PUBLIC NOTICE

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COMMISSION RELEASES 2008 BIENNIAL REVIEW OF TELECOMMUNICATIONS REGULATIONS

CG Docket No. 08-177, EB Docket No. 08-178, IB Docket No. 08-179, ET Docket No. 08-180, PS Docket No. 08-181, WT Docket No. 08-182, WC Docket No. 08-183

The Federal Communications Commission is releasing the results of its 2008 Biennial Review of telecommunications regulations in accordance with Section 11(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 161(a). Section 11(a) requires the Commission to review, in every even-numbered year, all regulations issued under the Communications Act that apply to the operations or activities of any provider of telecommunications service and to determine whether any regulation "is no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service."

On September 4, 2008, the Commission issued a Public Notice seeking comment on whether any rules subject to the Section 11(a) biennial review should be repealed or modified as the result of meaningful economic competition between providers of telecommunications service.[1] Staff considered the public comments, as well as developments in the marketplace, in deciding whether to recommend repeal or modification to any rules that are subject to review under Section 11(a).

The following bureaus and offices conducted the Section 11(a) review:

Consumer & Governmental Affairs Bureau (CGB) – CGB staff reviewed relevant rules in 47 C.F.R. Parts 1, 6, 7, 64, and 68. CGB did not receive any timely filed comments suggesting that the Commission should repeal or modify any of these rules. Based on its review, CGB staff did not recommend that the Commission should repeal or modify any rules as no longer in the public interest as the result of meaningful economic competition between telecommunications service providers.

Enforcement Bureau (EB) – EB staff reviewed relevant rules in 47 C.F.R. Part 1. EB did not receive any comments suggesting that the Commission should repeal or modify any of these rules. Based on its review, EB staff did not recommend that the Commission should repeal or modify any rules as no longer in the public interest as the result of meaningful economic competition between telecommunications service providers.

[1] Public Notice, *The Commission Seeks Public Comment in the 2008 Biennial Review of Telecommunications Regulations*, FCC 08-201, 23 FCC Rcd 13636 (2008).

International Bureau (IB) – IB staff reviewed relevant rules in 47 C.F.R. Parts 23, 25, 43, 63, and 64. Based on its review and in response to comments, IB staff made two recommendations. First, IB staff concluded that the reporting requirements for international services in Part 43 may no longer be necessary in the public interest, and recommended that the Commission should consider whether to repeal or modify those requirements in IB Docket 04-112.[2] Second, IB staff concluded that the International Settlements Policy (ISP) in Part 64, Subpart J, may no longer be necessary in the public interest as the result of meaningful competition between telecommunications service providers, and recommended that the Commission should initiate a proceeding to consider repealing or modifying the ISP. IB did not receive any comments suggesting that the Commission should repeal or modify any other rules within IB's purview. Based on its review, IB staff did not recommend that the Commission should repeal or modify any other rules as no longer in the public interest as the result of meaningful economic competition between telecommunications service providers.

Office of Engineering & Technology (OET) – OET staff reviewed relevant rules in 47 C.F.R. Parts 2, 5, 15, and 18. Parties filed comments suggesting that the Commission should amend rules in Part 2, Subpart J and Part 15, but the comments did not suggest that the rules should be repealed or modified because they are no longer in the public interest as the result of meaningful economic competition between telecommunications service providers. Accordingly, OET concluded that these comments were beyond the scope of the section 11(a) review. OET did not receive any other comments. Based on its review, OET staff did not recommend that the Commission should repeal or modify any rules as no longer in the public interest as the result of meaningful economic competition between telecommunications service providers.

Public Safety & Homeland Security Bureau (PSHSB) – The presence or absence of meaningful economic competition between telecommunications service providers, which is the focus of Section 11(a) and the Commission's Biennial Review of its regulations, is not necessarily relevant when assessing the continued need for the public safety and homeland security regulations that PSHSB superintends. Nevertheless, PSHSB staff reviewed relevant rules in 47 C.F.R. Parts 1, 4, 10-12, 20, 22, 25, 64, and 90 pursuant to Section 11(a). The Federal Emergency Management Agency (FEMA) filed comments concerning rules in Parts 10 and 11, but FEMA did not suggest that the rules should be repealed or modified because they are no longer in the public interest as the result of meaningful economic competition between telecommunications service providers. Accordingly, PSHSB staff concluded that these comments were beyond the scope of the section 11(a) review. PSHSB did not receive any other comments suggesting that the Commission should repeal or modify any of the rules within PSHSB's purview. Based on its review, PSHSB staff did not recommend that the Commission should repeal or modify any rules as no longer in the public interest as the result of meaningful economic competition between telecommunications service providers.

Wireless Telecommunications Bureau (WTB) – WTB staff reviewed relevant rules in 47 C.F.R. Parts 1, 17, 20, 22, 24, 27, 80, 90, 95, and 101. Based on its review and in response to comments, WTB staff made several recommendations. First, WTB staff

[2] *See Reporting Requirements for U.S. Providers of International Telecommunications Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4231 (2004).

recommended that the Commission should further consider in the pending comprehensive universal service/intercarrier compensation reform proceeding[3] whether section 20.11 is no longer necessary in the public interest as a result of meaningful economic competition, or whether it should be modified so that the rule is in the public interest. Second, WTB staff recommended that the Commission should further consider in its then-pending roaming proceeding[4] whether section 20.12 is no longer necessary in the public interest as a result of meaningful economic competition, or whether it should be modified so that the rule is in the public interest. Third, WTB staff recommended that the Commission should initiate a proceeding to determine whether the rules concerning comparative renewal in Part 27 and Part 101 should be revised.[5] Marcus Spectrum Solutions filed comments suggesting that the Commission should clarify its out-of-band emission rules in Parts 22, 24, 27, and 90, but did not recommend that any of the rules should be repealed or modified as a result of meaningful economic competition between telecommunications service providers. Accordingly, WTB staff concluded that these comments were beyond the scope of the section 11(a) review. Based on its review, WTB staff did not recommend that the Commission should repeal or modify any other rules as no longer in the public interest as the result of meaningful economic competition between telecommunications service providers.

Wireline Competition Bureau (WCB) – WCB staff reviewed relevant rules in 47 C.F.R. Parts 1, 32, 36, 42-43, 51-54, 59, 61, 63-65, and 68-69. Based on its review and in response to comments, WCB staff made several recommendations. First, WCB staff recommended that the Commission should further consider in the pending *RAO Letter 12 Modification Proceeding*[6] whether section 32.26 is no longer necessary in the public interest as a result of meaningful economic competition. Second, WCB staff recommended that the Commission should further consider in the pending *Separations Freeze FNPRM* proceeding[7] whether any of the Part 36 rules are no longer necessary in the public interest as a result of meaningful economic competition. Third, WCB staff recommended that the Commission should further consider in the pending *Equal Access Notice of Inquiry* proceeding[8] whether any of the Part 51 carryover equal access rules preserved by 47 U.S.C. § 251(g) are no longer necessary in the public interest as a result of meaningful economic competition. Fourth, WCB staff recommended that the Commission should further consider in the pending comprehensive universal

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[3] *See* FCC No. 08-262, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475 (2008).

[4] *See* WT Docket No. 05-265, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817 (2007); *see also* WT Docket No. 05-265, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, FCC 10-59 (rel. April 21, 2010) (revising 47 C.F.R. § 20.12(d)).

[5] *See* WT Docket No. 10-112, Notice of Proposed Rulemaking and Order, FCC 10-86 (rel. May 25, 2010).

[6] *See* WC Docket No. 05-352, Public Notice, 21 FCC Rcd 72 (2006).

[7] *See* CC Docket No. 80-286, Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5516 (2006).

[8] *See* CC Docket No. 02-39, Notice of Inquiry, 17 FCC Rcd 4015 (2002).

service/intercarrier compensation reform proceeding[9] whether any of the intercarrier compensation rules in Part 51 are no longer necessary in the public interest as a result of meaningful economic competition. Fifth, WCB staff recommended that the Commission should further consider in the pending comprehensive universal service/intercarrier compensation reform proceeding[10] whether any of the universal service rules in Part 54 are no longer necessary in the public interest as a result of meaningful economic competition. Sixth, WCB staff recommended that the Commission should further consider in the pending comprehensive universal service/intercarrier compensation reform proceeding[11] and the *Special Access Proceeding*[12] whether any of the rules in Part 61 are no longer necessary in the public interest as a result of meaningful economic competition. Seventh, WCB staff recommended that the Commission should further consider in pending forbearance proceedings[13] whether any of the rules in Part 64, Subpart G are no longer necessary in the public interest as a result of meaningful economic competition. Eighth, WCB staff recommended that the Commission should further consider in a pending proceeding[14] whether any of the rules in Part 64, Subpart T are no longer necessary in the public interest as a result of meaningful economic competition. Ninth, WCB staff recommended that the Commission should further consider in the pending comprehensive universal service/intercarrier compensation reform proceeding[15] and the *Special Access Proceeding*[16] whether any of the access charge rules in Part 69 are no longer necessary in the public interest as a result of meaningful economic competition. In addition, the Mercatus Center filed comments concerning rules in Parts 36, 54, and 69, but did not recommend that any of the rules should be repealed or modified as a result of meaningful economic competition between

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[9] *See* FCC No. 08-262, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475 (2008).

[10] *Id*.

[11] *Id*.

[12] *See* WC Docket No. 05-25, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005); Public Notice, 22 FCC Rcd 13352 (2007).

[13] *See , e.g*., Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. §160(c) in Cox's Service Territory in the Virginia Beach Metropolitan Statistical Area, WC Docket No. 08-49 (filed Mar. 31, 2008; withdrawn May 12, 2009); Petition of the Verizon New England for Forbearance Pursuant to 47 U.S.C. § 160(c) in Rhode Island, WC Docket No. 08-24 (filed Feb. 14, 2008; withdrawn May 12, 2009).

[14] *See 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, CC Docket No. 00-175, Notice of Proposed Rulemaking, 16 FCC Rcd 17270 (2001).

[15] *See* FCC No. 08-262, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475 (2008).

[16] *See* WC Docket No. 05-25, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005); Public Notice, 22 FCC Rcd 13352 (2007).

telecommunications service providers.[17] Accordingly, WCB staff concluded that these comments were beyond the scope of the section 11(a) review. Based on its review, WCB staff did not recommend that the Commission should repeal or modify any other rules as no longer in the public interest as the result of meaningful economic competition between telecommunications service providers.

Section 11(b) directs the Commission to "repeal or modify any regulation it determines to be no longer necessary in the public interest." 47 U.S.C. § 161(b). The Commission will take further action as appropriate to implement the staff recommendations and satisfy the requirements of Section 11(b).

The staff recommendations summarized in this Public Notice were made as of December 31, 2008, the conclusion of the period of review covered in the 2008 Biennial Review, and do not necessarily represent current staff views. Commission staff will develop findings and recommendations and report on the status of proceedings for the period following December 31, 2008 during the 2010 Biennial Review.

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[17] *See* Mercatus Center at George Mason University Oct. 2, 2008 *Ex Parte* Comments, *attached to* Letter from Jerry Ellig, Senior Research Fellow, Mercatus Center, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 08-183, 05-337, 99-68, 07-135, CC Docket Nos. 01-92, 96-45 (filed Oct. 2, 2008) (providing a correction to earlier *Ex Parte* Comments); *see also* Mercatus Center at George Mason University Oct. 2, 2008 Comments, WC Docket No. 08-183.