



NEWS

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See MCI v. FCC, 515 F 2d 385 (D.C. Circ 1974).

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FCC CLARIFIES CERTAIN ASPECTS OF ITS “DESIGNATED ENTITY” ELIGIBILITY RULES ADOPTED IN APRIL 2006

Washington, D.C. – Today, the Federal Communications Commission (FCC) adopted an Order on Reconsideration of the Second Report and Order (Recon Order) that provides guidance on certain aspects of the FCC’s April 2006 Second Report and Order (April 2006 Order) which modified certain rules governing the benefits reserved for applicants or licensees that qualify as “designated entities.” Several parties have recently submitted filings seeking reconsideration and clarification of various aspects of the April 2006 Order. Today’s Recon Order addresses issues raised in those filings.

In the April 2006 Order, the FCC revised its designated entity rules to include certain “material relationships” as factors in determining designated entity eligibility. Specifically, the FCC adopted rules to limit the award of designated entity benefits to any applicant or licensee that has “impermissible material relationships” or an “attributable material relationship” created by certain agreements with one or more other entities for the lease or resale (including under a wholesale arrangement) of its spectrum capacity. The FCC also adopted changes to its rules related to unjust enrichment payments, explained how it will implement its rules concerning audits, and refined its rules regarding the reporting obligations of designated entities. The FCC found that these rule modifications were necessary to ensure that every recipient of the FCC’s designated entity benefits is an entity that uses its licenses to directly provide facilities-based telecommunications services for the benefit of the public.

Today’s Recon Order:

- dismissed arguments claiming that the adoption of rules in the April 2006 Order was without sufficient notice,
- with respect to the material relationship rules, clarified how the FCC will evaluate impermissible and attributable material relationships, including those that are grandfathered, for the purpose of determining eligibility for designated entity benefits and the imposition of unjust enrichment,
- responded to arguments that its rule changes related to unjust enrichment payments were arbitrary and capricious, and made clear that the ten-year

schedule applies only to licenses granted after release of the April 2006 Order, and

- clarified that the new rule relating to reportable eligibility events includes events that might affect a designated entity's eligibility under either the new material relationship or existing controlling interest standards.

Action by the Commission on June 2, 2006, by Order on Reconsideration of the Second Report and Order (FCC 06-78). Chairman Martin and Commissioner Copps, with Commissioners Adelstein and Tate approving in part and concurring in part. Separate statements issued by Chairman Martin and Commissioners Copps, Adelstein, and Tate.

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