmingham, AL. Graduated from the College of William and Mary with a degree in Government. Received his J.D. from Georgetown University Law Center.

**Gloria Tristani (Democrat)**

Nominated to the Commission by President Clinton; confirmed October 28, 1997; sworn in November 3, 1997; term ends June 30, 2003. Served on New Mexico State Corporation Commission since 1994, where she was the first woman elected to that office. Served as Commission Chair in 1996. Served on the National Association of Regulatory Utility Commissioners' communications committee. Was an attorney in private practice in Albuquerque. Named one of the Nation's 100 most influential Hispanics by Hispanic Business Magazine in 1996. Born in San Juan, P. R. Received undergraduate degree from Barnard College of Columbia University and law degree from the University of New Mexico School of Law. Board member of the Dennis Chavez Foundation. Member of the New Mexico and Colorado Bars and the American Bar Association.

**Commissioners from 1934 to Present**

<b>Commissioner</b>	<b>Party Affiliation</b>	<b>State</b>	<b>Term of Service</b>
Eugene O. Sykes Chairman	Democrat	Mississippi	July 11, 1934 to Apr. 5, 1939 July 11, 1934 to Mar. 8, 1935
Thad H. Brown	Republican	Ohio	July 11, 1934 to June 30, 1940
Paul A. Walker Acting Chairman Chairman	Democrat	Oklahoma	July 11, 1934 to June 30, 1953 Nov. 3, 1947 to Dec. 28, 1947 Feb. 28, 1952 to Apr. 17, 1953
Norman Case	Republican	Rhode Island	July 11, 1934 to June 30, 1945
Irvin Stewart	Democrat	Texas	July 11, 1934 to June 30, 1937
George Henry Payne	Republican	New York	July 11, 1934 to June 30, 1943
Hampson Gary	Democrat	Texas	July 11, 1934 to Jan. 1, 1935
Anning S. Prall Chairman	Democrat	New York	Jan. 17, 1935 to July 23, 1937 Mar. 9, 1935 to July 23, 1937
T. A. M. Craven	Democrat	DC	Aug. 25, 1937 to June 30, 1944
Frank McNinch Chairman	Democrat	Virginia	July 2, 1956 to Mar. 25, 1963
Frederic I. Thompson	Democrat	North Carolina	Oct. 1, 1937 to Aug. 31, 1939 Oct. 1, 1937 to Aug. 31, 1939
James Lawrence Fly Chairman	Democrat	Alabama	Apr. 13, 1939 to June 30, 1941
Ray C. Wakefield	Republican	Texas	Sept. 1, 1939 to Nov. 13, 1944 Sept. 1, 1939 to Nov. 13, 1944
Clifford J. Durr	Democrat	California	Mar. 22, 1941 to June 30, 1947
Ewell K. Jett Interim Chairman	Independent	Alabama	Nov. 1, 1941 to June 30, 1948
Paul A. Porter Chairman	Democrat	Maryland	Feb. 15, 1944 to Dec. 31, 1947 Nov. 16, 1944 to Dec. 20, 1944
Charles R. Denny Acting Chairman Chairman	Democrat	Kentucky	Dec. 21, 1944 to Feb. 25, 1946 Dec. 21, 1944 to Feb. 25, 1946
William H. Willis	Republican	DC	Mar. 30, 1945 to Oct. 31, 1947 Feb. 26, 1946 to Dec. 3, 1946 Dec. 4, 1946 to Oct. 31, 1947
Rosel H. Hyde Chairman Acting Chairman Acting Chairman Chairman	Republican	Vermont	July 23, 1945 to Mar. 6, 1946
Edward M. Webster	Independent	Idaho	Apr. 17, 1946 to Oct. 31, 1969 Apr. 18, 1953 to Apr. 18, 1954 Apr. 19, 1954 to Oct. 3, 1954 May 1, 1966 to June 26, 1966 June 27, 1966 to Oct. 31, 1969
Robert F. Jones	Republican	DC	Apr. 10, 1947 to June 30, 1956
Wayne Coy Chairman	Democrat	Ohio	Sept. 5, 1947 to Sept. 19, 1952
George E. Sterling	Republican	Indiana	Dec. 29, 1947 to Feb. 21, 1952 Dec. 29, 1947 to Feb. 21, 1952
Frieda B. Hennock	Democrat	Maine	Jan. 2, 1948 to Sept. 30, 1954
Robert T. Bartley	Democrat	New York	July 6, 1948 to June 30, 1955
Eugene H. Merrill	Democrat	Texas	Mar. 6, 1952 to June 30, 1972
John C. Doerfer Chairman	Republican	Utah	Oct. 6, 1952 to Apr. 15, 1953
Robert E. Lee Interim Chairman Chairman	Republican	Wisconsin	Apr. 15, 1953 to Mar. 10, 1960 July 1, 1957 to Mar. 10, 1960
George McConnaughey	Republican	Illinois	Oct. 6, 1953 to June 30, 1981 Feb. 5, 1981 to Apr. 12, 1981 Apr. 13, 1981 to May 18, 1981
		Ohio	Oct. 4, 1954 to June 30, 1957

Frederick W. Ford Chairman	Republican	West Virginia	Aug. 29, 1957 to Dec. 31, 1964 Mar. 15, 1960 to Mar. 1, 1961
John S. Cross	Democrat	Arkansas	May 23, 1958 to Sept. 30, 1962
Charles H. King	Republican	Michigan	July 19, 1960 to Mar. 2, 1961
Newton N. Minow Chairman	Democrat	Illinois	Mar. 2, 1961 to June 1, 1963 Mar. 2, 1961 to June 1, 1963
E. William Henry Chairman	Democrat	Tennessee	Oct. 2, 1962 to May 1, 1966 June 2, 1963 to May 1, 1966
Kenneth A. Cox	Democrat	Washington	Mar. 26, 1963 to Aug. 31, 1970
Lee Loevinger	Democrat	Minnesota	June 11, 1963 to June 30, 1968
James J. Wadsworth	Republican	New York	May 5, 1965 to Oct. 31, 1969
Nicholas Johnson	Democrat	Iowa	July 1, 1966 to Dec. 5, 1973
H. Rex Lee	Democrat	DC	Oct. 28, 1968 to Dec. 31, 1973
Dean Burch Chairman	Republican	Arizona	Oct. 31, 1969 to Mar. 8, 1974 Oct. 31, 1969 to Mar. 8, 1974
Robert Wells	Republican	Kansas	Nov. 6, 1969 to Nov. 1, 1971
Thomas J. Houser	Republican	Illinois	Jan. 6, 1971 to Oct. 5, 1971
Charlotte T. Reid	Republican	Illinois	Oct. 8, 1971 to July 1, 1976
Richard E. Wiley Chairman	Republican	Illinois	Jan. 5, 1972 to Oct. 13, 1977 Mar. 8, 1974 to Oct. 13, 1977
Benjamin L. Hooks	Democrat	Tennessee	July 5, 1972 to July 25, 1977
James H. Quello Chairman	Democrat	Michigan	Apr. 30, 1974 to Nov. 1, 1997 Feb. 5, 1993 to Nov. 28, 1993
Glen O. Robinson	Democrat	Minnesota	July 10, 1974 to Aug. 30, 1976
Abbott M. Washburn	Republican	Minnesota	July 10, 1974 to Oct. 1, 1982
Joseph R. Fogarty	Democrat	Rhode Island	Sept. 17, 1976 to June 30, 1983
Margita E. White	Republican	Sweden	Sept. 23, 1976 to Feb. 28, 1979
Charles D. Ferris Chairman	Democrat	Massachusetts	Oct. 17, 1977 to Apr. 10, 1981 Oct. 17, 1977 to Feb. 4, 1981
Tyrone Brown	Democrat	Virginia	Nov. 15, 1977 to Jan. 31, 1981
Anne P. Jones	Republican	Massachusetts	Apr. 7, 1979 to May 31, 1983
Mark S. Fowler Chairman	Republican	Canada	May 18, 1981 to Apr. 17, 1987 May 18, 1981 to Apr. 17, 1987
Mimi Weyforth Dawson	Republican	Missouri	July 6, 1981 to Dec. 3, 1987
Henry M. Rivera	Democrat	New Mexico	Aug. 10, 1981 to Sept. 15, 1985
Stephen A. Sharp	Republican	Ohio	Oct. 4, 1982 to June 30, 1983
Dennis R. Patrick Chairman	Republican	California	Dec. 2, 1983 to Apr. 17, 1987 Apr. 18, 1987 to Aug. 7, 1989
Patricia Diaz Dennis	Democrat	New Mexico	June 25, 1986 to Sept. 29, 1989
Alfred C. Sikes Chairman	Republican	Missouri	Aug. 8, 1989 to Jan. 19, 1993 Aug. 8, 1989 to Jan. 19, 1993
Sherrie P. Marshall	Republican	Florida	Aug. 21, 1989 to April 30, 1993
Andrew C. Barrett	Republican II	Illinois	Sept. 8, 1989 to March 30, 1996
Ervin S. Duggan	Democrat	Georgia	Feb. 28, 1990 to Jan. 30, 1994
Reed E. Hundt Chairman	Democrat	Maryland	Nov. 29, 1993 to Nov. 3, 1997 Nov. 29, 1993 to Nov. 3, 1997
Susan Ness	Democrat	New Jersey	May 19, 1994 to
Rachelle B. Chong	Republican	California	May 23, 1994 to Nov. 3, 1997
William E. Kennard Chairman	Democrat	California	Nov. 3, 1997 to Nov. 3, 1997 to
Harold W. Furchtgott-Roth	Republican	Tennessee	Nov. 3, 1997 to

Michael K. Powell  
Gloria Tristani

Republican  
Democrat

Virginia  
New Mexico

Nov. 3, 1997 to  
Nov. 3, 1997 to



## **Overview**

The Federal Communications Commission (FCC) is an independent federal regulatory agency responsible directly to Congress. Established by the Communications Act of 1934, it is charged with establishing policies to govern interstate and international communications by radio, television, wire, satellite, and cable. Its jurisdiction covers the 50 states and territories, the District of Columbia and U.S. possessions.

The FCC is directed by five Commissioners appointed by the President and confirmed by the Senate for staggered five-year terms. No more than three can be members of the same political party. The President designates one of the Commissioners to serve as Chairman.

The Chairman presides over all FCC meetings. The Chairman coordinates and organizes the work of the Commission and represents the agency in legislative matters and in relations with other government departments and agencies.

The Commission is committed to the use of emerging technologies to serve its customers -- the American public and regulated industries -- more efficiently.

The Commission continues to expand its use of the Internet, which has become an increasingly popular way for the public to access information. Extensive information is available through the FCC's Internet homepage (<http://www.fcc.gov>). The Commission uses a fax-on-demand system to allow quick access to forms, press releases and other information (202-418-4830).

### **BUREAUS AND OFFICES**

In FY98 the Commission had six operating Bureaus and 10 offices which provide support services.

#### **Office of the Managing Director (OMD)**

Under the supervision and direction of the Chairman, the Managing Director serves as the FCC's chief operating and executive official. The Managing Director provides managerial leadership to, and exercises supervision and direction over, the FCC's Bureaus and staff offices in management and administrative matters; formulates and administers all management and administrative policy programs and directives for the Commission; assists the Chairman in carrying out administrative responsibilities; advises the Chairman, Commissioners and management on administrative and related matters; administers the FCC's management systems and directs agency efforts in improving management effectiveness, operational efficiency and employee productivity.

**Office of Public Affairs (OPA)**

The Office of Public Affairs is responsible for informing the press and public of the FCC's actions, facilitating public participation in the FCC's decision-making processes and operating many of the FCC's public reference rooms and library. OPA issues daily news releases, public notices and other informational material; prepares the Annual Report and other publications; handles telephone, written, and walk-in requests for information. OPA maintains the FCC's Internet homepage.

**Office of the Inspector General (OIG)**

The Inspector General conducts and supervises audits and investigations relating to the programs and operations of the agency. The Inspector General recommends policies for activities designed to promote economy, efficiency and effectiveness, as well as to prevent and detect fraud and abuse in agency programs. The Inspector General also provides a means for keeping the Chairman, Commissioners, and the Congress fully informed about problems and deficiencies at the agency. Incidents of waste, fraud, abuse or mismanagement within the FCC may be reported to the Office of Inspector General by dialing (202) 418-0473 or the toll free Hotline-1-888-TO-FCCIG (1-888-863-2244).

**Office of Administrative Law Judges**

Administrative Law Judges preside over hearings and issue Initial Decisions. Review of initial decisions is done by the full Commission.

**Office of the General Counsel (OGC)**

The General Counsel serves as the chief legal advisor to the Commission and its various Bureaus and Offices. The General Counsel also represents the Commission before the federal courts of appeals, recommends decisions in adjudicatory matters before the Commission, assists the Commission in its decisionmaking capacity, performs a variety of legal functions regarding internal administrative matters and advises the Commission on fostering competition and promoting deregulation in a competitive environment. (A more extensive profile of the Office is included later in this report.)

**Office of Workplace Diversity (OWD)**

This Office serves as the principal advisor to the Chairman and Commission on all issues relating to workforce diversity, affirmative recruitment, and equal employment opportunity (EEO) within the Commission. The Office enforces EEO and civil rights laws that apply to employees and applicants for employment, trains employees on subjects such as race relations and preventing sexual harassment in the workplace, counsels employees, and develops and implements policies and programs that encourage fair and equal treatment of Commission employees, affirmative recruitment, and that foster understanding and acceptance of the diversity that employees of the Commission bring to the workplace.

### **Office of Communication Business Opportunities (OCBO)**

OCBO is responsible for providing advice to the Commission on issues and policies concerning opportunities for ownership and contracting by small, minority and women-owned communications businesses. The Office also advises the Commission on policies to foster equal employment opportunity in the communications industries for minorities, women, and people with disabilities. The Office works with entrepreneurs, industry and public interest organizations and individuals to provide information about policies to promote ownership and employment opportunities in the communications industry.

### **Office of Plans and Policy (OPP)**

The Office of Plans and Policy serves as principal economic and technical policy adviser to the Commission, analyzing agenda items and developing long-term policy. The Office also produces working papers on major policy issues. (A more extensive profile of the Office is included later in this report.)

### **Office of Legislative and Intergovernmental Affairs (OLIA)**

The Office of Legislative and Intergovernmental Affairs serves as the Commission's principle point of contact with Congress and other governmental entities. (A more extensive profile of the Office is included later in this report.)

### **Office of Engineering and Technology (OET)**

The Office of Engineering and Technology is responsible for managing the non-Government use of the spectrum. OET makes recommendations to the Commission on how the radio spectrum should be allocated and establishes the technical standards to be followed by users. (A more extensive profile of the Office is included later in this report.)

### **The Operating Bureaus**

The Commission is divided into six operating Bureaus reflecting six broad divisions of Commission responsibility. These are: the Mass Media, Common Carrier, Wireless Telecommunications, Compliance and Information, International, and Cable Services Bureaus. The FY98 work of each Bureau is discussed in the following chapters of this report.

# Mass Media Bureau

## Overview

The Mass Media Bureau is the part of the FCC that deals with broadcasting -- television and radio -- as well as Multipoint Distribution Service (MDS) (sometimes called wireless cable) and Instructional Television Fixed Service (ITFS), a service used mainly by educational entities to provide classroom instruction to multiple locations. The Bureau issues licenses (authorization of service), performs policy and rulemaking functions and administers the enforcement program for all mass media services.

## Bureau Organization

The Bureau consists of four Divisions.

The **AUDIO SERVICES DIVISION** (ASD) is responsible for reviewing and taking action on all applications filed by the nation's 13,424 FM and AM stations and 3,862 FM translator and booster stations. As a result of the substantially relaxed broadcast station ownership limitations included in the Telecommunications Act of 1996, ASD has continued to receive an unprecedented level of applications seeking consent for proposed radio mergers and acquisitions. Specifically, the number of sales application filings in FY98 matched FY97's record-level of over 4,000. Many of these transactions continue to reach new levels of complexity and have resulted in large media conglomerates. For example, the transfer of control of SFX Broadcasting's stations to an entity controlled by Hicks, Muse, Tate & Furst brought the number of radio stations under Hick's control to over 350 and the transfer of control of American Radio Systems to CBS Corporation resulted in the common ownership of 172 radio stations. ASD maintained an impressive speed of disposal rate in processing over 13,000 applications in FY98 despite an attrition rate of approximately 15% among ASD's professional and para-professional staff during the fiscal year.

The **VIDEO SERVICES DIVISION** (VSD) is responsible for reviewing and taking action on all applications filed by the nation's 1,770 commercial and non-commercial educational television and 8,002 TV translator and low power television broadcast stations (LPTV). VSD is also responsible for the disposition of applications and other requests regarding the development and licensing of facilities in the Multipoint and/or Multichannel Distribution Service (MDS) and the Instructional Television Fixed Service (ITFS). In FY98, VSD increased its disposals of TV, LPTV, and ITFS new and major, license and other, sales and renewal applications by more than 12% (from 7,938 to 8,940), with nearly 4% of these disposals being non-routine actions. VSD also disposed of nearly 1,100 MDS applications and nearly 850 petitions to deny and other legal challenges and waiver requests, thereby reducing the number of such pending matters by one-third.

The **POLICY AND RULES DIVISION** (PRD) conducts rulemaking proceedings which affect the mass media services and provides legal and technical analyses of these rules. The Policy and Rules Division also conducts economic studies to formulate and evaluate Commission policies in terms of their economic effects on the mass media or on other Commission regulated industries or society, and evaluates economics and other studies submitted to the Commission in connection with various proceedings.

In FY98, PRD continued to enhance its web pages on the Internet, making them more user-friendly and expanding the information available by adding both text and numerous links to related sites on particular topics of potential use to the public. Designed for broadcasters, the bar, and the general public, the PRD web pages provide on-line advice on how to participate in rulemaking activities, access to rulemaking documents (such as Notices of Proposed Rule Making and Reports and Orders) concerning broadcast matters, including weekly updates of access to all allocations decisions, and links to numerous related-topic sites.

The **ENFORCEMENT DIVISION** responds to complaints, conducts investigations of broadcast stations, handles matters concerning political broadcasting, enforces the cable television equal employment opportunity laws and rules, and participates in formal adjudicative proceedings involving broadcast stations.

### **Major Proceedings**

#### **MAIN STUDIO AND PUBLIC FILE REQUIREMENTS (MM Docket No. 97-138)**

On August 11, 1998, the Commission released a *Report and Order* that relaxed the main studio rule to allow a station more flexibility in the location of its main studio and public file. This relaxation of the rules was more in line with modern communications and mobility by listeners and viewers. It also afforded stations better opportunities to take advantage of the business consolidation opportunities presented by the recent relaxation of the multiple ownership limitations. The new rules also permitted the public file be located outside the community of license as long as it was at the main studio. This location should increase accessibility of the file for members of the public by placing the file in a logical, easily discernable location, while significantly reducing the burden for those licensees who had to keep off-premises public files due to their studio location. The new public file rules also clarified and updated the retention periods of certain documents and eliminated the retention of documents that had proven of little interest to the public or were obsolete. The new rules effectively serve the public's interest in having reasonable access to the main studio facilities and also to the material in each station's public file that is relevant to the public's interest in station performance.

## **LOW POWER RADIO (RM Nos. 9208, 9242)**

The Commission initiated an Inquiry into the feasibility of establishing a new class of low power radio service. In February and March of 1998, the Commission sought public comment on petitions for rulemaking to initiate such a service or services in order to provide opportunity for new entrants in the broadcasting field and to provide for highly localized and special interest programming.

## **FEE ALTERNATIVES FOR ANCILLARY SERVICES OFFERED BY DTV BROADCASTERS (MM Docket No. 97-247)**

On December 18, 1997, the Commission issued a *Notice of Proposed Rulemaking* requesting comment on various fee alternatives for broadcasters' use of excess digital capacity to offer certain services that would be "ancillary or supplementary" to their over-the-air digital broadcast (DTV) signals. The *Notice* was issued pursuant to a Congressional requirement that the FCC establish a program to assess and collect fees from broadcast licensees for ancillary or supplementary uses of their DTV spectrum. These services could include subscription television services, computer software distribution, data transmissions, audio signals, and other uses for which the DTV licensee receives subscription fees or compensation other than from commercial advertising from third parties. As required by Congress, these fees would "recover for the public a portion of the value of the public spectrum," "avoid unjust enrichment" of broadcast licensees using the DTV spectrum for fee-based services, and recover for the public an amount that, to the extent feasible, equals but does not exceed the amount that would have been recovered had such service been licensed pursuant to an auction.

## **TWO-WAY DIGITAL ITFS AND MDS COMMUNICATIONS (MM Docket No. 97-217)**

On September 17, 1998, the Commission adopted a *Report and Order* clearing the way for Multicast Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) licensees to offer two-way digital services. The changes further the mandate of Section 257 of the Telecommunications Act of 1996, 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 promotion of the public interest.

## **BROADCAST EEO**

The Commission adopted an *Order* on September 29, 1998, suspending until further notice the requirement that television and radio broadcast licensees and permittees submit Broadcast Station Annual Employment Reports (FCC Form 395-B), Broadcast Equal Employment

Opportunity Program Reports (FCC Form 396), and Broadcast EEO Model Program Reports (FCC Form 396-A). The Commission stated that, in view of the denial by the U.S. Court of Appeals for the D.C. Circuit of the Commission's request for rehearing of Lutheran Church - Missouri Synod v. FCC, this action was advisable while the Commission considers adoption of new EEO rules that address concerns of the Court. Because the Lutheran Church decision involves broadcasters only, all other services remain unaffected and must continue to file their reports with the Commission.

### **Biennial Review**

Section 11 of the Communications Act, as amended, requires the Commission to review all of its regulations applicable to providers of telecommunications service in every even-numbered year, beginning in 1998, to determine whether the regulations are no longer in the public interest due to meaningful economic competition between providers of the service and whether such regulations should be repealed or modified. The first biennial regulatory review presented an excellent opportunity for a serious top-to-bottom examination of all of the Commission's regulations, not just those statutorily required to be reviewed.

As part of the 1998 Biennial Regulatory Review, each of the operating Bureaus, together with the Office of General Counsel, hosted a series of public forums and participated in brown-bag practice group lunches with the Federal Communications Bar Association to solicit informal input from the public. Beginning in January 1998, the Commission initiated a series of rulemaking proceedings as part of the 1998 Biennial Regulatory Review. FCC staff released a list of 31 proceedings which it has proposed that the Commission initiate as part of the review. In August 1998, the FCC announced Significant Progress on 1998 Biennial Review.

The following actions were taken as part of the Mass Media Bureau's Biennial Review:

**Broadcast Streamlining.** On April 2, 1998, the Commission adopted a *Notice of Proposed Rulemaking* (MM Docket 98-43) which proposed fundamental changes in the broadcast application and licensing procedures. The goals of the proceeding were to reduce applicant and licensee burdens, realize fully the benefits of the Mass Media Bureau's current electronic filing initiative and preserve the public's ability to participate fully in the broadcast licensing processes. The *Notice* was part of the Mass Media Bureau's streamlining initiative. Specifically, the *NPRM* proposed to streamline application processing by reducing form length and disclosure requirements, and to recast questions into a format compatible with electronic filing. The *NPRM* also proposed the elimination of the "no profit" rule, Section 73.3597(c), which restricts payments upon assignment or transfers of construction permits for unbuilt stations to reimbursement of the seller's expenses. In order to ensure that enforcement policies remain adequate in light of FCC streamlining efforts, the *Notice* sought comment as to whether existing enforcement measures remain sufficient, or whether new measures should be implemented. The *Notice* also sought comment on whether to adopt mandatory electronic filing

of 16 key Mass Media Bureau broadcast application and reporting forms, including sales forms and applications for new commercial stations, modifications to licensed facilities, and the children's programming report. The *Notice* sought comment on whether to phase in mandatory filing, and whether small businesses or other qualified entities should be exempt from the mandatory filing requirement.

In addition, this proceeding proposed to revise extension of construction permit procedures by (a) issuing all construction permits for a uniform three-year term; (b) extending permits only in circumstances where the permit itself is subject to administrative or judicial appeal or where construction delays are caused by an "act of God;" (c) prohibiting extra time for construction after a permit has been subject to a modification or assignment or transfer of control; and (d) making expired construction permits subject to automatic forfeiture. The Commission also invited comment on whether prior consent requirements for *pro forma* transfers and assignments, which are virtually always granted by the Commission, could or should be eliminated or modified. Finally, the *Notice* proposed to replace the current commercial broadcast station annual ownership report filing requirement with filings when license renewal applications are due and at the four-year mid-point of the license term. Licensees would still be required, however, to file an ownership report within 30 days of the consummation of an approved transfer or assignment.

**Streamlining of Radio Technical Rules.** On June 15, 1998, the Commission released a *Notice of Proposed Rulemaking and Order* (MM Docket No. 98-93) in a continuation of its broad-based initiative to streamline Mass Media Bureau rules, policies and licensing procedures. This radio technical rules initiative is designed to provide broadcasters with substantially greater flexibility in improving service and to create opportunities for coordinated facility improvements among stations. The *Notice* (a) invited comment on whether to permit "negotiated interference" proposals that would cause new or increased interference in the FM band where service gains would substantially outweigh newly created interference; (b) proposed to modify the contingent application rule to permit coordinated facility modifications among broadcasters; (c) proposed a signal propagation methodology that more accurately takes into account terrain effects to better predict where interference would not occur; and (d) proposed other changes to promote greater technical flexibility in the FM service and to streamline and expedite the processing of applications to modify existing facilities in several services.

**Broadcast Auctions.** On August 18, 1998, following a rulemaking proceeding to implement provisions of the Balanced Budget Act of 1997, the Commission released a *Report and Order* (MM Docket No. 97-234) applying its expanded competitive bidding authority to award commercial broadcast station construction permits when there are mutually exclusive applications for analog frequencies. The new auction procedures will be used in all future licensing proceedings, as well as those involving pending commercial radio and television competing applications that were held in abeyance following the Court of Appeals decision in Bechtel v. FCC, which invalidate certain elements of the Commission's comparative selection



criteria. Auctions will result in a more expeditious resolution of these proceedings, thereby better serving the public interest through the prompt initiative of new broadcast service. To this end, questions as to an applicant's qualifications will only be entertained with respect to those pending and future applicants who ultimately become the winning bidder. It was also concluded that Congress intended that all mutually exclusive applications for secondary broadcast stations, such as low power television and FM and TV translators, should also be awarded by the use of auctions.

To fulfill its duty to promote dissemination of licenses among a whole variety of applicants and to ensure that certain designated entities have an opportunity to participate in the auctions, the Commission adopted a "new entrant" bidding credit for applicants with no, or a very few, media interests. The Commission reasoned that this bidding credit would help to ensure that small businesses and businesses owned by minority groups and women are given the opportunity to participate in the provision of spectrum-based services pursuant to Section 309(j) of the Communications Act, without raising any constitutional questions.

In accordance with the exemptions set forth in the statute, the Commission's expanded competitive bidding authority did not allow the use of auctions to choose among mutually exclusive applicants to operate on frequencies reserved for noncommercial educational broadcast service. In addition, the Commission stated that it lacked sufficiently focused comment to enable it to resolve the question of how to proceed in situations involving unreserved or "commercial" frequencies where one or more of the competing applicants is a noncommercial entity. Accordingly, the Commission announced that it would seek additional comments with respect to these matters in its ongoing rulemaking proceeding reexamining the comparative selection standards for competing noncommercial educational applicants.

Since the statute lacked an expressed exemption for the Instructional Television Fixed Service, the Commission concluded that auctions would also be used to resolve pending and future cases involving competing ITFS applications. Given the instructional nature of the service and the long-standing reservation of ITFS spectrum for noncommercial educational use, the Commission was concerned that Congress may not have intended its expansion of the Commission's competitive bidding authority to include ITFS. Accordingly, the Commission stated that it would not commence ITFS auctions immediately in order to allow it to request and obtain Congressional guidance.

**Broadcast Ownership Rules.** On March 12, 1998, the Commission adopted a *Notice of Inquiry* (MM Docket No. 98-35) that reviews four rules that were not modified by the 1996 Telecom Act: UHF Television Discount; Daily Newspaper/Broadcast Cross-Ownership Rule; Cable/Television Cross-Ownership Rule; and Experimental Broadcast Station Multiple Ownership Rule. Also, the *Notice of Inquiry* reviews three rules that were recently modified by the FCC in accordance with provisions of the 1996 Telecom Act: National Television Ownership Rule; Local Radio Ownership Rules; and Dual Network Rule.

The Commission also reviewed and restated its approach to granting conditional waivers of broadcast ownership rules that are under active consideration by the Commission in a rulemaking or inquiry proceeding.

## **BROADCAST LICENSE AND PERMIT REVOCATION**

The following are licenses and construction permits revoked by the Commission.

<b>Call letters</b>	<b>Location</b>	<b>Date of revocation order</b>
KUMA	Yuma, AZ	02-20-39
WSAL	Salisbury, MD	10-24-39
WWPN	Middlesboro, KY	10-16-47
KGAR, KGAR-FM	Garden City, KS	02-27-48
WPBP	Mayaguez, PR	12-22-48
KCRO	Englewood, CO	10-14-49
KWIK	Burbank, CA	12-14-49
KPAB	Laredo, TX	01-26-50
WXLT	Ely, MN	05-23-50
KFMA	Davenport, IA	06-21-50
KALA	Sitka, AK	05-21-52
WSHA(TV)	Sharon, PA	10-27-54
KOTO	Albuquerque, NM	06-22-55
WGAV	Amsterdam, NY	09-25-57
KHCD	Clifton, AZ	07-23-58
KAJK(TV)	Reno, NV	06-03-59
KBOM	Bismarck-Mandan, ND	11-30-60
KLFT	Golden Meadow, LA	01-19-61
WIOS	Tawas City-East Tawas, MI	12-20-61
KPSR(FM)	Palm Springs, CA	07-19-61
WLOV(FM)	Cranston, RI	11-01-61
KCPA(FM)	Dallas, TX	02-12-62
WGRC	Green Cove Springs, FL	02-20-62
KWK	St. Louis, MO	05-27-63
WBMT	Black Mountain, NC	06-26-63
WELF-FM	Glen Ellyn, IL	03-11-64
WELG-FM	Elgin, IL	03-11-64
WCLM(FM)	Chicago, IL	09-27-64
WHHL	Holly Hill, SC	06-22-66
WPFA	Pensacola, FL	05-11-66
WSRA	Milton, FL	08-01-67
WEKY	Richmond, KY	05-03-68
KDFR(FM)	Tulare, CA	07-03-68

KLSU	White Castle, LA	03-26-73
WFAN-TV	Washington, DC	04-16-74
WMET(TV)	Baltimore, MD	04-16-74
WVGB	Beaufort, SC	06-24-76
WCLY	Columbia, PA	05-19-77
WLLE	Raleigh, NC	07-21-77
KKUZ-AM	Terrance Lake, WA	01-13-89
KRGL-AM	Myrtle Creek,OR	05-05-89
WRPZ-AM	Paris, KY	08-22-90
WBBY(FM)	Westerville, OH	02-21-90
WKSP-AM	Kingstree, SC	08-01-91
WPSC-AM	Pageland, SC	02-07-92
WDAT-AM	Amory, MS	08-03-92
WAST(AM)	Ashtabula, OH	08-19-92
WORI-AM	Oak Ridge, TN	06-24-92
KOKY-AM	Jacksonville, AR	07-13-92
WKU(AM)	Parrish, AL	11-11-92
WFRK(AM)	Coleman, FL	01-07-93
KBRS(AM)	Springdale, AK	08-03-93
WKLO(AM)	Danville, KY	08-26-93
KUCB(FM)	Des Moines, IA	02-02-96
KLEH(AM)	Anamosa, IA	11-05-96
WSJR(AM)	Madawaska, ME	11-05-96
WKZF(FM)	Bayboro, NC	11-14-96
KZOT(AM)	Marianna, AR	11-20-96
WLVC	Fort Kent, ME	12-10-96
KRBG(FM)	Canadian, TX	02-01-97
WAYB(AM)	Waynesboro, VA	02-09-97
KRKE	Aspen, CO	02-24-97
KFCC(AM)	Bay City, TX	04-22-98
KUHD(AM)	Port Neches, TX	05-19-98
WBOW(AM), WBFX(AM), WZZQ(FM)	Terre Haute, IN	06-25-98

## MASS MEDIA STATISTICS

### Current Broadcast Authorizations

Outstanding broadcast authorizations for major services at the close of FY98 totaled 27,058, an increase of 185 over FY97.

Class	Sept. 30, 1997	Sept. 30, 1998	Increase or (decrease)
Standard (AM)	4,970	4,979	9
Frequency Modulation (FM)	6,107	6,168	61
Educational FM	2,240	2,277	37
UHF Commercial TV	763	792	29
VHF Commercial TV	575	587	12
UHF Educational TV	259	263	4
VHF Educational TV	128	128	---
LPTV/TV Translators (UHF-VHF)	8,230	8,002	(228)
FM Translator and Booster	<u>3,601</u>	<u>3,862</u>	<u>261</u>
Totals	26,873	27,058	185

There were 15,194 AM, FM and TV broadcast stations authorized at the close of FY98. A total of 13,956 had operating authorizations, and 1,238 were under construction.

Class	Licensed Stations Sept. 30, 1997	Outstanding Construction Permits for New Stations Sept. 30, 1997	Licensed Stations Sept. 30, 1998	Outstanding Construction Permits for New Stations Sept. 30, 1998
Standard (AM)	4,811	159	4,734	245
Frequency Modulation (FM)	5,510	597	5,639	529
Educational FM	1,906	334	2,000	277
UHF Commercial	639	124	656	136
VHF Commercial TV	558	17	559	28
UHF Educational TV	242	17	243	20
VHF Educational TV	<u>124</u>	<u>4</u>	<u>125</u>	<u>3</u>
Totals	13,790	1,252	13,956	1,238

## NONHEARING APPLICATIONS STATISTICS

### Standard Broadcast (AM), Frequency Modulation (FM) - Commercial and Educational, and FM Translators and Boosters

Class	On hand Oct. 1, 1997	New	Granted	Dismissed Denied Returned	Designated for hearing	On hand Oct. 1, 1998
AM/FM New stations and major changes	2,145	822	650	329	0	1,988
FM Translators and Boosters						
New stations and major changes	540	503	406	180	0	457
Assignments and transfers	673	4,032	3,887	157	2	659
Renewals	2,507	2,969	4,222	34	0	1,220
Licenses	935	1,555	1,404	48	0	1,038
Modifications and Extensions	676	1,811	1,608	217	0	662

### Television (TV) (Commercial and Educational)

New stations and major changes	771	3	88	105	0	581
Assignments and transfers	93	543	500	22	0	114
Renewals	147	556	529	0	0	174
Licenses and other	451	248	243	43	0	413

### LPTV/TV Translators and Boosters

New stations and major changes	645	14	326	142	0	191
Assignments and transfers	56	307	275	18	0	70
Renewals	386	3,603	3,392	0	0	597
Licenses and other	151	2,471	1,255	140	0	1227

### Instructional TV Fixed

New stations and major changes	1,135	70	484	150	0	571
Assignments and transfers	8	8	11	0	0	5
Renewals	67	111	118	8	0	53
Licenses and other	632	1,098	1,082	9	0	639

# **Common Carrier Bureau**

## **Overview**

The FCC has jurisdiction over interstate communications services such as telephone calls between states. These services also include the connections to local customers that local exchange carriers (LECs) provide to long distance telephone companies. Under the Communications Act of 1934, as amended by the 1996 Act, the FCC is charged with ensuring that common carriers provide services at just, reasonable, and affordable prices and in a nondiscriminatory manner. Over the past three years, the FCC's work has been dominated by its efforts to implement the 1996 Act's "pro-competitive, deregulatory national policy framework" to bring greater competition to all communications markets and to ensure that universal service and other public interest provisions of the Act are fully implemented in a manner that yields the best results for the American people.

The Common Carrier Bureau implements FCC regulations and programs designed to meet these objectives. The FCC's Common Carrier Bureau has responsibility for FCC policies concerning telephone companies that provide interstate telecommunications services to the public through the use of wire-based transmission facilities. These companies, called common carriers, provide voice, data, and other transmission services. The Common Carrier Bureau seeks to encourage competition in various telephone markets and to ensure that the FCC's regulations do not impede the development of competition. Where competition does not yet exist, or where it fails to protect consumers, the Bureau enforces Commission rules and policies that are designed to ensure that the Communications Act mandate of just, reasonable and non-discriminatory rates for interstate services is fulfilled. As the industry has evolved from an integrated monopoly to an intensely competitive industry, the FCC and the Common Carrier Bureau have worked to adapt the Communications Act to a rapidly changing industry.

The Common Carrier Bureau works closely with the other operating Bureaus, especially the International Bureau, the Wireless Telecommunications Bureau, and the Cable Services Bureau, to coordinate related matters. The Common Carrier Bureau also works closely with state regulators on the many issues that affect both jurisdictions. On issues such as universal service, the FCC and the states work together through the formation of a Federal-State Joint Board, whose members are drawn from the FCC and from state regulatory bodies.

## **Bureau Organization**

In 1998, the Common Carrier Bureau had a staff of approximately 350. The Common Carrier Bureau is organized into seven divisions:

The **ACCOUNTING SAFEGUARDS DIVISION** develops and administers accounting and reporting programs to provide the Commission with information about communications common carriers with which to measure the impact of Commission policies on carriers and the network and to serve as a foundation for regulatory decision-making. The Division also conducts a comprehensive program of field audits and investigations of carriers' financial and operating practices, procedures, and records to verify that carriers are complying with the Commission's rules.

The **ACCOUNTING POLICY DIVISION** is responsible for implementing and administering the provisions of section 254 of the Communications Act of 1934, which are designed to ensure universal availability of affordable telecommunications services and to extend the availability of advanced telecommunications to schools and rural health care providers. The Division is also responsible for administering jurisdictional separations under Part 36 of the Commission's rules.

The **COMPETITIVE PRICING DIVISION** is responsible for administering the tariffing provisions of sections 201 - 205 of the Communications Act of 1934, as amended, including the review of all domestic and international common carrier tariffs, and conducting tariff investigations. The Division is also responsible for implementing various sections of the 1996 Act, including the development of federal regulations relating to pricing of the various forms of interconnection, the administration of regulatory reform provisions relating to the review of local telephone company tariffs on a streamlined basis, and the development and implementation of forbearance as it relates to the tariffing and pricing of common carrier telecommunications services.

The **ENFORCEMENT DIVISION** is charged with addressing complaints filed pursuant to section 208 of the Act. All carriers, even those that the Commission has chosen not to regulate directly because of increased competition in the market place, are subject to certain consumer protection requirements. All users of telecommunications services retain the right to bring their formal or informal complaints directly to the Commission. The Division receives, processes, and assists in the resolution of tens of thousands of consumer complaints each year, providing an inexpensive, easily accessible, user friendly process for consumers to address a variety of grievances against common carriers, including complaints relating to billing issues, slamming, and cramming. The Division also adjudicates formal complaints filed against common carriers. These complaints frequently involve disputes between competing carriers or disagreements between carriers and their customers over the terms and conditions of service. The Division also monitors complaint data to identify trends in carrier practices and provide information for use by consumers and other enforcement organizations.

The **INDUSTRY ANALYSIS DIVISION** (IAD) gathers and publishes data about the telecommunications industry. It administers the Commission's programs for assisting low-income telephone subscribers. Pursuant to its data gathering activities, IAD



undertakes to advise the Commission, other Divisions of the Common Carrier Bureau and the public about data and trends in the telecommunications industry. Throughout the fiscal year IAD prepares numerous statistical reports that are published by the Commission and the Federal-State Joint Board, and answers thousands of inquiries from the public about telephone industry-related data and trends. IAD also conducts rulemakings and other public proceedings related to the Communications Act of 1934 and implementation of the Telecommunications Act of 1996.

The **NETWORK SERVICES DIVISION** (NSD) is responsible for the day-to-day coordination, planning, and execution of ongoing telecommunications numbering plan challenges and improvements to ensure the efficient utilization of current resources and to prevent number exhaust of the public switched telephone network. The Division is responsible for the technical standardization of communications equipment compatibility to protect network operation. NSD oversees the Telecommunications Service Priority System that allows and ensures the protection and restoration of vital communications based on established service requirement priorities. NSD serves as the Common Carrier Bureau's proponent to facilitate Year 2000 compliance within the telecommunications industry.

The **POLICY AND PROGRAM PLANNING DIVISION** is involved in most rulemaking and policy making proceedings that concern major issues of wireline telecommunications policy, other than access pricing. The Division has primary responsibility for implementing the interconnection requirements of the Telecommunications Act of 1996 and reviewing Bell Operating Company (BOC) applications to provide in-region interLATA service. The Division also has responsibility for reviewing most petitions for preemption of state and local telecommunications regulations filed by wireline carriers pursuant to the 1996 Act. The Division recommends rules and regulatory programs that are designed to promote competition in the provision of telecommunications services and promote unbundling of network services and features useful to consumers, other carriers, and information service providers as well as ensuring that consumers benefit from competition in the interexchange market. The Division develops rules and policies in such areas as interconnection, number portability, and the interexchange market.

### **Major Proceedings**

#### **ACCESS CHARGE REFORM (CC Docket Nos. 96-262 and 97-250)**

In December 1997, incumbent LECs filed tariffs implementing most of the changes introduced by the Access Charge Reform *First Report and Order*. On June 1, 1998,

the Commission released a *Memorandum Opinion and Order*, completing its investigation of the tariffs. These changes modified the interstate access rate structure rules by requiring incumbent price cap LECs to move recovery of their costs to a manner that is more reflective of the way those costs are incurred. To the extent possible, costs that do not vary with the amount of usage are now recovered through flat-rated charges, and costs that do vary with the amount of usage are recovered through traffic-sensitive, per-minute charges. On August 19, 1998, the United States Court of Appeals for the 8th Circuit affirmed the Access Charge Reform *First Report and Order* in all respects.

### **ADVANCED SERVICES (CC Docket Nos. 98-146 and 98-147)**

On August 7, 1998, the Commission released a *Memorandum Opinion and Order (Order)* and *Notice of Proposed Rulemaking (NPRM)* proposing actions to encourage all wireline providers, both incumbent local telephone companies and their competitors, to provide advanced telecommunications services.

In the *Order*, the Commission found that an incumbent local telephone company must interconnect its data network with the data networks of competitive providers of telecommunications services. The Commission also clarified that the facilities and equipment used by an incumbent to provide advanced services are network elements and subject to the 1996 Act's unbundling obligations. In addition, the Commission clarified that incumbent local telephone companies are required to offer for resale at a wholesale discount all advanced services provided to retail customers. The Commission also concluded that it did not have statutory authority to forbear from the market-opening requirements placed on incumbents in sections 251 and 271 of the Act until those requirements have been fully implemented.

In the *NPRM*, the Commission proposed an optional alternative pathway for an incumbent local telephone company willing to offer advanced services on the same footing as other competitors. Specifically, the Commission proposed that, under certain circumstances, a separate affiliate of the incumbent offering advanced services would not be regulated as an incumbent local exchange carrier, and would not be subject to certain statutory requirements as an incumbent. The Commission proposed certain safeguards that would apply to such an affiliate, and sought comment on those safeguards. In addition, the Commission proposed and sought comment on several rules regarding the provision of collocation space and unbundled network elements by incumbent local exchange carriers.

Also on August 7, 1998, the Commission released a *Notice of Inquiry*, pursuant to the mandate of Section 706(b) of the Communications Act of 1996. The Commission's *Notice of Inquiry* was designed to compile a record about the status of broadband capabilities of existing and planned networks by asking commenters to describe the

assets, abilities and incentives of companies that own the networks. The *Notice* also sought comment about how the Commission could determine whether advanced telecommunications capability is being deployed in a "reasonable and timely fashion," by asking questions about current supply of and demand for such services. Finally, the *Notice* invited proposals for Commission action if the Commission determined that advanced telecommunications capability is not being deployed in a reasonable and timely fashion.

**AT&T ET AL. V. AMERITECH, US WEST, AND**  
(File No. E-98- 41-43)

On September 28, 1998, the Commission issued a decision in AT&T Corporation, et al. v. Ameritech Corporation, Qwest Communications Corp. and U S WEST Communications, Inc. resolving several formal complaints concerning the lawfulness of two separate business agreements between Ameritech and Qwest and between U S WEST and Qwest. The agreements resulted in both Ameritech and U S WEST providing, under the brand names CompleteAccess and Buyer's Advantage, respectively, a package of services that included Qwest's long distance service. The Commission concluded that Ameritech's and U S WEST's business agreements with Qwest resulted in their provision of long distance service, in violation of section 271 of the Act. The Commission, in determining that Ameritech and U S WEST unlawfully were providing long distance service through these business agreements, found that the companies' involvement in the long distance market enabled them to obtain competitive advantages, thereby reducing their incentive to cooperate in opening their local markets to competition. The Commission outlined factors relevant to making such a determination, including whether the company obtains material benefits uniquely associated with the ability to include a long distance component in a combined service offering; whether the company is effectively holding itself out as a provider of long distance service; and whether the company is performing activities and functions that are typically performed by those who furnish long distance service.

**CUSTOMER PROPRIETARY NETWORK INFORMATION (CPNI)**  
(CC Docket No. 96-115).

On February 26, 1998, the Commission issued a *Second Report and Order and Further Notice of Proposed Rulemaking* implementing the statutory obligations of section 222 of the Telecommunications Act of 1996. In addition, the Commission undertook a review of the current regulatory customer proprietary network information (CPNI) framework and addressed issues deferred to this proceeding from other Commission proceedings. Specifically, the *Order* modified previous rules and procedures as follows. First, the Commission 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 their carrier. Second, before carriers may use CPNI to market service outside the

customer's existing service relationship, the Commission required that carriers obtain express customer approval. The Commission further required carriers to provide a one-time notification of customers' CPNI rights prior to any solicitation for approval. Finally, the Commission eliminated the *Computer III* CPNI framework in light of the comprehensive regulatory scheme Congress established in section 222.

**FORMAL COMPLAINTS – IMPLEMENTATION OF THE 1996 ACT,  
AMENDMENT OF RULES GOVERNING PROCEDURES TO BE FOLLOWED  
WHEN FORMAL COMPLAINTS ARE FIELD AGAINST COMMON  
CARRIERS  
(CC Docket No. 96-238)**

On November 25, 1997, the Commission released a *Report and Order* adopting new and revised rules establishing the procedures governing formal complaints filed against common carriers pursuant to section 208 of the Act. Revised rules were necessitated by the Telecommunications Act of 1996, which imposed 90-day to 5-month deadlines on the Commission to resolve certain categories of formal complaints. The new rules and procedures are designed to satisfy these deadlines and to speed the resolution of all formal complaints. Generally, the revised rules are intended to promote settlement efforts, improve the utility and content of pleadings, and eliminate or curtail certain pleading and discovery practices.

On July 14, 1998, the Commission released a *Second Report and Order* establishing rules for an Accelerated Docket. Under the Accelerated Docket rules, parties to a dispute are required to participate in settlement discussions supervised by Commission personnel. Only if these discussions fail to resolve a dispute (and the dispute is otherwise appropriate for handling on a fast-track basis) are matters accepted onto the Accelerated Docket. Once accepted onto the docket, cases are subject to accelerated discovery, which may include depositions and extensive document discovery. The docket's rules also allow parties to present their arguments in a live, hearing-type proceeding, rather than merely submitting briefs. The rules for the Accelerated Docket call for issuance of an order disposing of cases within 60 days of the filing of the complaint.

**MERGER APPLICATIONS**

Several companies filed with the Commission during 1998 applications for transfer of control of certain wireless licenses and section 214 authorizations. The transfers of control of these licenses and authorizations are necessary to effectuate the mergers between these companies. Several of these applications have been granted (WorldCom/MCI, AT&T/TCG, SBC/SNET), while two others are pending, (SBC/Ameritech, Bell Atlantic/GTE).

On July 23, 1998, in CC Docket No. 98-24, the Commission released an *Order* approving the transfer of licenses associated with the merger between AT&T Corp. and Teleport Corporation Group. The Commission found, in brief, that the merger will have no anti-competitive effects and that the merger likely will create an entity that will enter local markets more quickly than would either of the merging parties on its own.

On September 14, 1998, in CC Docket No. 97-121, the Commission approved the transfer of communications licenses and authorizations from MCI Communications Corporation to WorldCom, Inc., subject to two conditions: (1) MCI must complete divestiture of its Internet assets prior to the close of its merger with WorldCom; and (2) the transfer of MCI's direct broadcast satellite license to WorldCom is subject to the outcome of pending applications for review of the initial license grant to MCI. The Commission found that, with these conditions, the merger would serve the public interest.

On July 24, 1998, SBC and Ameritech filed joint applications under sections 214 and 310(d) of the Communications Act, requesting Commission approval of the transfer of control to SBC of licenses and authorizations controlled or requested by Ameritech or its affiliates or subsidiaries (CC Docket No. 98-141). That merger was pending at the end of Fiscal Year 1998.

**OSS NPRM  
(CC Docket No. 98-56, RM 9101)**

In the *Local Competition First Report and Order*, the Commission concluded that, pursuant to sections 251(c)(3) and (c)(4) of the Communications Act, an incumbent LEC must provide nondiscriminatory access to its operations support systems (OSS) for five functions: pre-ordering, ordering, provisioning, maintenance and repair, and billing. With respect to interconnection, the Commission concluded that, pursuant to section 251(c)(2)(C), an incumbent LEC is required to provide interconnection between its network and that of a requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate, or any other party. Congress required incumbent LECs to make network elements available to competing carriers on an unbundled basis. Pursuant to its statutory authority, the Commission identified operator services and directory assistance as network elements that must be provided on an unbundled basis in a nondiscriminatory manner.

On May 30, 1997, LCI and CompTel jointly filed a petition asking the Commission to initiate a rulemaking proceeding to address, among other things, performance measurements and reporting requirements for the provision of OSS functions. On April 17, 1998, the Commission released a *Notice of Proposed Rulemaking* seeking comment on a set of model performance measurements and reporting requirements for OSS, interconnection, and access to operator services and directory assistance.

## **SECTION 271 APPLICATIONS**

On December 24, 1997, the Commission denied BellSouth's application for authorization to provide in-region, interLATA service in South Carolina. The Commission concluded that BellSouth was not eligible to proceed under Track B, and that it had not yet demonstrated that it generally offers each of the terms of the competitive checklist. Specifically, the Commission found that BellSouth had failed to demonstrate that it: (1) offers nondiscriminatory access to its operations support systems; (2) offers nondiscriminatory access to unbundled network elements in a manner that permits competing carriers to combine them; and (3) offers certain retail services at discounted rates as required by the 1996 Act. The Commission found, however, that BellSouth had demonstrated that it offers nondiscriminatory access to 911 and E911 services, and that BellSouth's proposed inbound telemarketing script is acceptable under section 272 of the 1996 Act.

On February 3, 1998, the Commission denied BellSouth's application to provide in-region, interLATA service in Louisiana. The Commission found that, in several respects, BellSouth's application for Louisiana was materially indistinguishable from its application to provide long distance service in South Carolina, which the Commission had recently denied. The Commission concluded that BellSouth's Louisiana application failed to meet two aspects of the competitive checklist that it also failed to meet in its South Carolina application. First, BellSouth failed to demonstrate that it provides competing carriers with nondiscriminatory access to its operations support systems. Second, BellSouth did not satisfy the competitive checklist because it refused to offer certain individually-tailored customer contracts, or contract service arrangements, to competing carriers at a wholesale discount.

On July 9, 1998, BellSouth filed a second section 271 application to provide in-region, interLATA service in Louisiana. Action on this was pending at the close of the fiscal year.

## **SLAMMING**

On April 21, 1998, the Commission revoked the operating authority of the Fletcher Companies for engaging in the unauthorized change of consumers' preferred interexchange carriers (slamming), and numerous other violations of the Communications Act and the Commission's rules (CC Docket No. 97-144). The Fletcher Companies, a group of long distance telephone companies, were barred from providing interstate common carrier services without obtaining the prior consent of the Commission. In addition, the Commission assessed forfeitures against the Fletcher Companies totalling \$5,681,500. The action represented the first revocation order and largest total forfeiture assessed by the Commission for slamming.

On July 6, 1998, the Commission issued a *Notice of Apparent Liability for Forfeiture (NAL)* against All American totaling 1.04 million dollars, which, at the time, was the

third largest proposed forfeiture amount in the Commission's history. The *NAL* alleged that All American had engaged in the unauthorized change of 13 consumers' preferred interexchange carriers (slamming) through the use of forged Letters of Authorization. The *NAL* was unique in its application of the Commission's Forfeiture Policy Statement and Guidelines to propose a forfeiture amount of \$80,000 per slamming violation.

**TARIFF STREAMLINING  
(CC Docket No. 96-187)**

In the *Tariff Streamlining Report and Order*, CC Docket No. 96-187, the Commission adopted regulations implementing tariff streamlining provisions of the Telecommunications Act of 1996. The Commission determined that it would establish a program of mandatory electronic filing of tariffs and associated documents, via the Internet, by incumbent local exchange carriers. On July 1, 1998, the Commission inaugurated the Electronic Tariff Filing System (ETFS). ETFS is an Internet based system through which incumbent local exchange carriers submit official tariffs and associated documents to the Commission in lieu of filing paper copies with the Secretary's Office. Mandatory filing by incumbent local exchange carriers via ETFS began on July 1, 1998. In addition, the public may also use ETFS, via the Internet, to view these electronically filed tariffs and associated documents.

**TELECOMMUNICATIONS RELAY SERVICES (TRS) AND SPEECH-TO-SPEECH SERVICES FOR INDIVIDUALS WITH HEARING AND SPEECH DISABILITIES  
(CC Docket No. 98-67)**

On May 14, 1998, the Commission adopted a *Notice of Proposed Rulemaking*, released May 20, 1998, proposing rule amendments that will enhance the quality of TRS, and broaden the potential universe of TRS users. The proposals further promote access to telecommunications for the millions of persons with disabilities who might otherwise be foreclosed from participation in the increasingly telecommunications and information-oriented society. First, the Commission proposed to require that common carriers providing voice transmission service must ensure that nationwide speech-to-speech (STS) relay services are available to users with speech disabilities throughout their service areas. Second, the Commission proposed a number of amendments to its current TRS minimum standards that will improve the overall effectiveness of the TRS program. For example, the Commission proposed to amend the speed-of-answer rules to make the experience of persons using TRS in placing a telephone call through a TRS center more functionally equivalent to the experience of voice callers using the voice telephone network. Third, the Commission proposed amendments to its enforcement rules to improve its oversight of certified state TRS programs and its ability to compel compliance with federal mandatory minimum standards for TRS. One of those proposals would require TRS programs to notify the Commission of substantive changes to their program within 60 days of the effective date of the change, and to file documentation demonstrating the state program remains in compliance with all the Commission's mandatory minimum standards.

**TELEPHONE NUMBER PORTABILITY  
(CC Docket No. 95-116)**

Telephone number portability refers to the ability of residential and business consumers to retain their telephone numbers when switching from one local telephone service provider to another. To remove the barrier to local competition caused by the inability of customers to retain their telephone numbers when changing local service providers, section 251(b)(2) of the amended 1934 Communications Act requires all LECs, both incumbents and new entrants, "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." To prevent the cost of providing number portability from itself becoming a barrier to local competition, section 251(e)(2) requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."

The Commission released a combined *Order and Further Notice of Proposed Rulemaking* in July 1996 to begin implementing number portability. In the *First Report and Order*, the Commission directed LECs to use currently available techniques such as call forwarding to offer an interim form of number portability. On August 18, 1997, in its *Second Report and Order*, the Commission adopted a number of recommendations made by the North American Numbering Council regarding, among other things, the technical and operational standards for the provision of long-term number portability by wireline carriers.

In a *Third Report and Order*, adopted on May 12, 1998, the Commission addressed issues associated with the costs of providing long-term number portability. Specifically, the Commission addressed the categorization of costs; the funding of the regional databases necessary to provide long-term number portability; and standards for recovery of the carrier-specific costs directly related to the implementation and provision of telephone number portability. With respect to carrier-specific costs, the Commission adopted a narrow view of the costs permitted to be recovered. Essentially, recoverable costs are only those that would not have been incurred "but for" portability, and that were incurred "for the provision of" number portability. Pursuant to that definition, costs that carriers incur "as an incidental consequence of number portability" cannot be recovered as number portability costs. The *Third Report and Order* also prohibited the use of general overheads in determining number portability costs. Finally, the Commission permitted, but did not require, incumbent LECs subject to rate-of-return or price-cap regulation to recover their carrier-specific costs directly relating to providing number portability through a federal charge assessed on end-users, to begin no earlier than February 1, 1999, and last no longer than 5 years. Carriers not subject to rate regulation -- CLECs, CMRS providers and non-dominant IXCs -- may recover their carrier-specific costs in any lawful manner consistent with their obligations under the Communications Act.



**TOLL FREE SERVICE ACCESS CODES  
(CC Docket No. 96-254)**

On March 31, 1998, the Commission released a *Fourth Report and Order and Memorandum Opinion and Order* that concluded that vanity numbers in the 877 toll free code, and in toll free codes beyond 877, shall be released and made available on a first-come, first-served basis as each toll free code is deployed. The *Order* further concluded that a right of first refusal shall be offered to current 800 subscribers holding 800 vanity numbers that correspond to the 888 vanity numbers that were initially set aside. If the 800 subscriber refrains from exercising its option to reserve the corresponding 888 vanity number, that number shall be released and made available on a first-come, first-served basis.

**UNIVERSAL SERVICE  
(CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72)**

The Commission has continued to issue rulemaking and other orders that are necessary to implement the universal service provisions of the 1996. The *Commission's First Report and Order* in this docket was issued in May 1997. Included among the issues were: the principles of universal service, including competitive neutrality; services to be included within the definition of universal service; the influence of affordability on subscribership; the criteria for designating telecommunications carriers eligible for universal service support; service areas and unserved areas; support for both rural and non-rural high cost local exchange carriers; universal service support for low income consumers; issues unique to insular areas; methods of supporting and enhancing deployment of telecommunications services to schools and libraries and rural health care providers; interstate subscriber line charges and carrier common line charges; and administration of universal service programs. In FY 1998, the following actions were taken:

On December 30, 1997, the Commission issued the *Fourth Order on Reconsideration*, in which it clarified or made further findings regarding: (1) the rules governing the eligibility of carriers and other providers of supported services; (2) methods for determining levels of universal service support for carriers in rural, insular, and high cost areas; (3) support for low-income consumers; (4) the rules governing the receipt of universal service support under the schools and libraries and rural health care programs; (5) the determinations of who must contribute to the new universal service support mechanisms; and (6) administration of the support mechanisms.

On April 10, 1998, the Commission issued a *Report to Congress*, addressing issues relating to universal service implementation and the regulatory status of the Internet, including IP telephony.

On May 8, 1998, the Commission issued a *Report to Congress* proposing that the Universal Service Administrative Company, the current Administrator of the high cost and low income support mechanisms, also administer the universal service support

mechanisms for schools and libraries and rural health care providers. The *Report* also supplied information concerning funding and disbursements for the schools and libraries support mechanism.

### **Biennial Review**

Section 11 of the Communications Act, as amended, requires the Commission to review all of its regulations applicable to providers of telecommunications service in every even-numbered year, beginning in 1998, to determine whether the regulations are no longer in the public interest due to meaningful economic competition between providers of the service and whether such regulations should be repealed or modified. The first biennial regulatory review presented an excellent opportunity for a serious top-to-bottom examination of all of the Commission's regulations, not just those statutorily required to be reviewed.

As part of the 1998 Biennial Regulatory Review, each of the operating Bureaus, together with the Office of General Counsel, hosted a series of public forums and participated in brown-bag practice group lunches with the Federal Communications Bar Association to solicit informal input from the public. Beginning in January 1998, the Commission initiated a series of rulemaking proceedings as part of the 1998 Biennial Regulatory Review. FCC staff released a list of 31 proceedings which it has proposed that the Commission initiate as part of the review. In August 1998, the FCC announced significant progress on 1998 Biennial Review. Highlights are as follows:

**Computer III.** On January 28, 1998, the Commission adopted a *Further Notice of Proposed Rulemaking (FNPRM)* (CC Docket No. 95-20) proposing to streamline the safeguards under which the BOCs provide information (*i.e.*, enhanced) services, such as data processing and electronic messaging. The safeguards exist to encourage BOC provision of new technologies and innovative information services, while ensuring that the BOCs make their networks available for use by competitive providers of such services. The FNPRM aims to strike a balance between the Commission's goal of deregulating where competition has developed, and its recognition that until full competition is realized in the local exchange market, certain safeguards may still be necessary. The proposals are also designed to harmonize the Commission's existing safeguards established in the Computer III proceeding with the Telecommunications Act of 1996.

**Testing New Technology.** On June 11, 1998, the Commission released a *Notice of Inquiry* (CC Docket No. 98-94) which solicited public comment about the effects of existing Title II regulation on experiments involving advanced telecommunications technology conducted by regulated firms and others.

**Accounting and Cost Allocation Requirements.** On June 17, 1998, the Commission released a *Notice of Proposed Rulemaking* (CC Docket No. 98-81) proposing rule changes that would modify its accounting and cost allocation to reduce the administrative burden

on mid-sized incumbent local exchange carriers while maintaining the necessary degree of oversight and monitoring on such carriers.

**Signal Power Limitations.** On September 16, 1998, the Commission issued a *Notice of Proposed Rulemaking*, (CC Docket No. 98-163) proposing to relax the signal power limitations contained in Part 68 of the Commission's rules and seeking comment on the benefits and harms, if any, that may result from this change. This change would allow Pulse Code Modulation modems, which are used by Internet Service Providers and other online information service providers to transmit data to consumers, to operate at higher signal powers and to transmit data at moderately higher speeds to end-users.

**Streamlined Reporting Requirements.** On September 25, 1998, the Commission released a *Notice of Proposed Rulemaking and Notice of Inquiry* (CC Docket No. 98-171) that proposed to simplify four reporting requirements associated with the administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability and Universal Service Support mechanisms so that carriers may satisfy filing requirements by filing a single worksheet. The Commission's goal is to eliminate the burdens on regulated carriers and reduce the public costs of regulation by conserving Commission staff resources associated with auditing and cross-checking data submissions.

# Cable Services Bureau

## Overview

The Cable Services Bureau provides a single point-of-contact for consumers, community officials and the industry for cable related issues pending before the Commission. Other duties include policy and rulemaking in cable television and enforcement of the cable television related provisions of the 1996 Telecommunications Act and the 1992 Cable Act.

Increasing competition in the markets for the delivery of multi-channel video programming and providing more consumer choice in the selection of a video provider continue to be the major goals of the Cable Services Bureau. During the past fiscal year, the Cable Services Bureau moved forward a number of pro-competition proceedings arising from the 1996 Telecommunications Act. In addition to promoting competition, other important policy areas include promoting the availability to the public of cable television service and ensuring growth and development in the cable industry. The past year was also the final full year of federal cable rate regulation on the cable programming service tier (CPST). In the 1996 Telecommunications Act, Congress included a sunset of March 31, 1999, as the date rate regulation on the CPST would end. The Bureau will continue to receive and act upon local rate appeals of basic service tier rates.

The Cable Services Bureau is organized into four divisions: **Policy and Rules**, **Financial Analysis and Competition**, **Consumer Protection and Competition**, and **Engineering and Technical Services**. The Bureau also handles public inquiries and inquiries from other governmental offices through the **Office of Government and Public Outreach**.

## Major Proceedings

### **MANDATORY CARRIAGE OF DIGITAL TELEVISION SIGNALS (CS Docket No. 98-120)**

The Communications Act of 1934, as amended by the 1992 Cable Act, instructs the Commission to commence a proceeding to determine whether changes in the mandatory carriage rules are necessary to accommodate digital broadcast television signals on cable television systems. In 1995 and 1996 the Commission received comments on digital television signal carriage issues from broadcasters, cable operators, cable programmers, equipment manufacturers, public interest groups, and other interested parties in response to questions posed in the *Fourth Further Notice of Proposed Rule Making in MM Docket 87-268*. While these comments have been helpful in framing the issues, additional information was necessary to refresh the record and reflect recent changes in technology, policy, and law. A new *Notice of Proposed Rulemaking* was

adopted by the Commission on July 9, 1998, asking for new and updated information and arguments. Nearly 90 comments have been received. This *NPRM* officially renews the examination of issues involved in the cable carriage of digital television stations.

### **COMMERCIAL AVAILABILITY OF COMPETITIVE NAVIGATION DEVICES (CS Docket No. 97-80)**

Section 629 of the Communications Act requires the Commission to ensure the commercial availability of navigation devices, the equipment used to access video programming and other services from multichannel video programming services. On June 11, 1998, the Commission adopted rules intended to create a consumer market for this equipment. The rules require multichannel video programming distributors to separate security function from non-security functions by July 1, 2000. An exception is made for navigation devices that operate throughout the continental United States and are commercially available from unaffiliated sources. The rules also prohibit multichannel video programming distributors from selling or leasing new integrated boxes as of January 1, 2005.

### **PROGRAM ACCESS (CS Docket No. 97-248)**

On August 6, 1998, the Commission adopted an *Order* amending its program access rules (Section 628 of the Communications Act). The Commission found that its existing statutory forfeiture authority can be used in appropriate circumstances as an enforcement mechanism for program access violations. The Commission also affirmed its statutory authority to impose damages for program access violations. Where a program access defendant knew, or should have known, that it was engaging in conduct violative of Section 628, damages may be appropriate. The Commission found that the adoption of time limits for program access disputes served the public interest. The *Order* found that denial of programming cases (unreasonable refusal to sell, petitions for exclusivity, and exclusivity complaints) should be resolved within five months of the submission of the complaint to the Commission. All other program access complaints, including price discrimination cases, should be resolved within nine months of the submission of the complaint to the Commission. In the *Order*, the Commission also adopted a streamlined pleading cycle. Program access defendants now must file an answer within 20 days of service of the complaint and program access complainants must file a reply within 15 days of service of the answer. The *Order* retained the current system of Commission-controlled discovery.

**ENTERTAINMENT CONNECTIONS INC.  
(CS Docket No. 98-111)**

ECI is a satellite master antenna television (SMATV) provider that serves multiple dwelling units (MDUs) in Michigan. ECI subscribes to a tariffed video service provided by Ameritech, the local telephone provider to distribute its programming to various MDUs. ECI owns and controls the headend and interior wiring facilities and exercises editorial control over the content of its programming. Ameritech owns and controls the transmission facilities that use public rights-of-way. The City of East Lansing sought to have ECI obtain a franchise agreement as a cable operator. In response, ECI filed with the Commission a petition for a declaratory ruling that it is not a cable operator.

The Commission determined that ECI's facilities and Ameritech's facilities do not constitute a single, integrated cable system. The Commission also determined that, because Ameritech, and not ECI, "uses" the public rights-of-way as contemplated by the Communications Act, ECI also satisfies the private cable exemption of Section 602(7)(B). In granting ECI's motion for a declaratory ruling, the Commission noted that: (1) there is an absolute separation of ownership between ECI and Ameritech and there is nothing more than the carrier-user relationship between them; (2) ECI's facilities are located entirely on private property; (3) Ameritech provides service to ECI pursuant to a tariffed common carrier service; (4) Ameritech has no editorial control over the content of ECI's programming; (5) the facilities primarily used by Ameritech to provide service to ECI were not constructed at ECI's request; (6) there is capacity to serve several other programming providers; and (7) ECI has committed to make its drops available to other programming providers. The Commission notes that while other multichannel video programming providers have advocated a similar interpretation as ECI, its decision was expressly limited to the facts before the Commission as presented by ECI.

**CLOSED CAPTIONING OF VIDEO PROGRAMMING  
(MM Docket No. 95-176)**

On September 17, 1998, the Commission adopted an *Order on Reconsideration* revising the video programming closed captioning rules. The 1996 Act generally directed the Commission to adopt rules and implementation schedules for captioning of video programming, regardless of distribution technology, to ensure access to video programming by people with hearing disabilities. The 1996 Act also authorized the Commission to exempt classes of programming for which the provision of closed captioning would be economically burdensome. The Commission had previously adopted an order that included rules and implementation schedules for captioning of video programming ensuring access to video programming by persons with hearing disabilities. On reconsideration, the Commission was able to refine these rules further to make them more consistent with Congressional intent. The revised rules adopted by

the Commission will increase the amount of closed captioned programming available to the more than 22 million Americans with hearing disabilities.

**AT&T-TCI MERGER  
(CS Docket No. 98-178)**

The Commission initiated review of license transfer applications filed by AT&T Corp. and Tele-Communications, Inc., on September 14, 1998, in connection with the applicants' planned merger. In their application, AT&T and TCI stated that the merger would enable the merged company to provide facilities-based competition to the incumbent local exchange carriers in the residential and business markets, as well as long-distance telephone service, high-speed internet service, and traditional cable television service. On September 29, the Commission issued a *Public Notice* establishing dates for the filing of comments and reply comments. Working toward a first-quarter 1999 projected issuance date for the Commission's *Report and Order* on the merger, the Bureau began the process of evaluating the competitive impacts of the planned merger, as well as other issues affecting the public interest. Among the issues raised in the comments and *ex parte* presentations are arguments in favor of open access to the merged company's broadband facilities, with particular emphasis on access by competing internet service providers; program access conditions; digital must-carry requirements; and application of common carrier regulation to some or all of the services that the merged company will offer. The Bureau also participated in the planning of two en banc hearings to be convened by the Commission in October and December to consider the issues raised by this and other pending mergers.

**CABLE OWNERSHIP ATTRIBUTION RULES  
(CS Docket No. 98-82)**

On June 4, 1998, the Commission adopted a *Notice of Proposed Rulemaking* (FCC 98-112) regarding the cable television ownership attribution rules. The *Notice* sought comment on possible changes to these rules in light of recent developments in the cable industry, various Commission proceedings related to the issue of cable ownership, and the Commission's review, in a separate proceeding, of the broadcast attribution rules on which many of the cable attribution rules were based. Among other issues, the *Notice* sought comment on (1) whether any relevant differences exist between the cable and broadcasting industries that would support a distinct cable attribution standard; (2) whether certain debt/equity, business, contractual, or common purchasing relationships may allow an otherwise nonattributable interest holder to influence or control a cable system; and (3) whether to retain, modify, or eliminate the single majority shareholder exemption. The *Notice* also sought specific information as to the structure of the business arrangements involved in recent cable system partnerships, joint ventures, swaps, transfers, mergers and acquisitions.

The Commission's cable attribution rules define what constitutes a "cognizable interest" that triggers application of various Commission rules relating to the provision of cable television services. The attribution rules seek to identify those corporate, financial, partnership, ownership and other business relationships that confer on their holders a degree of ownership or other economic interest, or influence or control over an entity engaged in the provision of communications services such that the holders should be subject to the Commission's ownership regulations. Comments were due by August 14, 1998; the reply comment period closed on September 3, 1998.

### **HORIZONTAL OWNERSHIP RULES (CS Docket No. 98-264)**

On June 23, 1998, the Commission adopted an *Order and Further Notice of Proposed Rulemaking* (FCC 98-138) regarding the cable television horizontal ownership rules. Section 613 of the Communications Act requires the Commission to "prescribe rules and regulations establishing reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such a person, or in which such a person has an attributable interest."

The *Order* on the cable horizontal ownership limits addressed the pending reconsideration petitions and maintained the current rule which provides that no person may hold attributable interests in cable systems reaching more than 30% of all homes passed nationwide by cable. The *Order* generally denied a motion to lift the Commission's voluntary stay on enforcement of the 30% limit, but did lift the stay as to the rules' information reporting requirements.

The *Further Notice* sought to reexamine the cable television horizontal ownership rules to ensure consistency with the statutory objectives of these rules in the context of evolving market conditions. The *Notice* sought comment on whether, in light of evolving market conditions, 30% should remain the appropriate horizontal ownership limit. It also sought comment on whether the Commission should revise the rules to consider the presence in the market of all multichannel video programming providers rather than cable operators alone, and whether to base the limit on actual subscribers rather than on homes passed. It also asked for on the 35% minority-control allowance. Comments were due by August 14, 1998. The reply comment period closed on September 3, 1998.

### **TELEVISION RATING SYSTEM (THE "V-CHIP") (CS Docket No. 97-55, CS Docket No. 97-321, ET Docket No. 97-206)**

In March of 1998 the Commission adopted an *Order* finding acceptable the video programming rating system currently in voluntary use and established technical requirements for consumer electronic equipment to enable blocking of video



programming. These two actions continued the process of providing parents with the information and ability to make informed viewing decisions for their families.

These actions fulfilled the requirements of Section 551 of the 1996 Telecommunications Act which required the Commission to determine whether video programming distributors (1) have established acceptable voluntary rules for rating video programming that contains sexual, violent or other indecent material about which parents should be informed before it is displayed to children and; (2) have agreed voluntarily to broadcast signals that contain such ratings. Under section 551, the Commission was also required to adopt rules to require television receivers to block such programming that contains such material by decoding rating information transmitted via line 21 of the vertical blanking interval.

The National Association of Broadcasters (NAB), the National Cable Television Association (NCTA) and the Motion Picture Association of America (MPAA) (the Industry) jointly created the *TV Parental Guidelines*. The *TV Parental Guidelines* were subsequently revised on August 1, 1997, following discussions between the Industry and certain advocacy groups that had expressed concerns about the original Industry proposal. The Commission found that the Industry's *TV Parental Guidelines* established acceptable voluntary rating rules and that the near unanimous agreement to voluntarily broadcast signals containing the *TV Parental Guidelines* complied with the requirements of Section 551(e).

In a companion item the Commission adopted technical rules that require television receivers with picture screens 33 centimeters (13 inches) or greater to be equipped with features to block the display of television programming with a common rating, commonly referred to as "v-chip" technology. The v-chip will be phased in with half of television receiver models with picture screens 33 cm or greater required to have the v-chip by July 1, 1999, and all such models required to have the v-chip by January 1, 2000.

## **CABLE RATE COMPLAINTS**

The Bureau continued its efforts at resolving cable programming services tier (CPST) rate complaints this past year. The Telecommunications Act of 1996 and FCC rules require that complaints against the CPST rate be filed with the Commission by a local franchising authority (LFA) that has received subscriber complaints. An LFA may not file a CPST rate complaint unless, within 90 days after such increase becomes effective, it receives more than one subscriber complaint. The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPST rate. The 1996 Act requires that the Commission issue a final order resolving the complaint within 90 days of its receipt. If the Commission finds the rate to be unreasonable, it determines the correct rate and any refund liability.

During this past year the Bureau received 679 complaints filed by local franchise authorities. In 54% of these cases, the operator's rates were found to be reasonable. In the remaining 46% of cases, the Bureau ordered a rate reduction and refund. The Bureau also continues to process complaints filed prior to the passage of the 1996 Act. In this past year, the Bureau reviewed over 957 rate complaints resulting in 188 rate decisions being issued. The Bureau also resolved additional complaints through negotiated settlement of rate complaints with major cable operators. The Bureau's efforts in this regard continued to reduce administrative burdens on all parties and also provided subscribers with immediate refunds in many instances. The Commission, through the use of social contracts and rate resolutions, has resolved or proposed to resolve rate complaints affecting 26.7 million subscribers. To date, subscriber refunds ordered or proposed to be paid as a result of social contracts and resolutions total approximately \$56.3 million.

Consistent with the Commission's adoption of social contracts and rate resolutions with major cable operators, the Commission this year approved four additional rate resolutions with Century, TCI and Cablevision Systems. The Commission currently has one additional resolution pending which if adopted, will result in \$383,000 in refunds to 80,000 subscribers. These resolutions provide for a non-adjudicatory solution to rate complaints, providing certainty to operators and speedy refunds to consumers.

Highlights of the resolutions adopted during this fiscal year include:

- Century, which covered 155,700 subscribers, provided for \$4.6 million in refunds and resolved 280 rate complaints.
- TCI, which covered 1.1 million subscribers, provided for \$4.9 million in refunds and resolved 329 rate complaints.
- Cablevision Systems, which covered 1.2 million subscribers, provided for \$1.2 million in refunds and resolved 288 rate complaints.

## **ENGINEERING REPORT**

The Engineering & Technical Services Division processed the following during FY1998: 791 Cable Television Relay Service (CARS) microwave license applications, 8,528 Cable System Registrations and System Record Changes, 1,005 Aeronautical Frequency Notifications, and approximately 33,700 (annually) Basic Signal Leakage Criteria (CLI) Reports. Additionally, the Division initiated forfeitures totaling \$130,000 for CARS and cable signal leakage violations.

# Compliance and Information Bureau

## Overview

The Compliance and Information Bureau (CIB) is one of the FCC's primary points of contact with the public. CIB informs and educates licensees and permittees of important or new regulations and ensures compliance with FCC rules. It advises consumers about measures they can take to combat fraud and other illegal practices in the provision of communication services. It informs the Commissioners and other Bureaus about telecommunications problems and the needs of users, and it uses its technical expertise to solve problems in the communications environment.

The Bureau carries out its programs through 16 district offices, nine resident agent facilities, a toll-free National Call Center, and 14 remotely controlled monitoring and radio direction-finding sites located throughout the United States. Three regional offices, along with headquarters divisions and offices, develop and coordinate the Bureau programs and policies.

The **COMPLIANCE DIVISION** administers the compliance program. The Compliance Division staff in Washington is composed of the Investigations Group, the Legal Services Group, and Special Enforcement Teams. The compliance program involves field office and division staff activities such as inspecting radio stations for compliance with the Communications Act and the Commission's Rules, investigating the unlicensed or unauthorized operation of radio stations, resolving radio frequency interference problems not suitable for private sector resolution, and providing assistance to public safety and law enforcement agencies experiencing radio communications problems. CIB pursues administrative sanctions as well as civil and criminal court actions against persons and entities that violate the Communications Act or the Commission's Rules. During FY98 the Division, with the assistance of CIB's field offices, conducted a number of significant compliance and fact gathering inquiries, as well as investigative initiatives for other Commission Bureaus and Offices.

During FY98 the **EMERGENCY ALERT SYSTEM (EAS) STAFF** completed its work in assisting the Working Group on Natural Disaster Information Systems for the Office of Science and Technology Policy. It also assisted the Vice President's National Partnership for Reinventing Government office with development of a report titled, "Saving Lives With an All-Hazard Warning Network." EAS headquarters and district office staff participated in over 80 EAS workshops and seminars in FY98. Workshop participants included broadcasters, cable operators, federal, state and local officials. Many of the workshops were hosted by FCC appointed State EAS Chairs who work voluntarily in developing EAS plans for their states and communities. In FY98, the staff reviewed 10 State or Territory and 30 local EAS plans. The staff conducted a meeting of the National Advisory Committee (NAC). The NAC provides the FCC with

recommendations on EAS operations, policy, and rule makings. The staff developed a Cable EAS Handbook and assisted the cable industry in developing an EAS video training tape as training tools for cable operators who will become EAS participants in 1999.

The **NATIONAL CALL CENTER (NCC)** is the agency's primary source for consumer information. Staffed by consumer and communications industry specialists who are knowledgeable in all areas of FCC related issues, and using state-of-the-art technological tools, the NCC handled over 700,000 calls in FY98. Although an in-bound call center, the NCC also responded to 2,833 e-mails in FY98. The NCC provided statistical data for use in reports to Congress and other areas where such statistics were needed. High volume calls in FY98 were requests for information concerning potential violations of telephone consumer protection laws, including the unauthorized switching of residential long distance telephone service, or "slamming," and telephone access charges. The NCC also handled a large volume of calls requesting information concerning the Satellite Home Viewers Act (SHVA).

The **TECHNOLOGY DIVISION** supports the Bureau's compliance and public information functions through the Equipment and Standards Group (ESG) in Washington, DC, the Equipment Development Group (EDG) in Powder Springs, GA, and the High Frequency Direction Finding Center at Columbia, MD. The Technology Division also maintains a Communications and Crisis Management Center at its Washington, DC, headquarters. ESG establishes and reviews technical measurement procedures to determine compliance with FCC regulations and to provide regulatory feedback. It also develops the technical specifications for equipment used by FCC field offices, provides equipment and facilities used by those offices, and analyzes and interprets data collected by the field offices to improve CIB's operational effectiveness. EDG designs and constructs specialized equipment for field use that cannot be purchased "off the shelf" or economically contracted for in small quantities. It also has a patent program to protect the Commission's investment in unique devices that have been developed and patented by EDG. The High Frequency Direction Finding Center controls the direction finding network.

In FY98 the Technology Division completed construction and implementation of a new remotely controlled Interferometric Radio Direction Finding System at monitoring stations that were formerly staffed by Bureau personnel. The Division then filed for patents for some aspects of the technical design of this system. The Technology Division produced project instructions to be used when investigating pirate radio broadcasters, and modified and vetted a field-generated spreadsheet to be used for calculations of pirate radio field strength.

The EDG designed, installed, and tested a fixed automatic direction finding system for the Washington, DC, metropolitan area. This system will allow the Bureau to locate interference and resolve problems in the VHF and UHF frequency range that threaten

important communications channels. EDG also constructed and installed a fixed direction finding element in Duluth, GA, for use by the Atlanta FCC office in its enforcement mission. Additionally EDG designed, constructed, and delivered six new mobile investigative units with direction finding capability for use by the field staff.

The ESG conducted studies regarding potential interference to the Bureau's direction-finding network on over 100 license applications from the Mass Media Bureau and other Bureaus impacting on CIB's radio signal analysis capabilities. ESG also participated in a study to determine the effects of the radio noise floor on radio systems.

## **Major Proceedings**

### **SHIP INSPECTION PRIVATIZATION (CI Docket 95-55)**

The Commission adopted a *Report and Order* on April 20, 1998, which allows the private sector to conduct all required inspections of ship radio communications equipment to ensure that it meets U.S. Government safety standards for functioning during emergency conditions. Previously only FCC inspectors checked the communications equipment. The FCC had two goals in mind when it changed its rules to allow the use of private sector inspectors. One was to reduce the economic burdens on the public and the FCC. The other was to make it more convenient for the maritime industry by increasing the supply and availability of competent, private sector inspectors to conduct radio equipment inspections. The FCC established safeguards to ensure that the use of private sector inspectors does not compromise safety.

### **IMPORTATION OF RADIO FREQUENCY DEVICES CAPABLE OF CAUSING HARMFUL INTERFERENCE (CI Docket 98-69)**

The Commission adopted an *Order and Notice of Proposed Rule Making* on May 18, 1998, that sought comment on two proposals involving the importation of radio frequency devices. The first proposal was that entities submit FCC Form 740 only to the U.S. Customs Service (Customs) rather than be required to file duplicate declarations with both the FCC and Customs. There are a few remaining entities that do not file the Form 740 electronically with Customs that will be affected. With the elimination of the requirement to file duplicative information with the FCC, the administrative burden on filers is reduced, especially for small businesses. This will eliminate an FCC record process that is no longer necessary. Any compliance information needed by the FCC will be readily available from Customs.

The next proposal was to modify the marketing rules affecting devices imported solely for export. This proposed modification will improve the Commission's ability to enforce the equipment authorization rules by eliminating a loophole that has resulted in the marketing and selling of devices that could not be authorized in the U.S.

## **UNLICENSED FM BROADCAST STATIONS**

Broadcasters and others began reporting to the FCC that there were over 1,000 unlicensed broadcast stations operating in the FM band. Known as "pirates," these stations not only operated without licenses, but they interfered with licensed broadcast stations and critical aircraft frequencies, and had the potential to cause harmful interference that could endanger the safety of life.

The FCC began to take steps to reduce the number of illegal stations. During the year the FCC investigated 282 pirate stations. Most of these went off the air voluntarily. The FCC noticed that a few areas of the country had a high concentration of pirates, and it adjusted its enforcement approach accordingly. Two such high concentration areas were Miami and Cleveland, which received special attention from the FCC. The FCC, in conjunction with the Department of Justice, initiated court action in over 40 cases.

Though the FCC has not eradicated the pirate problem, there has been a dramatic decrease in the number of active pirate stations. Recent surveys show fewer than 80 pirate stations operating around the country.

## **SLAMMING**

CIB established two teams to assist the Common Carrier Bureau in its effort to curtail the illegal practice of slamming. Slamming occurs when a company changes a subscriber's long distance service without the subscriber's knowledge or authorization. CIB teams conducted investigations of subscribers' complaints. The teams interviewed the subscribers, obtained evidence of slamming, and presented investigative reports to the Common Carrier Bureau. This led to the Commission's issuing multi-million dollar forfeitures against businesses which engaged in illegal slamming.

## **PRIVATIZING LAND MOBILE INTERFERENCE RESOLUTION**

Land mobile stations frequently ask the FCC for help in eliminating interference experienced by the stations. There are many reasons why interference occurs. Faulty transmitters, a poorly chosen frequency, a licensee's unawareness that the channels are shared with others, and unlicensed operators intruding on the frequency are some of the reasons which lead to an interference complaint.

The FCC and four industry frequency coordinators have signed agreements to work together to streamline the Commission's compliance and enforcement process in the resolution of interference complaints in the land mobile communications industry. This will not only relieve the FCC of this task, but it will give the industry a greater role in improving land mobile communications.

## **INTERFERENCE TO PUBLIC SAFETY STATIONS**

CIB resolved numerous complaints of interference which disrupted the communications of public safety agencies. These calls for assistance came from police and fire departments, hospitals, railroads, Coast Guard, Federal Aviation Administration, search and rescue satellite operators, and a host of other public safety agencies. At times faulty transmitters used by other radio stations generated unwanted signals which interfered with the public safety agency's frequency. For instance, some unknown signal was crippling the FAA's air traffic control system at an airport, and the FAA needed the FCC's help. Another time an emergency beacon transmitter mysteriously began sending out a distress signal, and those operating the search and rescue satellite asked the FCC to locate the signal which was tying up the distress system.

Sometimes the interference was deliberate. Police departments have found intruders on their frequencies masquerading as dispatchers and sending units on errant missions. At times the Coast Guard asked the FCC to use its direction finding expertise to locate individuals who broadcast hoax distress calls and caused the Coast Guard to launch aircraft and vessels in a frustrating search for non-existent vessels.

## **ENFORCEMENT AUDITS**

CIB audits found there was a need for broadcasters to improve their compliance with the Emergency Alert System requirements. The audits indicated that owners of tall communications towers must do a better job of registering their towers with the FCC but private sector ship radio inspectors appeared to be performing their safety checks satisfactorily.

# International Bureau

## Overview

The mission of the International Bureau is to promote innovative, efficient, reasonably priced, widely available, reliable, timely and high quality domestic and global communications services.

In pursuit of this mission, the Bureau develops, recommends and administers policies, standards, procedures and programs for the authorization and regulation of international telecommunications facilities and services and the licensing of domestic and international satellite systems. The Bureau advises and recommends to the Commission, or acts for the Commission under delegated authority, in the development and administration of international telecommunications policies and programs.

The Bureau consists of three Divisions.

The **PLANNING AND NEGOTIATIONS DIVISION** directs and coordinates, in consultation with other Bureaus and Offices as appropriate, Commission negotiations with foreign countries regarding international agreements. The Division represents the Commission in international conferences and meetings involving telecommunications matters such as spectrum planning, terrestrial and satellite issues, standards, and broadcasting, in the International Telecommunication Union (ITU) and other international forums, and ensures that Commission regulations, procedures and frequency allocations comply with international and bilateral agreements. The Division is also responsible for implementation of all notification and coordination provisions adopted as a result of these international conferences. The Division is responsible for conference preparatory activities related to World Radiocommunication Conferences (WRCs), rulemakings involving spectrum issues, and the reconciliation of domestic and international spectrum policies. The Planning and Negotiations Division consists of three branches: Negotiations Branch, Notifications Branch, and International Spectrum Branch.

The **SATELLITE AND RADIOCOMMUNICATION DIVISION** deals with policies, rules, procedures and standards for licensing and regulating satellite space and earth station facilities, both domestic and international. It undertakes Commission responsibilities under the Communications Satellite Act for the oversight of Comsat as the U.S. signatory to INTELSAT and Inmarsat. The Division represents the Commission in international conferences and meetings involving radio-related telecommunications matters such as satellites, spectrum allocation, standards, broadcasting, aviation, maritime and safety of life at sea in the International Telecommunication Union (ITU) and other international forums. The Satellite and Radiocommunication Division consists of three branches: Radiocommunication Policy Branch, Satellite Policy Branch and Satellite Engineering Branch.



The **TELECOMMUNICATIONS DIVISION** deals with the authorization and regulation of international telecommunications facilities and services. It represents the Commission at international conferences and meetings involving non-radio related telecommunications matters. The Division directs and coordinates Commission participation in bilateral telecommunications discussions and provides assistance in telecommunications trade negotiations. The Telecommunications Division consists of two branches: Policy and Facilities Branch and Multilateral and Development Branch.

### **Major Proceedings**

#### **COMSAT NON-DOMINANT (IB Docket No. 98-60)**

Cosat filed a petition seeking: (1) reclassification as a non-dominant carrier in the provision of its INTELSAT services; (2) pursuant to Section 10 of the Communications Act of 1934, forbearance from dominant carrier regulation of its INTELSAT tariffs; and (3) elimination or forbearance from structural separation and rate of return regulation of Cosat's INTELSAT services. The Commission adopted an *Order* April 24, 1998, before the expiration of the one-year statutory deadline for acting on Cosat's forbearance request. The Commission also initiated a *Notice of Proposed Rulemaking* inviting comments with respect to replacing rate of return regulation with a form of incentive based regulation similar to a price cap for Cosat's services in markets where the company remains dominant

#### **DIRECT BROADCAST SATELLITE (DBS) PART 100 (IB Docket No. 98-21)**

The Commission adopted a *Notice of Proposed Rulemaking* on February 19, 1998, which proposed eliminating the Commission's separate Part 100 rules for the Direct Broadcast Satellite (DBS) service and incorporating the rules in Part 25, which includes all other satellite service rules. The *Notice* proposed to harmonize the DBS licensing process with the rules and procedures applicable to other satellite services, including the direct-to-home fixed-satellite service (DTH-FSS). It also sought comment on whether the Commission should modify the DBS foreign ownership rules for subscription DBS and DTH-FSS in light of the International Bureau's decision in the MCI DBS authorization. In the *MCI Authorization Order*, the Bureau determined that the foreign ownership rules do not apply to DBS offered on a subscription basis. The *Notice* also sought comment on ways the Commission can speed delivery of DBS service to Alaska and Hawaii, Puerto Rico, and other U.S. territories and possessions. Finally, the *Notice* asked whether the Commission should consider adopting rules to address the issues of horizontal concentration in the MVPD market.

## **DOMESTIC AND INTERNATIONAL SATELLITE CONSOLIDATION ORDER (DISCO II)/WORLD TRADE ORGANIZATION (WTO)**

On February 5, 1998, the WTO Agreement on Basic Telecommunications Services went into effect. The Commission adopted the *Foreign Participation Order* in November 1997 implementing the U.S.' WTO commitments. The *Order* establishes a framework to facilitate access by foreign-licensed satellite systems to the U.S. market. Increased market access benefits the U.S. consumer by increasing the number of satellite service suppliers. This, in turn, lowers prices to consumers, leads to additional services being provided and spurs technological innovation. It also helps U.S. industry by increasing market access opportunities for U.S. service suppliers around the world.

## **FOREIGN CARRIER PARTICIPATION (IB Docket Nos. 97-142, 95-22)**

On February 9, 1998, the *Foreign Participation Order* governing foreign participation in the U.S. market for basic telecommunications services became effective. The *Order* replaces the effective competitive opportunities (ECO) test with an open entry standard for applicants from WTO Members. These applicants will no longer be required to demonstrate that their markets offer effective competitive opportunities in order to: (1) obtain section 214 authority to provide international facilities-based, resold switched and resold non-interconnected private line services; (2) receive authorization to exceed the 25 percent indirect foreign ownership benchmark in section 310(b)(4) of the Communications Act for wireless licenses; or (3) receive submarine cable landing licenses. The Commission also removed the equivalency test, a standard similar to the ECO test, for carriers seeking to provide switched services over private lines between the United States and World Trade Organization (WTO) Members. In lieu of the ECO test, the *Order* presumes that entry is procompetitive and therefore adopts streamlined procedures for granting most applications. The Commission recognized, however, that in some cases safeguards may not adequately constrain the potential for anticompetitive harm. In such instances, the Commission reserved the right to attach additional conditions to an authorization and, in the exceptional case in which an application poses a very high risk to competition that cannot be addressed by safeguards, it reserved the right to deny the authorization.

## **GLOBAL MOBILE PERSONAL COMMUNICATIONS BY SATELLITE (GMPCS) (GEN Docket No. 98-68)**

On May 14, 1998, the Commission took an important step toward implementing the international arrangements governing Global Mobile Personal Communications by Satellite (GMPCS) systems by adopting an interim procedure for the type approval of GMPCS terminals. This measure will facilitate transport of GMPCS terminals, many

of which are a part of U.S.-based systems, across national borders. In addition, the Commission modified its equipment approval process and implemented the *Mutual Recognition Agreement (MRA)* that was completed between the United States and the European Community (EC) last year. These exciting new global satellite systems hold great promise for international consumers, especially those living in or traveling to underpopulated and rural areas. The interim equipment certification proposal will pave the way for these GMPCS companies as they continue or begin to roll-out their global voice, data, and broadband services.

### **KA-BAND NOTICE (IB Docket No. 98-172)**

On September 17, 1998, the Commission adopted a *Notice of Proposed Rulemaking (NPRM)* proposing to redesignate portions of the 17.7-20.2 GHz (18 GHz) band to provide separate spectrum for terrestrial fixed service and Fixed Satellite Service (FSS) operations. In addition, the Commission proposed a blanket licensing procedure that would allow FSS satellite earth stations in the Ka-band (18 GHz downlink band and 28 GHz uplink band) to operate under a single system license. Blanket licensing would provide a fast and efficient means for licensing the large number of small antenna FSS earth stations expected to be deployed. Finally, the Commission proposed additional spectrum allocations for the Broadcast Satellite Service (BSS) at 17.3-17.8 GHz, and to FSS for BSS feeder link use at 17.3-17.8 GHz, to be effective April 1, 2007. These proposed allocations would align the U.S. Table of Allocations with the International Telecommunication Union's Region 2 Table of Allocations and would also provide additional spectrum for direct-to-home video services.

### **LITTLE LEO SYSTEMS (IB Docket No. 96-220)**

Little LEO (Low Earth Orbit) systems provide non-voice, data messaging services (e.g., paging, e-mail, remote meter reading) in frequency bands below 1 GHz. The Commission, on October 15, 1997, issued a *Report and Order* in which it concluded that use of appropriate transmission techniques, proper system coordination, time-sharing of frequencies and the adoption of a spectrum sharing plan jointly proposed by current applicants resulting in sufficient spectrum to accommodate all. As a result, the applicants filed conforming amendments, and the Commission issued licenses to Leo One (February 13, 1998), VITA (March 31, 1998), Orbcomm (March 31, 1998), Final Analysis (April 1, 1998) and E-SAT's (April 1, 1998).

## **U.S. - ARGENTINA FSS PROTOCOL**

On June 5, 1998, the United States and Argentina signed an Agreement and Protocol on satellite services, in which both countries agreed to open their markets to each other's satellites for the provision of direct broadcast satellite (DBS), direct-to-home fixed satellite service (DTH-FSS) and other forms of fixed satellite service (FSS). The Agreement and Protocol, which are closely modeled on a similar series of accords reached with Mexico over the last two years, mark a significant market-opening breakthrough and will allow U.S. satellite operators full access to the Argentine market. Under the Agreement and Protocol, Argentina will open its market for U.S.-licensed satellite operators to provide DBS, DTH-FSS and FSS. U.S. satellites will have the same rights to provide service in Argentina as Argentine satellites. The United States made similar commitments with regard to access to the United States market by Argentine-licensed satellites. The Agreement and Protocol will open a significant market to U.S. satellite providers. Pan-Latin American direct-to-home services, such as Galaxy Latin America and Sky Latin America, will now be able to provide their programming services to Argentina. Significantly, the Protocol limits domestic content restrictions either side can place on satellite programming to only a "modicum" of total programming, thereby increasing opportunities for U.S. program content producers. The Agreement and Protocol also ensure that FSS providers will be able to provide both current services and next generation broadband systems.

## **U.S. - CANADA SPECIAL COORDINATION PROCEDURES**

During the past year the FCC and Industry Canada entered into two special coordination procedure (SCP) arrangements, one involving paging frequencies and the other involving Specialized Mobile Radio (SMR) operations. SCP arrangements permit individual U.S. and Canadian licensees to operate in a manner not ordinarily permitted by the terms of existing agreements, if a mutual understanding is reached by the licensees on both sides of the border. SCP arrangements provide additional flexibility for U.S. licensees and allow for more efficient spectrum use.

## **U.S. - CANADA UNDERSTANDINGS ON DARS/T-DRB**

In August 1998 the U.S. and Canada agreed on technical conditions for implementation of satellite Digital Audio Radio Service (DARS) in the United States in the 2320-2345 MHz band and Terrestrial Digital Radio Broadcasting (T-DRB) services in Canada in the 1452-1492 MHz band. These agreed-upon conditions are the result of negotiations that took place over several years and involved complex inter-service frequency sharing considerations. Letters were exchanged that allowed both countries to begin to implement by September 1, 1998, the technical conditions for the introduction of these new digital sound broadcasting services on either side of the border. This successful

negotiation will provide U.S. consumers with access to innovative CD quality audio programming and will promote new communications services using innovative satellite-delivered digital technologies.

### **U.S. - CANADA UNDERSTANDING ON DIGITAL MDS**

On December 5, 1997, the FCC and Industry Canada finalized an Understanding that permits the use of digital technology by Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) systems in the U.S.-Canada border area. The agreement maintains the requirements contained in a previous agreement regarding analog MDS systems, but extends the scope of the earlier agreement by establishing parameters for digital systems. The new agreement will allow MDS operators, educational institutions and the public to benefit from new digital technologies.

### **U.S. - MEXICO MEMORANDUM OF UNDERSTANDING ON DTV**

On July 22, 1998, a *Memorandum of Understanding (MOU)* was signed which established procedures for implementing digital television (DTV) service in the U.S.-Mexico border area. The *MOU* contains a list of mutually acceptable second channel DTV allotments for each country. The *MOU* also provides an expedited notification process through which most authorized DTV stations can begin operation within 15 days of notification to the other country. In addition, the *MOU* includes approval of all five DTV stations in the U.S.-Mexico border area slated to begin service in November 1998 and May 1999. This *MOU* represents a major step forward in the cooperative efforts of Mexico and the U.S. to bring the benefits of DTV to consumers quickly and clears the way for the early roll-out of DTV in the top 10 U.S. markets.

### **INTERNATIONAL BUREAU'S BIENNIAL REVIEW**

Section 11 of the Communications Act, as amended, requires the Commission to review all of its regulations applicable to providers of telecommunications service in every even-numbered year, beginning in 1998, to determine whether the regulations are no longer in the public interest due to meaningful economic competition between providers of the service and whether such regulations should be repealed or modified. The first biennial regulatory review presented an excellent opportunity for a serious top-to-bottom examination of all of the Commission's regulations, not just those statutorily required to be reviewed.

As part of the 1998 Biennial Regulatory Review, each of the operating Bureaus, together with the Office of General Counsel, hosted a series of public forums and participated in brown-bag practice group lunches with the Federal Communications Bar Association to solicit informal input from the public. Beginning in January 1998 the Commission initiated a series of rulemaking proceedings as part of the 1998 Biennial Regulatory Review. FCC staff released a list of 31 proceedings which it has proposed

that the Commission initiate as part of the review. In August 1998 the FCC announced significant progress on 1998 Biennial Review.

The following actions were taken as part of the International Bureau's Biennial Review:

**International Common Carrier Regulations.** On July 14, 1998, the Commission released a *Notice of Proposed Rulemaking* in the Matter of Review of International Common Carrier Regulations (IB Docket No. 98-118). Specifically, the *Notice* proposed to: (1) grant a blanket international section 214 authorization for telecommunications services to unaffiliated international points; (2) eliminate the requirement for prior approval of *pro forma* assignments and transfers of control of international section 214 authorizations; (3) allow any carrier with global section 214 authorization to use any non-U.S.-licensed submarine cable system without specific approval, and clarify the exclusion list for international section 214 authorizations; (4) eliminate the need to apply for a separate section 214 authorization when applying for a common carrier cable landing license; (5) reorganize and simplify the rule on contents of international section 214 applications and list the obligations of each category of carrier in a separate rule section; (6) authorize the provision of switched services over private lines by declaratory ruling instead of requiring a section 214 application; and (7) eliminate the requirement that applicants inform the Commission of every 10 percent or greater shareholder, and require only that applicants provide a list of every greater-than-25-percent shareholder. The comment period closed on August 28, 1998.

**Maritime Mobile Services.** On July 17, 1998, the Commission released a *Notice of Proposed Rulemaking* in the Matter of Review of Accounts Settlement in the Maritime Mobile and Maritime Mobile-Satellite Radio Services and Withdrawal of the Commission as an Accounting Authority in the Maritime Mobile and the Maritime Mobile-Satellite Radio Services Except for Distress and Safety Communications (IB Docket No. 98-96). In the *Notice*, the Commission proposed to withdraw the Commission from its role as a nationwide clearinghouse for settling maritime mobile and maritime satellite accounts for non-government entities. The comment period closed on September 17, 1998.

**International Settlements.** On August 6, 1998, the Commission released a *Notice of Proposed Rulemaking* in the Matter of Reform of the International Settlements Policy and Associated Filing Requirements (IB Docket No. 98-190). In the *Notice*, the Commission proposed a review of the international settlements policy to consider granting substantially more flexibility to carriers' methods of carrying international switched traffic outside the traditional international settlements process. The Commission's International Settlements Policy imposes certain constraints on U.S. carriers' relations with foreign carriers. The policy was originally designed to prevent monopoly foreign carriers from taking advantage of the competitive marketplace in the United States by playing one carrier off against another — a practice known as "whipsawing" — in order to extract higher rates for the completion of international

calls originating in the United States. Today, there is more competition in foreign telecommunications markets, and less international traffic is being carried in the traditional manner. The *Notice's* proposed changes would recognize these changes and let the market, rather than government regulation, govern settlement arrangements between carriers in competitive markets.

# Wireless Telecommunications Bureau

## Overview

The Wireless Telecommunications Bureau oversees the use of radio spectrum to fulfill the communications needs of businesses, local and state governments, public safety service providers, aircraft and ship operators, and individuals. In addition to licensing commercial providers of wireless services, WTB monitors the more than two and a half million licensees that use private wireless radio for personal convenience, to promote safety of life and property, to increase commercial productivity, and to advance the science of telecommunications.

WTB is organized into six Divisions: **Auctions and Industry Analysis; Commercial Wireless; Enforcement and Consumer Information; Information Technology; Policy;** and **Public Safety and Private Wireless.**

The principal functions of WTB include assessing utilization levels of the spectrum and the competitiveness of markets, identifying and allocating spectrum appropriate for licensing, developing through rulemaking the operating rules for wireless services, developing methodologies for and assigning licenses through competitive bidding (auctions), evaluating new technologies (with the Office of Engineering and Technology), maintaining an antenna structure registration program, licensing commercial and private radio operators, and enforcing the Commission's rules for wireless services.

WTB coordinates closely with the Office of Engineering and Technology on spectrum allocations and rules governing equipment used in the provision of wireless services, and with the International Bureau on international spectrum allocations for wireless services and coordination between terrestrial and space-based services. WTB also works with representatives of the public safety community to foster a partnership to address communications issues.

In the past year WTB has undertaken various industry and consumer initiatives to promote an efficient and competitive communications environment. For example, WTB has participated in and organized several public forums to discuss with the wireless industry the ways in which Y2K computer issues may disrupt wireless communications. The Bureau organized several public forums on upcoming Commission auctions as well as forums on the Commission's new Universal Licensing System (ULS). The Bureau also provided consumer assistance on wireless issues to members of the public and other interested parties by responding to telephone and written inquiries, and speaking to industry associations and consumer groups throughout the nation.



In FY98, WTB also undertook initiatives to improve access to electronic information. The Bureau is moving to web-based technology to improve access to electronic information. Such an approach makes data available in easy-to-use formats for WTB's customers. Approximately 50 percent of all WTB application filings are received via such electronic methods.

The Bureau also made improvements to its web site ([www.fcc.gov/wtb/](http://www.fcc.gov/wtb/)). The site continues to make available information concerning wireless telecommunications services, FCC rules and regulations, Commission orders and public notices, forms and licensing databases. Importantly, the Bureau recently restructured its web site to be accessible to the disability community. The Bureau has been working with the Disabilities Issues Task Force, the Office of Workplace Diversity and the General Services Administration's Center on Information Technology Accommodation to ensure that its web site is as accessible as possible to all people. Through the continuing efforts of the Bureau staff, the Bureau web site is now "BOBBY" approved. BOBBY is a computer application that analyzes web sites for their accessibility to people with disabilities as well as their compatibility with various browsers. The BOBBY analysis is widely accepted by industry and is based on the World Wide Consortium's Web Accessibility Initiatives.

Also, prior to September 30, 1998, the FCC provided Members of Congress with detailed information regarding the expenditure of auction revenues per Section 309(j)(8)(b) of the Communications Act.

## **Major Proceedings**

### **AUCTION AND LICENSING INITIATIVES:**

**220 MHz Auction.** On September 15, 1998, the 220 MHz auction opened.

**800 MHz SMR (Specialized Mobile Radio) Service Auction.** On December 8, 1997, the 800 MHz SMR auction closed. This auction, which opened on October 28, 1997, offered 525 licenses and raised \$96.2 million for the U.S. Treasury. The Bureau also completed the licensing of these licenses in FY 98.

**LMDS Auction.** On March 25, 1998, the Local Multipoint Distribution Service (LMDS) auction closed. This auction, which opened on February 18, 1998, offered 986 licenses and raised \$578.7 million for the U.S. Treasury. The Bureau also completed the licensing of these licenses in FY98.

**Universal Licensing System.** In December 1997 the Bureau began the phased deployment of ULS for all wireless services. In FY98 the Bureau began using ULS for all post-auction licensing following the 800 MHz SMR, LMDS, and 220 MHz auctions,

and to handle all licensing activity in the Part 22 Paging and Radiotelephone Service, Offshore Radiotelephone Service, Personal Communications Services and Wireless Communications Services. Deployment of ULS in the remaining wireless services will occur in FY99.

**Wireless Facilities (Tower) Siting Agreement.** On August 5, 1998, an agreement was reached between the Commission's Local and State Government Advisory Committee (LSGAC), the Cellular Telecommunications Industry Association (CTIA), the Personal Communications Industry Association (PCIA), and the American Mobile Telecommunications Association (AMTA). The groups reached a joint agreement involving appropriate guidelines for tower and antenna siting, as well as an informal dispute resolution process for siting issues. As part of the agreement, CTIA also agreed to withdraw its petition seeking preemption of certain moratoria on facilities siting. A copy of the agreement can be found on the LSGAC section of the FCC's homepage at [www.fcc.gov/statelocal](http://www.fcc.gov/statelocal).

### **10 GHZ ORDER**

**(WT Docket No. 94-148; CC Docket No. 93-2)**

On February 24, 1998, the Wireless Telecommunications Bureau and the Office of Engineering and Technology released an *Order* modifying Section 101.31 of the Commission's rules to provide for conditional authorization authority in the 10.6-10.68 GHz band (10 GHz band) under certain circumstances. As a direct result of this action, microwave licensees will be able to provide service in the 10 GHz band in an expedited manner.

### **39 GHZ PROCEEDING**

**(ET Docket No. 95-183, PP Docket No. 93-253)**

On October 24, 1997, the Commission adopted a *Report and Order and Second Notice of Proposed Rule Making* establishing new service and auction rules for use of the 38.4-40.0 GHz frequency band (39 GHz band) and seeking comment on additional licensing issues pertaining to the 39 GHz band.

### **47 GHZ SERVICE AND AUCTION RULES**

**(ET Docket No. 94-124, WT Docket No. 98-136)**

On July 29, 1998, the Commission released a *Memorandum Opinion and Order and Notice of Proposed Rulemaking* representing the next step in the commercial utilization of the 47.2-48.2 GHz frequency band (47 GHz band). The 47 GHz band is one of several "millimeter wave" bands above 30 GHz for which technology initially developed for military use now holds the potential for commercial use. The development of this band is expected to foster the introduction of new services and open up a variety of commercial opportunities.

**220 MHZ SERVICE AND AUCTION RULES  
(PR Docket No. 89-552; GN Docket No. 93-252)**

On May 14, 1998, the Commission adopted a *Memorandum Opinion and Order on Reconsideration* addressing various petitions for reconsideration of Commission actions revising the rules for the 220-222 MHz radio service (220 MHz service). On August 6, 1998, the Commission adopted a *Fifth Report and Order* amending Part 90 of the Commission's Rules to adopt geographic partitioning and spectrum disaggregation rules for the 220-222 MHz service.

**911 EMERGENCY CALLS  
(CC Docket 94-102)**

On December 1, 1997, the Commission adopted a *Memorandum Opinion and Order* reaffirming its commitment to the rapid implementation of technologies needed to bring emergency assistance to wireless callers throughout the Nation. Under the Commission's revised rules, covered wireless carriers are required to transmit all wireless 911 calls, from both subscribers and non-subscribers, to emergency assistance providers operating Public Safety Answering Points, and are also required (subject to certain conditions) to develop service enhancements that will enable caller location information to be transmitted automatically to emergency assistance providers.

**BROADCAST AUCTION RULES  
(MM Docket No. 97-234, GC Docket No. 92-52, GEN Docket No. 90-264)**

On August 6, 1998, the Commission adopted a *First Report and Order* establishing general competitive bidding procedures for auctionable broadcast services. In addition, the Commission concluded that competitive bidding procedures should be used to resolve competing applications filed before July 1, 1997, for new commercial radio and television broadcast stations. The Commission also adopted a "new entrant" bidding credit to further the goals of the designated entity provisions of section 309(j) of the Communications Act. The Commission rendered its decisions after seeking public comment in a *Notice of Proposed Rulemaking*, which was adopted by the Commission on November 25, 1997.

**CMRS REPORT TO CONGRESS ON COMPETITION**

On May 14, 1998, the Commission adopted its *Third Annual Commercial Mobile Radio Service (CMRS) Competition Report*. Citing to various industry reports, the *Third Report* evaluated various CMRS product categories and concluded that progress has been made toward competition over the past year, particularly in the mobile telephony

market. More competition, the *Report* observes, has meant lower prices, more choices and new cutting edge technologies for American consumers.

### **COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA)**

On September 11, 1998, the Commission adopted a *Memorandum Opinion and Order* extending the compliance date for meeting the assistance capability requirements of the Communications Assistance for Law Enforcement Act (CALEA). This extension was necessary because compliance with the original date of October 25, 1998, was not reasonably achievable for telecommunications carriers due to the lack of equipment for meeting the requirements. The Commission extended the compliance date to June 30, 2000.

### **C BLOCK LICENSING (WT Docket No. 97-82)**

On August 19, 1998, the Commission adopted a *Fourth Report and Order* setting forth rules governing the reauction of broadband Personal Communications Services (PCS) C block spectrum. The Wireless Telecommunications Bureau also established a C block reauction date of March 23, 1999.

On March 24, 1998, the Commission released an *Order on Reconsideration of the Second Report and Order (Reconsideration Order)* addressing installment payment financing issues for C block licensees. The *Reconsideration Order* largely affirmed the framework of the September 25, 1997, *Second Report and Order and Further Notice of Proposed Rulemaking* that provided limited debt relief as an alternative to continuing under the existing installment payment plan; however, the *Reconsideration Order* provided greater flexibility for licensees by permitting elections on a Major Trading Area (MTA) basis (rather than requiring licensees to make one all-inclusive election) and by increasing the amount of credit available for disaggregated spectrum.

### **COMMERCIAL MOBILE RADIO SERVICES (CMRS) SAFEGUARDS (WT Docket No. 96-162)**

On October 3, 1997, the FCC established regulatory safeguards for the provision of in-region broadband commercial mobile radio services (CMRS) by incumbent local exchange carriers and their affiliates. These safeguards, for the first time, apply uniformly to provision of all broadband CMRS by all incumbent LECs (except for rural telephone companies). Consistent with the pro-competitive, deregulatory objectives of the Telecommunications Act of 1996, these safeguards will help to ensure fair rules of competition in the least burdensome manner possible.

**FINDER'S PREFERENCE RULES  
(WT Docket No. 96-199)**

On July 29, 1998, the Commission adopted a *Report and Order* amending Part 90 of its rules to eliminate the finder's preference program in the 220-222 MHz band and in the 470-512 MHz, 800 MHz, and 900 MHz private land mobile radio bands.

**INTERACTIVE VIDEO AND DATA SERVICE (IVDS)  
(WT Docket No. 95-47)**

On September 15, 1998, the Commission adopted an *Order, Memorandum Opinion and Order and Notice of Proposed Rulemaking* that initiated a comprehensive examination of the Commission's regulations governing the licensing and use of frequencies in the 218-219 MHz band.

**LOCAL MULTIPOINT DISTRIBUTION SERVICE (LMDS) RULES  
(CC Docket 92-297)**

On April 27, 1998, the Commission adopted a *Fourth Report and Order* regarding partitioning and disaggregation rules for LMDS licenses. These rules will bring to LMDS the competitive benefits that are at the core of the Commission's partitioning and disaggregation policy - more efficient use of spectrum, increased opportunities for a variety of entities, including small businesses, to participate in the provision of LMDS, and expedited delivery of service to unserved areas.

On February 3, 1998, the Commission adopted a *Third Order on Reconsideration* that generally affirmed key provisions of the LMDS service rules that it adopted in March 1997. This action paved the way for the auctioning and licensing of LMDS services.

**LOCATION AND MONITORING SERVICE RULES  
(PR Docket No. 93-61)**

On July 9, 1998, the Commission adopted rules and procedures for the future auction of Location and Monitoring Service (LMS) licenses. LMS refers to advanced radio technologies designed to support the nation's transportation infrastructure and facilitate growth of Intelligent Transportation Systems. These systems are intended to improve the efficiency and safety of U.S. highways.

**LOCAL NUMBER PORTABILITY  
(CC Docket No. 95-116)**

On September 1, 1998, the Bureau issued a *Memorandum Opinion and Order* granting a petition filed by the Cellular Telecommunications Industry Association (CTIA)

requesting a nine-month stay of the requirement that all cellular, broadband PCS, and covered SMR carriers provide service provider number portability by June 30, 1999, while supporting nationwide roaming. The Bureau found that extending the deadline from June 30, 1999, to March 31, 2000, was necessary to ensure the efficient development of wireless number portability.

**MULTIPLE ADDRESS SYSTEMS (MAS)**  
**(WT Docket No. 97-81)**

On September 17, 1998, the Bureau adopted an *Order* dismissing all pending MAS applications for use of the 932-932.5/941-941.5 MHz bands, which were filed in anticipation of the Commission awarding licenses for these channels through random selection or lottery.

**PART 1 STREAMLINED AUCTION RULES**  
**(WT Docket No. 97-82)**

On December 18, 1997, the Commission adopted a *Third Report and Order and Second Further Notice of Proposed Rulemaking* adopting comprehensive and streamlined rules for all auctionable services, replacing rules adopted in 1994 which required the Commission to adopt separate rules for each auction. The Commission also sought further comment on the use of installment payments and other financial incentives for small businesses, women, minorities, and rural telephone companies.

**PUBLIC SAFETY LICENSING**  
**(WT Docket No. 96-86)**

On October 9, 1997, the Commission adopted a *Notice of Proposed Rulemaking* seeking comment on how to license 24 MHz of spectrum in the 700 MHz band recently reallocated from over-the-air television broadcasting use to public safety radio communications. On August 6, 1998, the Commission adopted service rules for licensing this spectrum. In a *First Report and Order and Third Notice of Proposed Rulemaking* the Commission established a band plan for use of the 24 Mhz of spectrum in the 764-806 MHz band, established rules and procedures for licensing of 12.6 MHz of the spectrum, and sought comment on how to license the remaining portion of the spectrum (with 2.6 MHz designated as interoperability spectrum and 8.8 MHz designated as reserved spectrum) and on additional proposals to implement effective public safety nationwide interoperability.

**ACCESS TO PERSONS WITH DISABILITIES**  
**(WT Docket No. 96-198)**

On April 2, 1998, the Commission adopted a *Notice of Proposed Rulemaking* to implement section 255 of the Telecommunications Act of 1996. The Commission adopted a broad range of proposals intended to ensure that telecommunications service providers and equipment manufacturers who are subject to the terms of section 255 will take the actions necessary to make their services and products accessible to persons with disabilities.

### **SHIP/AIRCRAFT STATION LICENSE ELIMINATION (WT Docket No. 96-82)**

On October 18, 1997, the Commission adopted a *Report and Order* that eliminated the need for tens of thousands of individuals to obtain ship or aircraft radio station licenses. In response to the Commission's request, Congress in the Telecommunications Act of 1996 gave the Commission authority to remove this individual radio licensing requirement upon a determination that the public interest, convenience and necessity would be served thereby. This action will eliminate approximately 125,000 license applications filed each year for recreational ship and aircraft stations and will save scarce Commission resources to improve service to the public in other areas.

### **UNITED STATES COAST GUARD VESSEL TRAFFIC SERVICES**

On September 22, 1998, the Bureau modified section 80.838(a) of the Commission's rules to reinstate New Orleans, LA, to the list of the United States Coast Guard designated radio protection areas for mandatory Vessel Traffic Services (VTS) systems and to re-establish marine VHF Channels 11 (156.550 MHz), 12 (156.600 MHz), and 14 (156.700 MHz) as the VTS frequencies for New Orleans. VTS systems are used by the Coast Guard as an advisory communications service to coordinate vessel movement and prevent collisions in large, busy port areas.

### **PUBLIC COAST SERVICE AND AUCTION RULES (PR Docket No. 92-257)**

On July 9, 1998, the Commission released a *Third Report and Order and Memorandum Opinion and Order* aimed at streamlining the licensing process for VHF public coast stations. The Commission concluded that the public interest would best be served by providing licensees more flexibility in the use of maritime spectrum, while preserving this internationally-allocated radio service's core purpose of promoting the safety of life and property at sea. The decisions adopted further the Commission's goal to improve maritime communications.

### **WIRELESS TELECOMMUNICATIONS BUREAU'S BIENNIAL REVIEW**

Section 11 of the Communications Act, as amended, requires the Commission to review all of its regulations applicable to providers of telecommunications service in every even-numbered year, beginning in 1998, to determine whether the regulations are no longer in the public interest due to meaningful economic competition between providers of the service and whether such regulations should be repealed or modified. The first biennial regulatory review presented an excellent opportunity for a serious top-to-bottom examination of all of the Commission's regulations, not just those statutorily required to be reviewed.

As part of the 1998 Biennial Regulatory Review, each of the operating Bureaus, together with the Office of General Counsel, hosted a series of public forums and participated in brown-bag practice group lunches with the Federal Communications Bar Association to solicit informal input from the public. Beginning in January 1998 the Commission initiated a series of rulemaking proceedings as part of the 1998 Biennial Regulatory Review. FCC staff released a list of 31 proceedings which it has proposed that the Commission initiate as part of the review. In August 1998 the FCC announced significant progress on 1998 Biennial Review.

The following actions were taken as part of the Wireless Telecommunications Bureau's Biennial Review:

**Amateur Service Rules.** On July 29, 1998, the Commission adopted a *Notice of Proposed Rulemaking* (WT Docket No. 98-143) commencing a proceeding to examine its rules for the Amateur Radio Service in an effort to eliminate unnecessary and duplicative rules, as well as to streamline the amateur licensing process.

**Part 90 Private Land Mobile Radio Services.** On September 30, 1998, the Commission adopted a *Notice of Proposed Rulemaking* (WT Docket No. 98-182, PR Docket No. 92-235) to begin a comprehensive review of the Part 90 rules applicable to the Private Land Mobile Radio Services in order to determine which regulations are not in the public interest, obsolete, overly complex, require editorial change, or are redundant.

**CMRS Forbearance.** On June 23, 1998, the Commission granted in part and denied in part a *Petition for Forbearance* (WT Docket No. 98-100, GN Docket No. 94-33) filed by the Broadband Personal Communications Services Alliance of the Personal Communications Industry Association (PCIA). The Commission granted in part PCIA's requests to forbear from requiring CMRS providers to file tariffs for their international services and from applying section 226 of the Communications Act. The Commission also initiated a *Notice of Proposed Rulemaking* seeking comment on further forbearance from applying section 226 and other regulations or provisions of the Act to wireless telecommunications carriers.



**Universal Licensing System (ULS).** On March 18, 1998, the Commission released a *Notice of Proposed Rulemaking* (WT Docket No. 98-20) that proposed rules that consolidate, revise, and streamline its license application procedures for radio services licensed by the Bureau. The rule changes would implement ULS, an integrated database and automated processing system developed by the Bureau to facilitate electronic filing of, and access to, wireless applications and licensing information for all wireless radio services.

# Office of Engineering and Technology

## Overview

With approximately 85 full time employees, the Office of Engineering and Technology (OET) is one of the smaller units of the Commission. In 1998, however, the Office contributed significantly to the Commission's goals, particularly in the area of streamlining regulation and in providing unbiased technical support to the other bureaus and offices and to the Commission itself.

Traditionally, OET has been responsible for administering Parts 2, 5, 15, and 18 of the Commission's Rules. In 1998, however, the Office undertook to expand its responsibilities by adding new staff to increase its technical expertise in the areas of wireline and Internet telecommunications.

OET's wide-ranging obligation as technical advisor to the Commission as a whole entails various activities, including rulemaking, research and testing, technical evaluation, and education.

OET is organized into four divisions, each one dedicated to a particular aspect of spectrum use:

The **POLICY AND RULES DIVISION** has two functional units: the Spectrum Policy Branch (SPB), which handles petitions for rulemaking and other matters pertaining to the use of the electromagnetic spectrum (Part 2), and the Technical Rules Branch (TRB), which handles petitions and waiver requests relating to unlicensed (Part 15) and Industrial, Scientific, and Medical Devices (Part 18).

The particular responsibility of **ALLOCATIONS AND STANDARDS DIVISION** is to conduct studies and analyses relating to spectrum management and to plan for future uses of the spectrum in relation to developing telecommunications requirements. The Division includes two branches which share these obligations, the Standards Development Branch and the Spectrum Utilization and Economics Branch. Because the use of 40% of the spectrum is shared between the Federal Government and the private sector, the Division also co-ordinates frequency allocation policy and assignment activities with the National Telecommunications and Information Administration (NTIA), the agency within the Department of Commerce responsible for government use of the spectrum. ASD also participates in national and international standards-setting activities with other federal agencies.

The **NEW TECHNOLOGY DEVELOPMENT DIVISION** conducts laboratory analyses and special tests to evaluate the performance, spectrum efficiency, and interference potential of new technologies and services. The Experimental Licensing Branch administers Part 5 of the Commission's rules, thus providing a basic and important service in helping to facilitate the development of new ideas in telecommunications by permitting and monitoring limited operation of innovative devices and services. The Technical Research Branch conducts studies of radio wave propagation and communications systems which enable the Commission to improve spectrum efficiency. In addition, staff provide a liaison with government agencies, non-government organizations, and industries concerned with the development of new technologies. The Division also is the locus for the Office's expansion into providing technological advice to the other Bureaus, Offices and Commissioners on wireline and Internet technology matters.

The **EQUIPMENT AUTHORIZATION DIVISION**, which includes the Customer Service Branch and the Applications Processing Branch, operates largely out of the OET laboratory in Columbia, MD. EAD's main responsibility is for administering Subparts I and J of the Commission's rules, which deal with ensuring that only electronic devices which operate without causing harmful interference are permitted to be imported, marketed, and operated in the United States. It also provides public assistance and information concerning the authorization process and serves as liaison to foreign and domestic organizations concerned with equipment authorization. The Division designs test procedures for equipment subject to Commission regulation and supports industry standards activities concerning measurement procedures.

During FY98, significant OET activities included:

***CHAIRMAN'S YEAR 2000 INITIATIVE (Y2K)***

The Office spearheaded the establishment of the Y2K task Force to work on solutions that minimize the potential threats posed by the millennium change. The task force coordinates its efforts with the industry, federal and state governments and the international community. The Y2K task force advocates readiness among all industry participants, promotes information sharing and helps to build partnerships for effective contingency planning. The Task Force has crafted a basic operating model and Y2K-readiness plan which involves three core components: (1) Advocacy and Outreach; (2) Monitoring and Assessment; and (3) Contingency Planning.

The Task Force relies heavily on Network Reliability and Interoperability Council, a federal advisory council, which advises the Commission on technical issues, monitors industry progress, and promotes industry cooperation on Year 2000 compliance testing and other related problems.

***TECHNICAL LEADERSHIP***

- Providing technical leadership and analysis for the *Notice of Inquiry and Order and Notice of Proposed Rulemaking* (August 1998) relating to deployment of Advanced Telecommunications Capabilities (section 706). One of the most important provisions of the 1996 Telecommunications Act, section 706 envisions the deployment of such capabilities to all Americans, and especially to schools at all levels.

- Analyzing the impact of the Internet and other leading edge technologies on Commission regulations, including Universal Service, the Communications Assistance for Law Enforcement Act (CALEA), section 256 of the 1996 Telecommunications Act (Interoperability), and Part 68 Regulations.

- Providing technical analysis for merger evaluation teams, including the Worldcom/MCI merger and the proposed AT&T/TCI merger.

- Conducting technical seminars to educate the Commission and the general public on leading edge technical issues, such as ASDL Technology, Third Generation Mobile, and Internet Telephony.

***RADIOFREQUENCY HAZARDS***

- Responding to approximately 50,000 calls for information on the FCC's technical standards for RF devices and equipment authorization requirements. In addition, approximately 600 information packets on the equipment authorization program were mailed to the public.

- Settling several disputes with respect to compliance with the RF guidelines and making recommendations to the Commission and broadcasters for mitigating problems. OET has also been involved with settling disputes between local governments and licensees regarding international broadcast, wireless towers, DTV placement and other broadcasting.

- Maintaining the RF safety Web site, which has registered over 100,000 hits this year.

- Publishing Supplement C, Additional Information of Evaluating Compliance of Mobile and Portable Devices with FCC Limits for Human Exposure to Radiofrequency Emissions.

#### ***STREAMLINING REGULATIONS/IMPROVING PUBLIC ACCESS***

- Issuing 3,989 equipment authorizations and 631 changes to existing equipment.

- Implementing a new equipment authorization processing system (EAS) that allows an applicant to file for an equipment authorization electronically over the Internet. The proportion of electronically filed applications is expected to continue to increase from the present 25% until October 5, 1999, when paper applications will no longer be accepted. Staff also provides information and training for the EAS electronic filing.

- Based on coordination with the affected industries, developing Internet access to pending applications which will enable an applicant to determine the status of a pending application and respond to inquiries through the EAS Web page.

- Providing a new Web based module to allow firms that test equipment for equipment authorization applicants to electronically file a description of their site, or request renewal of their test site registration.

- Developing a new Web-based experimental licensing processing system (ELS) that provides for electronic filing of requests for an experimental license or Special Temporary Authority in the licensed services. The system is expected to be implemented in the first quarter of FY99.

- Expanding OET's Internet presence by adding a Docket Tracking Web page, which compiles all the Commission Items that are within various ET Dockets onto one page. In addition, the Office simplified its home page, using comments received from the public, to make most of the information on its Web site accessible with just one single click. Web site. In just one month (October 1998), FCC ID Search was used 47,742 times.

- Developing spectrum management software, including publishing on the Internet the tables that set forth the various radio licensing systems. In addition, OET has developed a series of programs which use raw assignment data to create a master frequency file database system and tools to analyze spectrum usage above 900 MHz.

## ***TECHNICAL SUPPORT FOR COMMISSION INITIATIVES***

- Conducting spectrum management and usage studies in support of several rule makings, including Mobile Satellite Service (MSS), 1990–2110 MHz; SkyBridge/Northpoint, 10.7 to 13.25 GHz and 17.7 to 19.7 GHz; and interference to medical telemetry devices resulting from land mobile operations in the 450-470 MHz band.
- Conducting studies in support of Commission policy items, including a determination of the susceptibility of wireless medical telemetry devices, a characterization of the emissions from three ultra wideband radiolocation and communications technologies, a yearlong study of short-term fading of UHF TV signals (in support of development of technical standards for DTV), and a study of skywave radio propagation.
- Further refining DTV allotment table algorithms and software as well as development and support of computer programs and to assist in analyzing radio paths, service areas and interference potential for MMDS and TV broadcast services.
- Preparation of technical briefs and working papers on the Skybridge NGSO/FSS system, satellite-based cellular communications, linear and continuous-phase modulation, and spectrum management implications of millimeter-wave propagation and smart antennas.

## ***COMPLIANCE***

- Ensuring compliance with the Commission's equipment authorization and marketing regulations by opening approximately 100 enforcement cases and resolving approximately 75 cases, evaluating sample equipment, and responding to over 1,000 enforcement related telephone calls.

## ***INTERNATIONAL COORDINATION***

- Participating in the development of the United States / European Union (US/EU) and the Asian Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement (MRA). Final rules that establish a framework for the FCC to implement the MRAs are expected in the first quarter of FY99.

## **Major Proceedings**

### **ADVANCED TELEVISION SYSTEMS AND THEIR IMPACT UPON THE EXISTING TELEVISION BROADCASTING SERVICE (DTV) (MM Docket No. 87-268)**

On April 23, 1997, the Commission released the *Sixth Report and Order* in the DTV proceeding setting forth policies and plans for the establishment of an initial DTV Table of Allotments and the assignment of those allotments to eligible broadcasters, an initial DTV Table that was developed using those policies and a sophisticated computer channel allotment system, and plans for spectrum recovery. This DTV Table also facilitated the early recovery of the 60 MHz of spectrum now used for TV channels 60-69 (746-806 MHz), and provided for recovery of additional spectrum at the end of the DTV transition period.

The DTV Table, allotment policies, and spectrum recovery plans were further refined in response to petitions for reconsideration in the February 17, 1998, *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, and the November 24, 1998, *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*.

The essential task of this proceeding was to identify DTV allotments that would accommodate all eligible, *i.e.*, existing, television broadcasters, while minimizing interference to both service provided by both DTV and existing television operations. In this regard, the Commission sought to preserve service to the existing population of television receiving equipment during the transition. To facilitate this effort, the FCC engineers developed computer models capable of generating and evaluating alternative DTV Table of Allotments and completed empirical studies relating to television receiver performance and the short term propagation variability of UHF television signals. Studies were also conducted to minimize the impact of the new DTV stations on existing analog television stations during the transition to all DTV service.

In addition to providing significant improvements in free, over-the-air television service, the new digital broadcast television technology will allow broadcasters users to take advantage of the full range of capabilities offered by digital technologies in providing ancillary services to their viewers and others.

**DIGITAL ELECTRONIC MESSAGE SERVICE  
(ET Docket 97-99)**

In October 1997, the Commission released an *Order* amending Parts 74, 78, and 101 of its rules regarding, respectively, Auxiliary Broadcast Services, Cable Television Relay Service, and Fixed Microwave Services to specify permanent coordination criteria between these services and Government operations in the 17.8-19.7 GHz (18 GHz) band. This action ensures that 18 GHz Government satellite Earth stations important to national security will operate without harmful interference being caused to them by 18 GHz non-Government operations.

**ARECIBO COORDINATION ZONE  
(ET Docket 96-2)**

In October 1997, the Commission released a *Report and Order* establishing a Coordination Zone regarding the Arecibo Radio Astronomy Observatory that operates near Arecibo, Puerto Rico. The *Report and Order* specified that radio facilities in various communications services must provide notification of their proposed operations to the Arecibo Observatory to protect the operations of the Observatory from harmful interference. In July 1998, in response to a petition for reconsideration of the *Report and Order*, the Commission released a *Memorandum Opinion and Order* that clarified rules regarding the Coordination Zone.

**AMENDMENT OF PART 15 OF THE COMMISSION'S RULES TO PERMIT OPERATION OF BIOMEDICAL TELEMETRY DEVICES ON VHF TV CHANNELS 7-13 AND ON UHF TV CHANNELS 14-46  
(ET Docket 95-177)**

This *Report and Order*, released in October 1997, established standards and operating frequencies for unlicensed biomedical telemetry transmitters used in health care facilities for such purposes as remote monitoring of hearth, blood pressure and respiration monitors. Previously, Part 15 only permitted operation on TV channels 7-13 and at a lower power level. The rule change would expand significantly the number of channels available for unlicensed biomedical telemetry.

**REVIEW OF THE PIONEER'S PREFERENCE RULES  
(ET Docket 93-266)**

In April 1998, the Commission released a *Memorandum Opinion and Order* denying a petition for reconsideration of the August 1997 *Order* that terminated the Commission's pioneer's preference program. The *Order* followed enactment of the Balanced Budget Act of 1997, which specified an expiration date for the pioneer's preference program of August 5, 1997. In its petition for reconsideration, Qualcomm, Incorporated contended that the *Order* constituted retroactive rulemaking with respect to Qualcomm's pioneer's preference request because that request had been remanded from the United States Court of Appeals to the Commission for further proceedings, and was still pending before the Commission as of August 1997. In the *Memorandum Opinion and Order* the Commission found that from August 5, 1997, it lacked Congressional authority to consider the merits of any pioneer's preference request.

**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 97-94)**

This *Report and Order*, released in April 1998, reduced the burden of the authorization program on manufacturers and on Commission staff. It 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. This item also provided for the electronic filing of applications and thus reduced the processing time by eliminating delays in the old paper system.

**IN THE MATTER OF 1998 BIENNIAL REGULATORY REVIEW -- CONDUCTED EMISSIONS LIMITS BELOW 30 MHZ FOR EQUIPMENT REGULATED UNDER PARTS 15 AND 18 OF THE COMMISSION'S RULES  
(ET Docket 98-42)**

In April 1998 the Commission began its review of the conducted emission limits in Parts 15 and 18 of the Commission's rules as part of an ongoing program of regulatory reassessment. It seeks to examine whether these regulations continue to be necessary, and if so, whether any changes to the limits may be appropriate.

**REVISION OF PART 2 RELATING TO THE MARKETING AND AUTHORIZATION OF RF DEVICES  
(ET Docket 94-45)**

In May 1998 the Commission released a *Memorandum Opinion and Order* concerning its marketing rules. In response to petitions for reconsideration, the Commission amended its importation rules to

permit manufacturers of transmitters for which a license is required to operate to import greater product numbers prior to testing or authorization provided the equipment is used for testing, evaluation or demonstration purposes. It also permits a manufacturer operating such equipment to do so under the authority of a local licensee.

**IN THE MATTER OF 1998 BIENNIAL REGULATORY REVIEW -- AMENDMENT OF PARTS 2, 25 AND 68 OF THE COMMISSION'S RULES TO FURTHER STREAMLINE THE EQUIPMENT AUTHORIZATION PROCESS FOR RADIO FREQUENCY EQUIPMENT, *ET AL.***

**(GEN Docket 98-68)**

In May 1998 the Commission released this *Notice of Proposed Rule Making*, which speeds up the certification process by allowing designated private parties in the U.S. to issue equipment authorizations in place of the Commission. In addition, it implements Mutual Recognition Agreements (MRAs) by allowing designated parties in other countries to issue equipment authorizations in place of the Commission. This action will ensure market access in other countries and promote competition in the provision of telecommunications products and electronic equipment.

**IN THE MATTER OF 1998 BIENNIAL REGULATORY REVIEW -- AMENDMENT OF PART 18 OF THE COMMISSION'S RULES TO UPDATE REGULATIONS FOR RF LIGHTING DEVICES  
(ET Docket 98-80)**

The Commission adopted a *Notice of Proposed Rulemaking* on April 1, 1998, proposing to amend Part 18 of its rules to update the regulations for radio frequency (RF) lighting devices. Recent developments and advances in RF lighting technology offer potential economic and environmental benefits for consumers and industry. The current FCC rules, however, may not easily accommodate these technological advancements and may thus hinder the further development and implementation of these new products.

In June 1998, the Commission proposed to update the regulations for RF lighting devices that offer potential economic and environmental benefits for consumers and industry. This action seeks to reduce unnecessary regulatory burden and to support the introduction of new and beneficial products while ensuring that spectrum-based communications services continue to be protected from interference. Specifically, the Commission proposed to relax the line-conducted emission limits and to adopt radiated emission limits above 1 GHz for RF lighting devices.

**REVISION OF PART 15 REGARDING ULTRA-WIDEBAND TRANSMISSION SYSTEMS  
(ET Docket 98-153)**

In September 1998, the Commission released a *Notice of Inquiry* into the regulation of ultra-wideband transmission systems. This inquiry seeks to determine the standards and measurement procedures that should be applied to ultra-wideband transmission systems in order to ensure a low probability that the operation of these systems will result in harmful interference to other users of the radio spectrum.



**ALLOCATION OF SPECTRUM WITHIN THE 5.850-5.925 GHZ BAND FOR USE BY DEDICATED SHORT RANGE COMMUNICATIONS (DSRC) FOR INTELLIGENT TRANSPORTATION SYSTEMS (ITS)  
(ET Docket 98-95)**

On June 11, 1998, the Commission released the *Notice of Proposed Rulemaking* which proposes to allocate the 5.875-5.925 GHz band on a primary basis to the mobile service for the provision of Dedicated Short Range Communications (DSRC) for Intelligent Transportation Services (ITS). The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) established a national program within the U.S. Department of Transportation (DOT) to develop ITS within the United States.

DOT, in cooperation with public and private partners throughout the United States, has sought to foster the development of ITS through the creation of a "National ITS Program Plan" and "National ITS Architecture." The National ITS Program Plan and Architecture identify 30 "user services" or applications that comprise the collaborative public/private vision of ITS. These ITS applications rely upon the integration of advanced communications systems and highway infrastructure systems. While many ITS communications requirements are being met within the framework of existing telecommunications systems, the National ITS Architecture identifies a need for a dedicated block of spectrum for reliable short-range wireless communications links between vehicles traveling at highway speeds and roadside systems, *i.e.*, DSRC.

**UNLICENSED NII DEVICES AT 5 GHZ (U-NII), (FORMERLY KNOWN AS WINFORUM AND APPLE PETITIONS)  
(ET Doc. 96-102)**

A *Memorandum Opinion and Order* was released in June 1998, addressing two Petitions for Reconsideration and a Petition for Clarification. The MO&O amends Part 15 of the rules to permit fixed, point-to-point Unlicensed National Information Infrastructure ("U-NII") devices in the 5.725-5.825 GHz band to operate with one watt ("W") maximum transmitter output power and directional antennas of up to 23 dBi gain. The Commission also amended its rules to specify transmit power limits in the form of a logarithmic equation as a function of channel bandwidth. The Commission also clarified its rules regarding unwanted emissions and specified these limits in terms of absolute radiated power levels. Further, this action clarified and addressed other issues raised in the petitions regarding the operation of, and regulations governing, U-NII devices.

## **Office Of Plans And Policy**

### **Overview**

The Office of Plans and Policy (OPP) serves as the principal economic, technical and policy advisor to the Commission. OPP assists, advises, and makes recommendations to the Commission with respect to the development and implementation of communications policies in all areas of Commission authority and responsibility, particularly those that cross traditional industry and institutional boundaries.

The Office is composed of a small group of multidisciplinary staff members, including economists, engineers, attorneys, MBAs, and social scientists. OPP is particularly

active in assisting the Commission in ensuring that broadband services are deployed and accessible to all Americans.

A principal function of the Office is to conduct independent economic and policy analyses of programs and responsibilities of other bureaus and offices and to recommend appropriate Commission action. OPP staff work to assess the long term effects of alternative Commission policies on domestic and international communications industries and services. These analyses often take the form of working papers or staff reports. The Office is also responsible for evaluating government, academic, and industry sponsored research affecting Commission policy issues.

During FY98 OPP continued to analyze current agenda items while developing long-term policy on issues that affect the entire communications industry. The Office sought to encourage economic growth in the communications industry with an increased focus on new communications technology and the availability of advanced telecommunications facilities. OPP continually seeks to stimulate innovation in new products and services, provide a sound economic basis allowing greater competition among providers, and promote market-oriented approaches to spectrum management.

### **Major Accomplishments in FY 98**

**Broadband Technology and Advanced Services.** OPP helped to develop and coordinate the Commission's policies to promote the deployment of advanced services, in accordance with the Telecommunications Act of 1996. OPP helped to co-manage and staff the inter-Bureau Broadband Task Force, which, among other things, identified and prioritized all the proceedings at the Commission affecting broadband access. OPP also helped to organize a Commission *En Banc* on Broadband Technology. In FY98 OPP worked closely with the Common Carrier Bureau and the Office of Engineering and Technology on drafting the *Advanced Services Notice of Proposed Rulemaking* and *Notice of Inquiry*.

**Industry Analysis.** In FY98 OPP assisted the Bureaus in conducting competitive analysis of industry consolidation and evaluating the long-term implications and economic bases of domestic and international telecommunications mergers. OPP facilitated discussion of industry consolidation by helping to organize academic forums and Commission *en bancs* on these issues.

**Spectrum Policy.** In FY98 OPP continued to provide leadership and analysis in support of economically efficient spectrum allocation and licensing policies for a wide range of rulemakings over the year dealing with different portions of the radio spectrum. It also continued its support of research in efficient spectrum management policies. OPP co-chairs the FCC's internal Spectrum Coordinating Committee that coordinates spectrum management activities across the Bureaus and Offices. In FY98, among other things, OPP collaborated with the Bureaus on the 36.0-51/4 GHz band

plan *Report and Order* to partition spectrum between satellite and terrestrial uses, and worked on designing a combinatorial bidding system, as required by the 1997 Budget Act.

**Disabilities Issues.** OPP staff co-chairs the FCC's inter-Bureau Disabilities Issues Task Force (DITF). The DITF helps to develop Commission policy on all proceedings directly or indirectly affecting the disabilities community. The DITF also helps respond to inquiries from the public on disabilities issues relating to communications. In FY98, the DITF worked closely with the Bureaus on several proposed rulemakings that would ensure that telecommunications services and equipment are accessible by persons with disabilities (Section 255), would improve the quality of Telecommunications Relay Service (Section 225), and on amended rules on closed captioning requirements for video programming providers (Section 713) in accordance with the Telecommunications Act of 1996. The DITF also worked extensively with an industry-consumer forum examining solutions to make TTY's and digital wireless handsets compatible.

**Communications Policy Issues.** In FY98 OPP provided critical support to the Bureaus on a wide range of issues including: high cost, access reform and universal service proceedings; economic models regarding local and broadband competition; reviewing the DTV fees draft Report and Order; analyzing set-top box and digital convergence issues including digital must carry; reviewing the cable programming costs report; reviewing the *Satellite Home Viewer Act NPRM*; helping to draft the annual Cable Competition Report; assisting with the review of mass media cross-ownership rules; and assisting with inquiries about the entry of utilities into telecommunications.

**Internet Issues.** During FY98, OPP continued to lead the Commission's Internet policy efforts. OPP staff worked closely with the Common Carrier Bureau on several major items that considered the legal status of Internet services under the Communications Act. In particular, OPP helped develop the portion of the April 8, 1998 Report to Congress on Universal Service addressing whether Internet services should be subject to universal service rules. OPP also heads the Internet Coordinating Committee, staffed by representatives of all the major Bureaus and Offices. OPP continues to monitor the relationship between communications and Internet services.

# Office of General Counsel

## Overview

The Office of General Counsel (OGC) serves as the chief legal advisor to the Commission and to its various bureaus and offices. The Office of General Counsel also represents the Commission in litigation in federal courts, recommends decisions in adjudicatory hearing matters before the Commission, assists the Commission in its decision-making capacity, and performs a variety of legal functions regarding internal and other administrative matters.

In the past year OGC reviewed over 375 draft decision documents presented to the Commission by bureaus and offices. OGC prepared and submitted for Commission consideration 32 hearing, rulemaking, FOIA and other draft decision documents. OGC participated on behalf of the Commission in more than 300 federal appeals and Supreme Court proceedings, and 100 federal district court cases. OGC drafted 45 appellate briefs and participated in 35 oral arguments, and assisted the Department of Justice in numerous cases pending before federal district courts and the Supreme Court.

The Office of General Counsel has two Divisions:

The **ADMINISTRATIVE LAW DIVISION** provides the Commissioners and the agency's bureaus and offices with legal advice on a broad range of communications and general administrative law issues. Its attorneys and paralegals also provide the public with legal information on such matters. The division reviews all draft Commission decisions for legal sufficiency. Division staff provides legal advice to the Commission concerning a wide array of statutes, regulations, and procedures, including, for example, the Communications Act of 1934, as amended by the Telecommunications Act of 1996, the Administrative Procedure Act, the Freedom of Information Act, the Privacy Act, the Regulatory Flexibility Act, the Paperwork Reduction Act of 1995, the Government in the Sunshine Act, the Contract with America Advancement Act of 1996, negotiated rulemaking, alternative dispute resolution, the Commission's procedural rules, procurement issues, and the agency's ex parte and ethics rules. The Division staff is available to answer inquiries from the public concerning these matters. The Division also drafts all Commission decisions involving matters on review from Administrative Law Judges, Freedom of Information Act applications for review, and regulatory and filing fee applications for review.

The **LITIGATION DIVISION** represents the Commission in Federal courts of appeals when parties challenge Commission actions, and, in conjunction with the United States Department of Justice and United States Attorneys offices, represents the Commission in litigation in Federal district courts. In addition, Litigation Division attorneys work with the Solicitor General of the United States in representing the Commission in actions in the United States Supreme Court.

## **Major Proceedings**

Among the significant Commission documents submitted by the Office of General Counsel during FY 1998 were the following:

### **TREATMENT OF CONFIDENTIAL INFORMATION**

The Commission adopted a Report and Order addressing its general policies governing the handling of competitively sensitive information that has been provided to the Commission and amending its rules to set out more clearly what should be contained in a request that information not be routinely available for public disclosure, to provide that audit information and programming contracts will be presumed to be exempt from public disclosure, and to codify the Commission's practice of sometimes deferring action on a request for confidentiality until a request for inspection is made. The Report and Order also adopted a Model Protective Order.

### **COMPETITIVE BIDDING PROCEDURES FOR COMMERCIAL BROADCAST AND INSTRUCTIONAL FIXED TV SERVICES LICENSES**

The Commission adopted a Report and Order implementing provisions of the Balanced Budget Act of 1997, which expanded the Commission's competitive bidding authority to utilize auctions for broadcast services; established a "new entrant" bidding credit to ensure that small business, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services; and concluded that certain mutually exclusive commercial broadcast applications filed before July 1, 1997 should be resolved by competitive bidding procedures.

**Among the significant court decisions during fiscal year 1998 involving cases that the Office of General Counsel briefed and argued, or assisted the Department of Justice in briefing, were the following:**

Arkansas Educational Television Comm'n v. Forbes, 118 S.Ct. 1663 (1998).

The Supreme Court held that the Arkansas Educational Television Commission, a state agency, did not violate the First Amendment when it organized and broadcast, on stations licensed to the Arkansas Commission, a political candidate debate that excluded a particular candidate because, the Arkansas Commission determined, he had not generated appreciable public interest. The FCC filed a brief supporting the Arkansas Commission.

BellSouth Corp. v. FCC, 144 F.3d 58 (D.C. Cir. 1998). Petitions for Writ of Certiorari pending in BellSouth Corp. v. FCC, No. 98-1046 (Sup. Ct.) and U S WEST, Inc. v. FCC, No. 98-1153 (Sup. Ct.).

The Court affirmed the FCC's order adopting rules to implement Section 274 of the Act, which restricts the participation of the Bell Operating Companies in electronic publishing services over their own networks for four years from the adoption of the 1996 Act. The Court rejected arguments that the restrictions, which apply only to the BOCs, were an unconstitutional bill of attainder and that they violated the BOCs' First Amendment rights.

Lutheran Church-Missouri Synod v. FCC, 141 F.3d 344, rehearing denied, 154 F.3d 494 (D.C. Cir. 1998).

A panel of the court of appeals held that the FCC's regulation, which required radio and television stations to maintain a positive effort to ensure equal opportunity in employment by recruiting new employees from a wide variety of sources that are likely to include women and minorities and by regular self-evaluation, was a racial classification that should be subjected to strict scrutiny under the equal protection provision of the Constitution. Although the FCC had explicitly stated that the rule did not impose any hiring requirements, the panel said that the regulation necessarily pressured stations to engage in race-conscious hiring. The panel concluded that the regulation did not meet the strict scrutiny requirement because the interest in producing program diversity was not compelling and because the regulation was not narrowly tailored since it applied to all station employees without regard to whether they were likely to influence the station's programming. The court denied a subsequent petition for rehearing filed by the Commission, with four judges dissenting.

MCI Telecommunications Corp. v. FCC, 143 F.3d 606 (D.C. Cir. 1998).

The Court reversed and remanded the FCC's order adopting rules to govern the compensation to be paid to payphone operators for coinless calls placed from their phones. The Court held that the Commission had failed to explain adequately its derivation of the compensation amount.

SBC Communications, Inc. v. FCC, 154 F.3d 226 (5th Cir. 1998), cert. denied, 119 S.Ct. 889 (1999).

The Court reversed a district court ruling and held that sections 271-275 of the Act, which restrict certain activities of the Bell Operating Companies, were nonpunitive in character and thus did not violate the constitutional prohibition against bills of attainder.

SBC Communications, Inc. v. FCC, 138 F.3d 410 (D.C. Cir. 1998).

The Court affirmed the Commission's order denying the application of Southwestern Bell, pursuant to section 271 of the Act, for authorization to provide long distance service in Oklahoma.

Alexander J. Serafyn, et al. v. FCC, 149 F.3d 1213 (D.C. Cir. 1998).

Alexander J. Serafyn appealed a Commission grant of an application by CBS to acquire a Detroit television station on the ground that a segment of a CBS Network "60 Minutes" broadcast about modern Ukraine had distorted the news in violation of FCC policies against news distortion. The court held that the Commission had applied its own news distortion standard incorrectly in addressing Serafyn's complaints about the factual inaccuracies in the broadcast. The court recognized the sensitive First Amendment issues that arise in government review of whether news broadcasts have been distorted but remanded the appeal for further explanation by the Commission of the application of its news distortion policy in this case.

Southwestern Bell Telephone Co. v. FCC, 153 F.3d 523 (8th Cir. 1998).

The Court affirmed in all respects an order and rules of the FCC modifying and reforming the rate structure for the access charges that long distance carriers pay local exchange telephone companies for the use of their local networks in initiating and terminating long distance calls.

Southwestern Bell Telephone Co. v. FCC, 153 F.3d 597 (8th Cir. 1998). Petition for Writ of Certiorari pending in Ameritech Corporation, et al. v. FCC, No. 98-1381 (Sup. Ct.).

The Court affirmed the Commission's order clarifying that the obligation of local exchange carriers to provide "unbundled network elements" to requesting competitors included the obligation to provide "shared transport" facilities.

United States v. Dunifer, 997 F.Supp. 1235 (N.D.Cal. 1998), appeal pending, No. 99-15035 (9th Cir. docketed Jan. 5, 1999).

The United States District Court for the Northern District of California issued a permanent injunction against unlicensed radio broadcaster Stephen Dunifer, who operated "Free Radio Berkeley" in Berkeley, California. The decision reaffirms the FCC's authority to require a license before any person can broadcast on the public airwaves.

## **Office of Legislative and Intergovernmental Affairs**

## **Overview**

The Office of Legislative and Intergovernmental Affairs (OLIA) informs the Congress of the Commission's decisions, prepares Commission witnesses for congressional hearings, coordinates responses to congressional inquiries, drafts Commission legislative proposals, analyzes and comments on other proposed legislation, assists in the coordination of the Commission's annual budget and appropriations legislation, and acts as liaison between the Commission and other Federal, state and local government agencies.

## **Enacted Laws**

During Fiscal Year 1998 (October 1, 1997-September 30, 1998), the Congress enacted 10 laws directly affecting, or of interest to, the Commission. These 10 laws: (1) continued appropriations for the Commission and other Federal agencies by means of a series of six, separate "Continuing Resolutions"; (2) appropriated funds to the Commission for FY 1998; (3) provided for the designation of common carriers not subject to the jurisdiction of a State commission as "eligible" telecommunications carriers for purposes of receiving Federal universal service support; (4) criminalized the possession and/or use of scanning receivers or software used for modifying or copying cellular phone electronic serial numbers; and (5) required the FCC to complete a rulemaking on the allocation of spectrum for "intelligent" transportation systems. A more detailed, chronological listing follows:

### **1. PL 105-64 (HJRes 97), 105-68 (HJRes 101), 105-69 (HJRes 104), 105-71 (HJRes 105), 105-84 (HJRes 106), and 105-240 (HJRes 128):**

**"Continuing Resolution"** Approved continuing appropriations for the Commission and other related agencies in the Commerce, Justice, State appropriations bill for fiscal year 1998. These Continuing Resolutions were signed into law on October 24, 1997, November 7, 1997, November 9, 1997, November 10, 1997, November 13, 1997, and September 25, 1998.

### **2. PL 105-119 (HR 2267):**

**"An Act Making Appropriations for Fiscal Year 1998"** Appropriated the FCC \$186,514,000 for FY 1998, of which amount only \$23,991,000 was to come from a direct appropriation and the balance of \$162,523,000 from the collection of regulatory fees. Required the Commission to review and report to the Congress no later than April 10, 1998 regarding implementation of the universal service provisions of the Telecommunications Act of 1996. Repealed a provision of law regarding the withholding of payments to the Universal Service Fund. Requested the General Accounting Office to review the FCC's then proposed move to the new Portals building including concerns about the Portals lease. This bill was signed into law on November 26, 1997.



### **3. PL 105-125 (S. 1354):**

**The "Eligible Telecommunications Carriers Act of 1997"** Amended Section 214(e) of the Communications Act of 1934 to provide for the designation of common carriers not subject to the jurisdiction of a State public service commission such as common carriers owned or controlled by Native Americans as telecommunications carriers "eligible" to receive Federal universal service support. This bill was signed into law on December 1, 1997.

### **4. PL 105-172 (S. 493):**

**"The Wireless Telephone Protection Act"** Amended 18 U.S.C. Sec. 1029 of the Criminal Law Code with respect to cellular telephone cloning paraphernalia. Made criminal the possession and/or use of scanning receivers or software used for modifying or copying cellular phone electronic serial numbers, with an exemption provided for certain telecommunication service providers. This bill was signed into on April 24, 1998.

### **5. PL 105-178 (H.R. 2400):**

**"Transportation Equity Act for the 21st Century"** Directed the FCC "to consider, in consultation with the Secretary of Transportation, the spectrum needs of intelligent transportation systems," and "to complete a rulemaking considering the allocation of spectrum for intelligent transportation systems by January 1, 2000." This bill was signed into law on June 9, 1998.

### **Liaison Activities**

A chief mission of OLIA is to ensure, to the maximum extent possible, good working relationships between the Commission, Members of Congress and their staffs. A primary means of meeting this mission is consistent, conscientious and effective communication with congressional offices. OLIA seeks to maintain the highest standards for responsiveness to congressional and public legislative inquiries, both oral and written.

For example, in FY 1998, OLIA provided considerable assistance to congressional offices in responding to their requests for information, public documents, status reports, and issue briefings. The majority of these requests were made on behalf of individual constituents. OLIA handled approximately 20,000 telephone calls, approximately 10% or 2000 of which were directly from the public on such topics as FCC appropriations and reauthorization legislation, amateur radio matters, broadcast indecency, cable TV rates and regulation, children's TV, telecommunications reform and regulation, implementation of the Telecommunications Act of 1996, reform of the Satellite Home Viewer Act, as well as countless calls and letters from the public concerned about two non-existent matters: the

FCC imposing a telephone surcharge on each computer modem, and the FCC granting a petition allegedly (but not actually) filed by famous atheist Madalyn Murray O'Hair to ban religious broadcasting.

### **Congressional Correspondence**

In FY 1998, OLIA coordinated FCC responses to over 9000 congressional letters on major pending FCC policy matters. The entire OLIA staff shares responsibility for responding to congressional and public inquiries. However, four Congressional Liaison Specialists within OLIA currently have chief responsibility for tracking Commission responses to written congressional inquiries. This responsibility includes:

- Operation of an automated congressional correspondence tracking system, including the development of a new Y2K compliant system with automated reporting capability;
- Establishment of written procedures for management of congressional inquiries, as well as coordinating with designated Bureau and Office Liaisons for congressional correspondence;
- Monitoring a revised and streamlined congressional correspondence package for presentation to the Chairman and eventual submission to the Hill; and
- Assuring compliance with tight response deadlines, *i.e.*, 10 workdays for both the Bureaus/Offices and the Chairman's Office.

### **Other Responsibilities**

OLIA works with staff from other Federal, state and local governments to respond to their inquiries and to assist in coordinating or facilitating contact within the agency. Such contacts have included not only arms of Congress such as Congressional Research Services, but also the Office of Management and Budget, the Department of Justice, the Department of State, the General Services Administration, the Federal Trade Commission and the Federal Aviation Administration. OLIA also works with Federal Advisory Committees such as the Local State Government Advisory Committee and the Public Safety Advisory Committee.

OLIA also works with staff of the House Committee on Commerce and the House Office of Legislative Counsel to add newly enacted amendments to the Communications Act of 1934 for publication in the biennial Compilation of the Communications Act of 1934 and Related Provisions of Law.

On request, OLIA staff speak to various FCC, industry, state and local governments and public groups about the relationship between the Commission and the Congress and pending legislative matters.

In addition, OLIA responds promptly to periodic FOIA requests for legislative information.

## **Accomplishments**

In Fiscal Year 1998, OLIA accomplished the following:

- **Hearings**

Coordinated preparation of testimony, briefing material, and responses to follow-up questions for 23 congressional oversight and legislative hearings requiring FCC witnesses.

- **Congressional Correspondence and Inquiries**

Coordinated FCC responses to 9274 written congressional inquiries and approximately 20,000 oral inquiries.

- **Congressional Monitoring**

Monitored over 100 congressional hearings, bill mark ups, and floor debates and votes on a wide variety of telecommunications issues.

- **Oversight Investigations**

Responded to requests from Congress for FCC documents as part of congressional oversight and investigation.

- **Legislative Comments**

Coordinated the preparation of over two dozen comments on pending communications legislation for both the Office of Management and Budget and the Congress.

- **Legislative Program**

Worked on legislative proposals to deregulate and streamline the FCC as well as implement the Commission's policy objectives of expanding telecommunications competition, increasing telecommunications opportunities, and strengthening enforcement of remaining FCC rules and regulations.

- **Congressional Briefings**

Conducted 58 subject matter briefings for Members of Congress and congressional staff.

- **Freedom of Information Act Requests**

Prepared responses to four FOIA requests.

