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

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

REPORT

Adopted: October 16, 2007 **Released: December 6, 2007**

By the Commission: Commissioners Copps and Adelstein approving in part, dissenting in part, and issuing separate statements.

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I. INTRODUCTION AND EXECUTIVE SUMMARY

1. Section 257 of the Communications Act of 1934, as amended (Communications Act)[1] mandates that, every three years, the Commission review and report to Congress on (1) efforts to identify and eliminate regulatory barriers to market entry in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services by entrepreneurs and other small businesses and (2) proposals to eliminate statutory barriers to market entry by those entities, consistent with the public interest, convenience, and necessity.[2]

2. The purpose underlying the requirements contained in Section 257 are:

> [T]o promote the policies and purposes of this [Communications] Act favoring a diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.[3]

3. In this 2006 Section 257 Report to Congress (*2006 Report*), we examine regulatory actions taken to reduce market entry barriers by each rulewriting Bureau and Office within the Commission since the last triennial report. We also make recommendations for legislative action to reduce statutory barriers to market entry. The Commission fully recognizes

[1] 47 U.S.C. § 25. Congress added Section 257 to the Communications Act through the Telecommunications Act of 1996, Public Law No. 104-104, 110 Stat. 56 (1996) (Telecommunications Act of 1996).

[2] 47 U.S.C. § 257 (c). Subsection (c) requires periodic review and reporting by the Commission every three years. The Commission's last report was adopted in 2003. *See* Section 257 Triennial Report to Congress, Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses, 19 FCC Rcd 3034 (2004).

[3] 47 U.S.C. § 257(b).

the role that small communications businesses play in a robust American economy. Our efforts, as detailed in this *2006 Report,* evidence the Commission's commitment to identifying and reducing or eliminating barriers that would impede the growth of such a vital sector of the industry and the economy. This 2006 Report contains information from each Bureau and Office that either conducts substantive rulemakings relevant to small businesses or that is directly engaged in advocating for regulatory policies, rules and regulation to support small businesses**.** Below is a summary of the actions taken in the last three years by the Commission's rulewriting Bureaus and Offices to reduce market entry barriers.[4]

A. The Office of Communications Business Opportunities

- Serves as the principal small business policy advisor to the Chairman and Commissioners, Bureaus and Offices.
- Developed, with the participation of Bureaus and Offices, policies, plans and programs to further the competitive concerns of small entities.
- Managed the implementation of the Regulatory Flexibility Act (RFA), the Small Business Act, Section 257 of the Telecommunications Act of 1996, and the Small Business Regulatory Enforcement Fairness Act (SBREFA).
- Acted as the Commission's liaison with the Small Business Administration.
- Reviewed Notices of Proposed Rulemakings, Orders and other items for Commission action to ensure consistency and compliance with the requirements of the RFA and SBREFA.
- Solicited information, on a semi-annual basis, concerning Commission rulemaking proceedings for inclusion in the Unified Agenda, which is published by the General Services Administration (GSA) and coordinated the submission of the description of the Commission's current rulemaking proceedings to the GSA.
- Reviewed and coordinated the publication of Small Entity Compliance Guides, pursuant to Section 212 of SBREFA, which summarize, in plain language, rules or groups of rules containing compliance requirements adopted by the Commission.
- Ensured that small entities obtained an opportunity to participate in any applicable rulemakings by organizing meetings, distributing information and attending conferences.
- Solicited information, on an annual basis, concerning rules that are subject to review pursuant to Section 610 of the RFA and drafted the *Federal Register* publications of the lists of existing ten-year old rules for public comment on the need for their continuation, modification or elimination. Also, maintained an electronic tracking system to monitor the resolution, by the Bureaus and Offices, of comments filed in response to the

[4] Subsection (c) of Sec. 257 requires the Commission to review and report on the regulatory actions taken to identify and eliminate market entry barriers during the preceding three-year period. The Commission's most recent report detailed actions taken for the period ending December 31, 2003. Accordingly, this 2006 Report provides a review of regulatory actions taken by the Commission for the three-year period ending December 31, 2006. Although the Commission has taken subsequent actions in many of the areas described within, these actions are not reflected in the instant Order. Instead, these more recent actions will be described in our next section 257 report.

publication of the Section 610 list of rules.

- Provided training, advice, and guidance on matters relating to the RFA and SBREFA by offering internal annual training seminars and quarterly Reg Flex clinics and by inviting staffers from the Small Business Administration to hold regular sessions for Commission rulewriters.

B. International Bureau

- Streamlined earth station licensing, directly benefitting the thousands of small businesses dependent on such stations.
- Streamlined the international Section 214 process, which lowers costs, eliminates delays in the authorization of entry, increases the availability of capital by eliminating unnecessary limits on foreign investment, and reduces reporting burdens.
- Engaged proactively with other countries to make spectrum available, both through new allocations and through technical and regulatory solutions, for small businesses interested in innovative telecommunications enterprises.
- Consolidated licensing and application processing system is designed to lower costs for applicants, and thereby lowers barriers to entry for small businesses. This system also provides easier availability for data for small businesses.
- Reformed international settlement policies to reduce regulatory burdens for many small businesses; increase the competitiveness of the market; and facilitate lower international communications costs for all users, including small businesses.
- Streamlined and reformed the procedures for obtaining satellite licenses.
- Initiated a proceeding to streamline outdated reporting requirements to reduce reporting burdens wherever possible.
- Taking action to reduce regulatory burdens for providers of International Fixed Public Radiocommunication service.

C. Wireless Telecommunications Bureau

- Facilitated broader access to wireless radio spectrum resources by entrepreneurs and other small businesses through the development of secondary markets, particularly through the use of streamlined processing and immediate approval procedures for license assignments and transfers of control applications, while extending helpful spectrum leasing policies to additional types of services, including public safety services.
- Established several measures intended to increase the ability of wireless service providers in rural areas, including small business entities, to use spectrum resources flexibly and to offer a variety of services in a cost-effective manner, including the adoption of a default definition of "rural" and an assessment that smaller licensing areas may be appropriate in some spectrum blocks to encourage deployment in rural areas.
- Initiated a proceeding to examine the state of roaming in the current CMRS marketplace in order to determine the appropriate regulatory regime for roaming services, including

requesting comment on whether evidence exists that national carriers are negotiating roaming agreements with small or rural carriers in an anti-competitive manner.

- Streamlined and harmonized various licensing provisions for certain wireless radio services, including eliminating the transmitter output power limit for Part 24 Broadband PCS base stations, while seeking comment on a proposal to substantially increase radiated power limits for Part 24 Broadband PCS and Part 27 AWS base stations.

- Furthered the Commission's goal of ensuring that tribal lands have access to affordable, quality telecommunications services, by increasing the special auctions bidding credit available to qualifying applicants and by increasing targeted outreach efforts.

- Entered into a Nationwide Programmatic Agreement (NPA) with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers to improve and streamline the review process for tower constructions and other undertakings, which included prescriptions for standard forms and for timelines for review.

- Maintained a Tower Construction Notification System (TCNS) database of information regarding geographic areas of interest identified by federally recognized Indian tribes and Native Hawaiian Organizations (NHOs), to allow tower constructors electronically to identify and initiate communications with tribes and NHOs that have asserted a traditional religious and cultural interest in historic properties within the geographic area of a proposed tower.

- Continued to offer a number of incentives, including bidding credits, to encourage the participation of small businesses in the auction process, while imposing additional eligibility requirements and new limitations on leasing to ensure that recipients of such benefits are bona fide small businesses using their licenses directly to provide facilities-based telecommunications services for the benefit of the public.

- Adopted rules to safeguard the integrity of the competitive bidding process, including, for the auction of AWS licenses in the 1710-1755 MHz and 2110-2155MHz bands (Auction No. 66), procedures that would in some circumstances withhold certain information on bidder interests and on bids and the identities of bidders that made them, thereby possibly assisting small businesses in particular.

- Implemented the Integrated Spectrum Auction System ("ISAS"), a new web-based auction application filing and bidding system that includes automated checking of data accuracy, improved application search functionality, and integration with FCC Form 602.

- Enhanced participation in spectrum auctions by entrepreneurs and other small businesses by offering auctioned spectrum licenses comprising a range of spectrum block sizes and geographic areas, such that small businesses could more readily obtain licenses that suit their needs

- Acted promptly in response to the devastation caused by Hurricanes Katrina, Rita, and Wilma in parts of Louisiana, Mississippi, Alabama, Texas, and Florida, by extending certain deadlines for license applications, construction permits, auction filings and

payments for affected licensees and applicants, by extending or waiving certain payments and fees, and by acting to protect the hundreds of thousands of displaced residents from being disconnected from their wireless service due to any inability to pay their wireless service bills in the wake of these hurricanes.

- Improved and expanded the online, interactive Universal Licensing System (ULS), which now includes not only application processing and filing, but the submission of pleadings regarding ULS applications and/or licenses, thereby assisting entrepreneurs and other small businesses by reducing the costs and other burdens associated with filings and research.

- Provided information on auction and licensing processes to all sections of the wireless telecommunications community through trade show booths, a webpage and Auctions/ULS Hot Line, pre-auction seminars, and an Auction Support telephone line.

- Promulgated guidelines to designate whether a given wireless provider is an eligible telecommunications carrier (ETC) under the federal Universal Service Fund (USF) rules, and clarified that Commercial Mobile Radio Services (CMRS) providers may recover their USF contributions through rates charged for all of their services.

D. Wireline Competition Bureau

- Eliminated the Title II and *Computer Inquiry* requirements applicable to wireline broadband Internet access services offered by facilities-based providers, and gave providers discretion whether to offer the underlying wireline broadband transmission on a common carrier basis.

- Provided increased incentives for broadband deployment by determining that certain state commission requirements that incumbent LECs provide DSL service to customers that subscribe to competitive LEC voice service provisioned using unbundled network elements are inconsistent with the Commission's unbundling policies.

- Established unbundling obligations only for those facilities and markets where it would be uneconomic for a reasonably efficient service provider to compete absent those network elements, enabling competitors to innovate and providing them certainty as they seek to enter local markets, while also limiting the disincentive effects of unbundling obligations.

- Granted the SBC-AT&T and Verizon-MCI merger applications, which adopted certain wholesale and retail telecommunications pricing and nondiscrimination commitments that can benefit smaller competitors.

- Amended Form 477 to collect more granular data regarding the status of local telephone competition and broadband deployment and took steps to minimize any associated burdens on small reporting entities.

- Streamlined or eliminated paperwork filing requirements with respect to several data collections.

- Promoted competition among payphone services by facilitating alternative compensation arrangements, permitting Internet posting and electronic transmission of documents, and allowing carriers to take advantage of clearinghouse audit procedures to establish compliance.

- Clarified rules regarding tariffed competitive LEC access services.

- Granted forbearance of certain rules relating to ISP-bound traffic that no longer served the public interest, and retained other ISP-bound traffic rules necessary to ensure that charges and practices are just and reasonable.

- Adopted rules related to the revenue-based contribution methodology for assessing contributions to the federal Universal Service mechanisms to ensure the continued stability and sufficiency of the universal service fund.

- Extended filing deadlines to ensure that schools, libraries, rural health care providers, and carriers in the areas affected by Hurricane Katrina continued to receive support under the various universal service support mechanisms.

- Granted numerous requests from small, rural carriers for relief from certain requirements associated with receiving support under the High Cost Support mechanism. The relief ensured that these small, rural carriers were able to continue to provide service in these rural areas. Modified rules to encourage investment in rural exchanges to provide small, rural carriers the incentive needed to upgrade their exchanges to better serve their rural populations.

- Granted a petition for reconsideration of the rules governing its safety valve mechanism to allow small, rural carriers to include their first year investment in newly-acquired exchanges. This action helps to ensure that for small, rural carriers have a sufficient incentive to upgrade such exchanges and thus better serve rural populations.

- Clarified rules on safety net additive support to allow carriers to qualify for such support in more than one year, thus providing additional support for those carriers that have made a significant investment in rural infrastructure.

- Modified the interstate access charge and universal service support system for incumbent LECs subject to rate-of-return regulation, and authorized rate-of-return incumbent LECs to reduce the number of end user common line charges assessed for derived channel T-1 service.

- Made a determination that certain calling card services are telecommunications services upon which access charges may be assessed and which are subject to universal service contribution obligations. This action leveled the regulatory playing field for calling card

providers and reduced regulatory uncertainty, thus encouraging entry and innovation in the market for these services.

- Finalized and reaffirmed rules implementing section 222(e) of the Communications Act, which requires carriers that provide telephone exchange service to provide subscriber list information to requesting directory publishers, including small competitive directory publishers, "on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions."

E. The Office of Engineering and Technology

- Streamlined and simplified the authorization of equipment process, both domestically and internationally.
- Promoted new and innovative services by entrepreneurs and other small businesses in the unlicensed spectrum market, including additional services that promote application of broadband access, wireless local area networks (WLAN), ultra-wideband (UWB) technologies, U-NII radios, cognitive radios, and the provision of broadband service over the electrical utility infrastructure and home wiring.
- Reformed policies to guide the Commission's future reallocation of spectrum and improved use of spectrum by a wider variety of users, including start-up, small equipment, and service providers.
- Initiated rulemakings to explore the more intensive use of spectrum by technologies that can share spectrum with existing users.
- Conducting studies to support and promote new technologies and greater use of spectrum.

F. Media Bureau

- Adopted a Further Notice of Proposed Rulemaking initiating regulatory review, which invited comment on proposals to advance minority and disadvantaged businesses and to promote diversity.
- Sought to ensure that cable operators affiliated with video programmers carry not only their own programming networks but also unaffiliated networks, thereby fostering diversity of cable programming.
- Adopted digital transition policies that take into consideration the needs and interests of small businesses regarding deadlines and other requirements.
- Initiated a proceeding seeking comment on specific rules guidance or best practices that would help to ensure that the local cable franchising process does not unreasonably impede competitive cable entry.
- Continued to enhance electronic filing systems, thereby relieving filers of time and cost burdens associated with paper filing.

G. Consumer & Governmental Affairs Bureau

- Issued an Order implementing Section 258 of the Communications Act, which prohibits "slamming", i.e. the practice by a carrier of submitting or executing an unauthorized

change in a subscriber's selection of a provider of telephone exchange or telephone toll service. In this Order, the CGB clarified the circumstances under which local exchange carriers can be held liable for unauthorized carrier charges, and modified the "drop-off requirement to allow carriers" sales agents, in certain situations, to remain silent on the line during a third verification of a customer's intent to switch carriers.

- Adopted rules which specified a number of situations in which carriers must share information with each other. It is anticipated that this sharing will reduce slamming and billing-related complaints by as much as 50%. The CGB did not specify what methods the carriers should use, allowing the options of sharing customer account information pursuant to state-mandated data exchange agreements; privately negotiated agreements with other carriers; or voluntary, industry-developed standards known as the CARE process. Such flexibility is intended to reduce burdens on smaller carriers.

H. Enforcement Bureau

- Market Disputes Resolution Division engages in informal mediation of most formal complaints and pre-complaint disputes among common carriers. This type of alternative dispute resolution facilitates private resolution, obviating the need for costly litigation. This also frees Commission resources for unresolved disputes that result in formal complaints, and therefore reduces the average amount of time it takes the Commission to decide those complaints. The Enforcement Bureau mediated over fifty disputes in 2005 and resolved almost two-thirds of those disputes.

- Investigations and Hearings Division investigates allegations of anti-competitive or discriminatory conduct by telecommunications carriers. These investigations target practices that could establish barriers to entry by small competitors, and the goal is thus to identify, correct, and deter violations through monetary forfeitures and other enforcement tools.

- Implements Section 224 of the Act, which authorizes the FCC to regulate the terms, rates, and conditions imposed by utilities on cable or telecommunications attachments to utilities' poles, thereby assuring fair and reasonable conditions. Such enforcement ensures that small competing carriers obtain the necessary pole access on a non-discriminatory basis.

- Office of Homeland Security issued a Public Notice granting 38 small cable television systems extensions to temporary waivers of the requirement that cable systems serving fewer than 10,000 subscribers from a headend install Emergency Alert System (EAS) equipment and begin transmitting national EAS alerts and weekly and monthly texts. The Enforcement Bureau granted the temporary waivers based on a showing that the cost of installing EAS equipment would impose a hardship on the small cable systems.

II. REGULATORY ACTIONS

A. Office of Communications Business Opportunities

4. The Commission created the Office of Communications Business Opportunities (OCBO) in 1994 to promote business opportunities for entrepreneurs and other small businesses, including minority- and women-owned small businesses. OCBO oversees the administration of

the Commission's obligations under the Regulatory Flexibility Act[5] (RFA) and the Small Business Act,[6] including agency regulatory review provisions. OCBO's staff participates in conferences and seminars throughout the country to keep the public informed about relevant agency proceedings, policies, and initiatives. As part of the Commission's outreach to entrepreneurs and other small businesses, OCBO maintains a database of approximately 3,000 small businesses to which it sends information regarding Commission actions, including new service opportunities. In addition, OCBO's internet site contains vital information concerning Commission rulemakings and ownership opportunities for the small business community.

1. Regulatory Flexibility Act and Small Business Act Initiatives

5. Following the dictates of the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments[7] to the RFA, the Commission works diligently to make its RFA analyses precise and helpful, including a focus on plain language. As the Commission writes rulemakings relating to the many communications services it regulates, such as TV, FM radio, paging, and amateur radio, OCBO reviews numerous RFA analyses describing each service and the extent of the small entity participation within each. Through diligent monitoring of existing services and recognition of new service areas, the Commission constantly revises its service sector analyses. Consequently, the Commission provides full and accurate analyses and certifications in the 100 or more rulemaking items it adopts each year. One of OCBO's most important functions, as related to RFA analyses, is to recommend possible alternatives to proposed regulations that are thought to result in an adverse impact on entrepreneurs and other small businesses.

6. During 2004 and 2005, OCBO continued its partnership with the Small Business Administration (SBA) to offer additional training for Commission staff engaged in rulemakings to further their understanding of the effect the Commission's Rules have on entrepreneurs and other small businesses and to inform them how they can, during the deliberative process, formulate policies that will benefit entrepreneurs and other small businesses.[8] The 2004 training focused on rulemakings with issues from the Wireline Competition Bureau while the 2005 training sessions focused on rulemakings with issues from the Wireless Telecommunications Bureau. OCBO also conducted smaller, more informal training called Reg Flex Clinics to help rulewriters improve their understanding of the RFA and drafting of RFA analyses.

2. Small Entity Compliance Guides

7. Pursuant to Section 212 of SBREFA, the Commission is required to publish Small Entity Compliance Guides when it conducts a Final Regulatory Flexibility Analysis (FRFA) under Section 604 of Title 5 of the U.S. Code.[9] In 2004, the OCBO coordinated the

[5] *See generally*, 5 U.S.C. §§ 601-612.

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

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

[8] *See generally*, *FCC Office of Communications Business Opportunities Hosts Small Business Regulatory Training Program*, News Release (Nov. 6, 2003). (First such session held in 2003).

[9] Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is a part of Title II of the contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847, 857 (1996)

Commission's implementation of a Compliance Guide Program.[10] The program is designed to implement Section 212 of the SBREFA by publishing documents that explain in plain language the actions a small entity must take to comply with a rule or a group of rules. OCBO drafted a Compliance Guide Manual which established internal agency policies and procedures for creating and publishing Compliance Guides in a timely manner. Congress enacted Section 212 to benefit small businesses, non-profits, and small governmental jurisdictions (with staffing or populations fewer than 50,000) by giving them concrete, easily understandable guidelines for compliance.

8. OCBO conducted Small Entity Compliance Guide training in 2004 in which over 150 Commission staffers attended. OCBO conducted the training session for Bureaus and Offices engaged in rulemakings to ensure that rulewriters understand the requirements of the statutes. The training session focused on the requirements of Section 212, the Commission's policy for publishing Compliance Guides, and the responsibilities of the Bureaus and Offices to ensure compliance with the Compliance Guide program.

3. Ten-Year Review of Rules (Section 610 Review)

9. Section 610 of the RFA requires agencies to publish annually in the *Federal Register* a plan for the periodic review of rules that have a significant economic impact on a substantial number of entrepreneurs and other small businesses.[11] The Commission's compilation identifies numerous rules that might be amended or rescinded, if appropriate, in an effort to better serve the public interest. The Commission's record of compliance with this program remains among the top of the sixty or so federal agencies subject to Section 610. During 2005, OCBO completed an updated, comprehensive listing of Commission Rules subject to review under the provision. Part of the September 2005 review included a Section 610 internal training session that trained Commission staffers on ways to identify rules which might be amended or rescinded to better serve small businesses and the public interest.

4. Special Small Business Size Standards

10. Generally, Federal departments and agencies that promulgate regulations that affect small businesses use the SBA's size criteria as they develop their regulations.[12] To ensure that our initiatives accurately target entrepreneurs and other small business participation in the telecommunications sector, OCBO works closely with the SBA's Office of Size Standards to obtain approval of any necessary new telecommunications small business size standards. To accomplish this, we forward to the SBA all descriptions and analyses of proposed size standards prior to the Commission's adoption of a *Notice of Proposed Rulemaking*, and, thereafter, send the SBA additional comments and documentation at each stage of the rulemaking process. At the end of the process, prior to final Commission consideration of the new size standard, the Commission sends a formal request for approval to the SBA Administrator.

[10] The Commission has long produced Fact Sheets and other informative documents, some of which have served as Compliance Guides.

[11] *See* 5 U.S.C. § 610.

[12] *See* 15 U.S.C. § 632.

5. Unified Agenda of Federal Regulatory and Deregulatory Actions

11. OCBO submits a Report for publication in the semi-annual Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda), which provides information to the public regarding Commission regulations under development.[13] The Unified Agenda has appeared in the *Federal Register* twice each year since 1983. It helps governmental agencies comply with their obligations under the RFA, other statutes, and Executive Orders. As a part of the Fall 2006 Unified Agenda, the Commission listed and described 137 ongoing rulemaking proceedings.[14] These descriptions assist the public in becoming involved in the regulatory process, and aid the regulated community in complying with existing regulations.

6. Office of the National Ombudsman

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

7. White House Initiative on Asian Americans and Pacific Islanders

13. President Bush signed Executive Order 13339 on May 13, 2004, renewing the previous Executive Order which committed his administration to increase opportunities and improved quality of life for Asian Americans and Pacific Islanders (AAPIs) through greater participation in federal programs where they may be underserved.[15] To implement the Presidential mandate, the Executive Order designated the Secretary of the Department of Health and Human Services to initiate a federal Inter-agency Working Group (IWG). The IWG, which consists of representatives of thirty-four participating federal agencies, oversees the development of all federal policies and initiatives addressing AAPI populations, particularly with respect to the development of programs and services for underserved AAPI populations.[16]

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

[14] *See* Fall 2006 Unified Agenda. *See* 5 U.S.C. § 602. The Government Services Administration's Regulatory Information Service Center publishes the Unified Agenda in the Spring and Fall of each year.

[15] Executive Order, No. 13339 (Bush Executive Order). President Clinton signed the underlying Executive Order, No. 13125, on June 7, 1999, and President George W. Bush signed the previous Executive Order 13216 on June 6, 2001.

[16] *Id*.

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

15. Given our mission to promote business opportunities in telecommunications, we have focused our efforts on promotion of AAPI economic and community development with regard to telecommunications issues. We seek to cooperate with other agencies that are interested in using telecommunications technologies to provide business-related information services, and other services, to rural, remote, and otherwise underserved populations. On September 29, 2006, we participated in the first ever White House Initiative on Asian American and Pacific Islanders (WHIAAPI) DC Summit, which was designed to offer opportunities for participants to network, compare best practices, and increase their capacity to serve AAPI communities. Since its inception, WHIAAPI has conducted 15 community site visits and 8 technical assistance conferences across the country.

B. International Bureau

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

1. Streamlining Earth Station Licensing

17. Thousands of small businesses in the United States are "earth station" operators. Earth stations are antennas that transmit information to and receive transmissions from satellites. As previously reported, in December 2000, the Commission released the *Part 25 Earth Station Streamlining NPRM*, in which it invited comment on several ideas to facilitate or expedite licensing of earth stations, thereby expediting the provision of satellite services to the public without increasing the risk of harmful interference to existing earth stations, space stations, or

terrestrial wireless operators.[17] As previously reported, in September 2002, the Commission adopted the *Part 25 Earth Station Streamlining Further NPRM* in the same proceeding to supplement the record on some of the *Part 25 Earth Station Streamlining NPRM*, and to consider additional proposals advanced by industry members for revising the earth station licensing rules.[18]

18. Since 2002, the Commission has adopted a number of revisions to its earth station rules based on the record developed in the *Part 25 Earth Station Streamlining NPRM* and *Part 25 Earth Station Streamlining Further NPRM*, including the following:

- Extending the earth station license term from 10 to 15 years;[19]
- Eliminated licensing requirements for receive-only earth stations receiving transmissions from certain non-U.S.-licensed satellites;[20]
- Streamlining the earth station application form for "routine" earth stations;[21] and
- Adopting a mandatory electronic filing requirement for all earth station applications, which allowed the Commission to streamline its review procedures further.[22]

19. In addition to these reforms, more recently, in 2005, the Commission adopted the *Part 25 Fifth Report and Order* and the *Part 25 Sixth Report and Order*.[23] In the *Part 25 Fifth Report and Order*, the Commission adopted *streamlined* procedures for "non-routine" earth station applications. These earth stations are often used to provide broadband Internet access

[17] *2000 Biennial Regulatory Review—Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Notice of Proposed Rulemaking, 15 FCC Rcd 25,128 (2000) (*Part 25 Earth Station Streamlining NPRM), cited in Section 257 Triennial Report to Congress, Identifying and Eliminating Market Entry Barriers For Entrepreneurs and Other Small Businesses*, Report, 19 FCC Rcd 3034, 3057-58 (2004) (*2003 Triennial Review Report*).

[18] *2000 Biennial Regulatory Review—Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Further Notice of Proposed Rulemaking, 17 FCC Rcd 18,585 (2002) (*Part 25 Earth Station Streamlining Further NPRM*), *cited in 2003 Triennial Review Report*, 19 FCC Rcd at 3057-58.

[19] *2000 Biennial Regulatory Review—Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, First Report and Order, IB Docket No. 00-248, 17 FCC Rcd 3847 (2002) (*Part 25 First Report and Order*).

[20] *2000 Biennial Regulatory Review—Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Second Report and Order, IB Docket No. 00-248, 18 FCC Rcd 12,507 (2003) (*Part 25 Second Report and Order*).

[21] *2000 Biennial Regulatory Review—Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Third Report and Order, IB Docket No. 00-248, 18 FCC Rcd 13,486 (2003) (*Part 25 Third Report and Order*).

[22] *2000 Biennial Regulatory Review—Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Fourth Report and Order, IB Docket No. 00-248, 19 FCC Rcd 7419 (2004) (*Part 25 Fourth Report and Order*).

[23] *2000 Biennial Regulatory Review—Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Fifth Report and Order, IB Docket No. 00-248, 20 FCC Rcd 5666 (2005) (*Part 25 Fifth Report and Order*); *2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Sixth Report and Order and Third Further Notice of Proposed Rulemaking, IB Docket No. 00-248, 20 FCC Rcd 5593 (2005) (*Part 25 Sixth Report and Order*).

services. Thus, the procedures adopted in the *Part 25 Fifth Report and Order* enable more entities, including small businesses, to enter the market to provide broadband Internet access services. This, in turn, increases competition in the market for broadband Internet access services, which benefits all the consumers of such services, including small business customers. The *Part 25 Fifth Report and Order* also benefited earth station operators, including small business earth station operators, by

- increasing the satellite downlink EIRP power spectral density limit for Ku-band earth stations from 6 dBW/4kHz to 10 dBW/4kHz;
- allowing Ku-band temporary-fixed earth station applicants to begin operations as soon as their applications are placed on public notice; and
- adopting several revisions to the very small aperture terminal (VSAT) rules.

20. The *Part 25 Sixth Report and Order* benefited earth station operators, including small business earth station operators, by relaxing some earth station antenna gain pattern requirements. The *Part 25 Sixth Report and Order* also included a *Third Further Notice of Proposed Rulemaking*, sought comment on new procedural revisions to further streamline earth station licensing.

2. Streamlining 214 Procedures

21. The Commission implemented numerous streamlining procedures to reduce administrative regulatory barriers to entry into the U.S. *international* telecommunications service market, many of which benefit small businesses. As early as 1985, the Commission began a process of streamlining its Section 214 international telecommunications licensing procedures.[24] As we have previously reported, in 1996, the Commission streamlined the application process for certain categories of international Section 214 authorizations by creating an expedited process for global, facilities-based Section 214 applications.[25] In 1999, the Commission continued its efforts to reduce possible barriers to entry by increasing the number of applications to provide international service eligible for streamlined processing.[26] The Commission also sought to increase foreign investment in U.S. international telecommunications by streamlining the application process for companies affiliated with foreign carriers following a finding that such investment furthers the public interest,[27] and by reducing regulatory and reporting requirements on companies doing business with foreign carriers. In 2002, as part of the 2000 Biennial Regulatory Review process, the Commission took additional steps to remove unnecessary burdens on international carriers by revising the rules for *pro forma* transfers and assignments of international Section 214 authorizations to give carriers greater flexibility in

[24] 47 U.S.C. § 214; *see International Competitive Carrier Policies*, Report and Order, 102 FCC2d 812 (1985), *recon. denied* 60 RR2d 1435 (1986); *modified*, *Regulation of International Common Carrier Services*, Report and Order, 7 FCC Rcd 7331 (1992).

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

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

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

structuring transactions.[28] These deregulatory efforts significantly reduced barriers to entry for small businesses seeking to attract foreign capital or to provide U.S. international telecommunications services.

22. In addition, in 2004, as part of the 2002 Biennial Regulatory Review process,[29] the Commission took steps further to remove unnecessary burdens on international carriers by seeking comment on several potential changes to the international section 214 authorization process and to the rules relating to the provision of U.S.-international telecommunications services. The Commission sought comment on whether: (1) to amend the procedures for discontinuance of an international service; (2) to amend the rules to clarify that U.S.-authorized resale carriers can resell the U.S.-inbound international services of either U.S. carriers or foreign carriers; (3) to amend the rules to allow commonly controlled subsidiaries to provide international service under their parent's section 214 authorization; (4) to revise the international section 214 requirements placed on Commercial Mobile Radio Service (CMRS) carriers; (5) to amend section 1.767 of the Commission's rules governing procedures for consideration of applications for cable landing licenses in order to assure compliance with the Coastal Zone Management Act of 1972 (CZMA); and (6) to amend the ownership and other rules to clarify their intent.[30] The Commission staff is also undertaking a more general review to reorganize, clarify and simplify the rules.[31] These proposals, if adopted, would assist all carriers, including small businesses, by streamlining the rules that such carriers operate within.

3. Spectrum

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

24. The Commission works closely with terrestrial and satellite wireless industry representatives preparing and attending ITU, the World Radiocommunication Conference (WRC) and study groups in the radio communication, telecommunication, and development sectors. Here, experience proves that advances in technology and standardization will ultimately

[28] *2000 Biennial Regulatory Review: Amendment of Parts 43 and 63 of the Commission's Rules*, IB Docket 00-231, Report and Order, 17 FCC Rcd 11,416 (2002) (*International 2000 Biennial Regulatory Review Order*) *aff'd sub nom. Cellco Partnership d/b/a Verizon Wireless, v. FCC & USA*, 357 F.3d 88 (D.C. Cir 2004).

[29] *2002 Biennial Regulatory Review,* GC Docket No. 02-390, 18 FCC Rcd 2726 (2003).

[30] *Amendment of Parts 1 and 63 of the Commission's Rules*, IB Docket No. 04-47, Notice of Proposed Rulemaking, 19 FCC Rcd 4231 (2004).

[31] *See 2004 Biennial Regulatory Review*, IB Docket No. 04-177, International Bureau Staff Report, 20 FCC Rcd 343, 357-58, para. 34 (2005).

lead to significant growth in small business opportunities, including export, whether it is in equipment design and manufacture, new software development, creative applications of existing intellectual property, or the provision of new services. The International Bureau is fully committed to making every effort to optimize spectrum utility to facilitate the entry of new users, including small businesses, and to promote new and innovative uses. For example, the WRC made spectrum allocations and decisions regarding various new satellite and terrestrial wireless services such as Earth Stations on Vessels (ESVs), which allows wireless communication, including broadband and Internet access, to and from vessels on the high seas and within U.S. waters.

25. The importance of spectrum to small new firms is illustrated by ESVs, a communication service in which a number of small businesses are supplying internet and broadband connections to both commercial ships and cruise vessels. Since 1997 under Special Temporary Authorizations, small businesses began offering internet and broadband service to vessels using fixed satellite service frequencies, even though ocean-going vessels are not "fixed" in location. At the time, the Commission developed a number of licensing conditions to prevent interference to other co-frequency communication systems. In 2003, the ESV operators achieved recognition within the ITU and in early 2005, the Commission passed formal service rules to ensure that ESVs could operate compatibly with the many other systems that share the same frequency bands.

4. Electronic Filing Initiatives

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

27. IBFS continues to evolve, tapping into advances in technology and web design. As of 2006, new and updated e-filing modules are available in MyIBFS. MyIBFS now offers easy to follow and interactive forms, with built-in edit checks. All new forms developed in the future will use this new format and, over time, the older forms will be converted to the new MyIBFS. IBFS demystified the process of filing International Bureau applications and made it easier for applicants to initiate filings, especially the new entrants to the market, without the need to retain outside counsel. MyIBFS continues this legacy. The IBFS/MyIBFS filing module provides access to valuable processing and technical data for new entrants and the general public. For example, applicants can check their status by accessing the IBFS/MyIBFS from personal computers. In addition, users are easily able to identify the competitors in a service area using the IBFS/MyIBFS's powerful search engine, from any web-ready location.

28. The IBFS/MyIBFS provides many benefits to applicants including those applicants that are small business. Under the traditional method of paper filing, procedures for many types of applications before the Commission require the applicant to file an original copy

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

29. During 2003, in connection with its actions on satellite licensing reforms, the Commission required mandatory electronic filing for all routine earth station applications.[32] Mandatory electronic filing was extended to all satellite and earth station applications in 2004.[33] In May 2005, the Commission adopted mandatory electronic filing for International Telecommunications Service applications and associated filings, with a phased approach beginning in 2006 with complete implementation anticipated in 2009.[34] In addition to these applications and filings, related filings are being added to the list of mandatory electronic submission, such as requests to surrender authorizations or withdraw applications. Non-docketed comments and petitions and other non-application filings will be added to the mandatory filings submitted via the MyIBFS as web modules are developed. Other significant measures taken include:

30. *Improved Public Access to Data*—All satellite applications and routine earth station applications are now filed electronically. As a result, the public has instant access to filings via the Internet. This is particularly significant to those members of the public and small businesses without regular representation in Washington, D.C.

31. *Simplified Filing of Earth Station Application*—The 312EZ form is available for routine earth stations, making the earth station application process error-free. The 312EZ form is interactive and has built-in edit checks, of particular benefit to smaller firms that do not file such applications with sufficiency to gain specialized filing expertise.

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

33. The International *Bureau* plans to complement the electronic filing initiatives identified above by continuing to redesign the *MyIBFS* home page to be customizable, easier to navigate, and contain enhanced features such as a "watch list" to track applications.

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[32] *See 2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Third Report and Order, IB Docket No. 00-248, 18 FCC Rcd 13,486 (2003) (*Part 25 Third Report and Order*).

[33] *See 2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Fourth Report and Order, IB Docket No. 00-248, 19 FCC Rcd 7419 (2004) (*Part 25 Fourth Report and Order*).

[34] *See Mandatory Electronic Filing for International Telecommunications Services and Other International Filings*, Report and Order, IB Docket No. 04-226.

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

5. International Settlements Policy

35. The Commission is taking action to remove regulatory impediments and to increase competition in the international telecommunications marketplace through reform of the longstanding ISP.[35] The Commission's primary goal underlying this policy is and will continue to be the protection of U.S. consumers, including small businesses, from potential harm caused by instances of insufficient competition in the global telecommunications market. To the extent that small businesses utilizing international telecommunications have fewer resources than large global corporations to deal with instances of insufficient competition, such protection reduces or eliminates disadvantages in the procurement of telecommunications services and enhances the chances of successful market entry and firm viability. As a result of U.S. policies and increasing competition internationally, the average U.S. settlement rate fell substantially over the last several years as have U.S. calling prices.[36]

36. As previously reported, in 1999, the Commission adopted sweeping deregulatory inter-carrier settlement arrangements between U.S. carriers and foreign non-dominant carriers on competitive routes.[37] In 2004, the Commission adopted the *ISP Reform Order*. The *ISP Reform Order* reformed the Commission's U.S.-international regulatory policies to reflect more appropriately changing market realities – namely, increased competition on many U.S.-international routes accompanied by lower settlement rates and calling prices for U.S. customers, including small businesses.[38] In particular, the Commission exempted many international routes from the ISP to give U.S. carriers greater flexibility to negotiate market-based arrangements on U.S.-international routes.[39]

37. Notwithstanding the Commission's decision to permit greater flexibility in commercial negotiations on certain routes, the Commission concluded that certain safeguards are necessary to allow it to respond to anticompetitive or "whipsawing" conduct when occurring on

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

[36] *See International Settlement Policy Reform; International Settlement Rates,* IB Docket Nos. 02-324, 96-261, First Report and Order, 19 FCC Rcd 5709, 5711, ¶ 12 (2004) (*ISP Reform Order*); *International Settlements Policy Reform; International Settlement Rates*, Notice of Proposed Rulemaking, 17 FCC 19,954, 19,964-66 (2002) (*ISP Reform Notice*).

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

[38] *See ISP Reform Order,* 19 FCC Rcd 5709 (2004).

[39] *ISP Reform Order,* 19 FCC Rcd at 5711, ¶ 2; 47 C.F.R. § 64.1002 (2004). In the *ISP Reform Order*, the Commission also eliminated its International Simple Resale policy.

individual U.S.-international routes.[40] Accordingly, the Commission adopted certain procedures in the *ISP Reform Order* that allow the Commission to address specific allegations of such conduct by foreign carriers.[41] In 2005, the Commission sought comment on ways to improve the process available to it to protect U.S. customers, including small businesses, from the effects of anticompetitive or "whipsawing" conduct by foreign carriers.[42]

6. Satellite Licensing Reforms

38. During the 2000-2003 Triennial Review Period, the Commission substantially revised its satellite licensing procedures to expedite the satellite licensing process and facilitate provision of satellite services to the public, including but not limited to small business customers. Considered together as a package, these reform measures advance the Commission's strategic goals of modernizing the Commission and facilitating efficient spectrum management, while at the same time, increasing transparency and easing public participation for all entities, including small businesses.[43]

39. As part of the satellite licensing reforms, the Commission adopted a bond requirement. Within 30 days of obtaining a license, satellite licensees must post a bond payable to the U.S. Treasury in the event that they fail to construct their licensed satellites within the deadlines set forth as conditions in their licenses. In the *First Space Station Licensing Reform Order*, the bond amounts were $7.5 million for GSO satellite licenses, and $5 million for NGSO satellite licenses. The Commission reduced these amounts in an Order adopted in June 2004, to $5 million and $3 million respectively. The Commission found that these reductions would help prevent the bond requirement from discouraging new or innovative satellite proposals, including but not limited to proposals from small business satellite operators.

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[40] *ISP Reform Order*, 19 FCC Rcd at 5729, ¶ 40; 47 C.F.R. § 64.1002(d). The term "whipsawing" generally refers to a broad range of anticompetitive behavior by foreign carriers that possess market power, in which the foreign carrier or a group of foreign carriers exploit that market power in negotiating settlement rates with competitive U.S. telecommunications carriers. *Modifying the Commission's Process to Avert Harm to U.S. Competition and U.S. Customers Caused by Anticompetitive Conduct*, IB Docket No. 05-254, Notice of Inquiry, FCC 05-152, ¶ 3 (rel. Aug. 15, 2005).

[41] *See id*. at 5730-32, ¶¶ 43-52. In addition to reforming these safeguards, the Commission has responded to individual allegations of "whipsawing" by foreign carriers. In 2003, for example, certain Philippines carriers disrupted the circuits on the U.S.-Philippines route of those carriers that did not agree to the demanded settlement rate increases. In response to petitions filed by U.S. carriers alleging anticompetitive conduct on the part of the Philippine carriers and in order to promote the public interest, the International Bureau, among other things, directed all U.S. carriers that provide facilities-based services to suspend payments to the Philippine carriers for terminating services until those carriers restored U.S. carriers' circuits. *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief and Petition of WorldCom, Inc. for Prevention of "Whipsawing" On the U.S.-Philippines Route*, IB Docket No. 03-38, Order on Review, 19 FCC Rcd 9993 (2004) (*Order on Review*); *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief and Petition of WorldCom, Inc. for Prevention of "Whipsawing" On the U.S.-Philippines Route*, IB Docket No. 03-38, Order, 18 FCC Rcd 3519 (2003) (*2003 Bureau Order*).

[42] *Modifying the Commission's Process to Avert Harm to U.S. Competition and U.S. Customers Caused by Anticompetitive Conduct*, IB Docket No. 05-254, Notice of Inquiry, FCC 05-152 (rel. Aug. 15, 2005).

[43] *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, IB Docket No. 02-34, 18 FCC Rcd 10760 (2003) (*First Space Station Reform Order*).

7. Reporting Requirements

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

41. In 2004 the Commission initiated a comprehensive review of the reporting requirements to which carriers providing U.S. international services are subject.[44] The Commission sought comment on several changes to simplify the reporting requirements and to ensure the usefulness of the data collected by the Commission, including: (1) eliminating the requirement to report messages; (2) consolidating the traffic and revenue and circuit-status reports; and (3) electronic filing of the reports. The Commission explained that these proposals are intended to reduce the number of forms and amount of information that smaller carriers will need to file and the detail of the information required of largest carriers. Among the proposals that the Commission sought comment on is the establishment of a revenue threshold for a carrier to report traffic and revenue for pure resale services which would essentially eliminate the reporting requirements for over 700 small resale carriers. The Commission also sought comment on whether to retain the quarterly reporting requirements and whether non-common carriers should file circuit-status reports. The Commission also proposed to eliminate the requirement that U.S. carriers report their contracts with foreign carrier correspondents governing the division of international tolls for telegraph communications. These proposals, if adopted, would exempt small businesses, those with less than $5M in IMTS resale revenue, from filing minute and revenue data and would greatly reduce the number of forms and amount of information that small businesses would need to file.

8. International Fixed Public Radiocommunication Service

42. The Commission is taking action to reduce regulatory burdens and to simplify the regulatory requirements placed on the providers of International Fixed Public Radiocommunication Service (IFPRS), including small business IFPRS operators. Generally, IFPRS is international point-to-point microwave service provided between island nations in the Caribbean. There are very few IFPRS operators remaining in operation because the technology for this service has largely been replaced by satellite communications and fiber optic cable.[45]

43. In 2005, the Commission started a rulemaking proceeding to eliminate Part 23 of its rules, which includes all the IFPRS rules, and to make IFPRS operators subject to the rules for domestic point-to-point microwave service in Part 101 of the Commission's rules.[46] By making

[44] Reporting Requirements for U.S. Providers of International Telecommunications Services; Amendment of Part 43 of the Commission's Rules, IB Docket No. 04-112, Notice of Propose Rulemaking, 19 FCC Rcd 6460 (2004).

[45] *See Amendment of Parts 2, 25, and 87 of the Commission's Rules to Implement Decisions from World Radiocommunication Conferences Concerning Frequency Bands Between 28 MHz and 36 GHz and to Otherwise Update the Rules in this Frequency Range*, Report and Order, ET Docket No. 02-305, 18 FCC Rcd 23426, 23452 (para. 68) (2003) (*WRC Implementation Order*).

[46] *Elimination of Part 23 of the Commission's Rules*, Notice of Proposed Rulemaking, IB Docket No. 05-216, 20 FCC Rcd 11416 (2005) (*Part 23 Notice*).

domestic and international point-to-point microwave operators subject to the same rules, the Commission intends to simplify the rules and reduce the regulatory burdens applicable to IFPRS operators, including small business IFPRS operators.[47]

C. Wireless Telecommunications Bureau

44. During the past three years, the Wireless Telecommunications Bureau ("WTB") initiated several new rulemaking proceedings, and continued to implement ongoing policies, that reduced barriers to entry into wireless telecommunication services for entrepreneurs and other small businesses. Initiatives concerning secondary markets, rural access, and tribal lands enhance the ability of entrepreneurs and other small businesses to obtain access to wireless spectrum and provide new services. Through its competitive bidding procedures, and particularly its designated entity program, the Commission offers incentives to encourage the participation of entrepreneurs and other small businesses in spectrum auctions. The Commission also adjusted the service rules governing certain wireless spectrum to provide for more spectrum to be made available in smaller geographic-sized licenses, to provide greater opportunity for small businesses to obtain licenses best suited to their needs.

1. Secondary Markets

45. The Commission continues to facilitate broader access to wireless radio spectrum resources by entrepreneurs and other small businesses through the development of secondary markets – *i.e.*, post-licensing opportunities to access spectrum. In May 2003, the Commission adopted the *Secondary Markets Report and Order* and *Further Notice of Proposed Rulemaking*,[48] which implemented policies and rules to enable licensees to enter into spectrum leasing arrangements with third parties, pursuant to streamlined or immediate processing procedures.

46. In July 2004, expanding upon these policies, the Commission adopted the *Secondary Markets Second Report and Order*, *Order on Reconsideration*, and *Second Further Notice of Proposed Rulemaking*,[49] which provided for streamlined processing and immediate approval procedures for license assignments and transfers of control applications. Further, spectrum leasing policies were extended to additional types of services, including public safety services. The Commission also sought comment on additional steps it might take to promote the development of secondary markets in wireless spectrum through a novel "private commons" option. This option may enable greater spectrum access to individual users or groups of users that employ certain advanced technologies, but lack sufficient resources to enter into more traditional leasing arrangements.

2. Rural Initiatives

47. The Commission continues to pursue innovative policies to encourage the provision of wireless services in rural areas, and to enhance access to wireless spectrum by rural services providers. Building upon an earlier Notice of Inquiry, in September 2003, the Commission adopted the *Rural Notice of Proposed Rulemaking*, in which the Commission

[47] *Part 23 Notice*, 20 FCC Rcd at 11419 (para. 5).

[48] Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Report and Order* and *Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604 (2003).

[49] Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Second Report and Order, Order on Reconsideration,* and *Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd 17503 (2004).

examined ways to promote the rapid and efficient deployment of quality spectrum-based services in rural areas.[50]

48. In September 2004, the Commission released its *Rural Report and Order* and *Further Notice of Proposed Rulemaking*, in which it established several measures intended to increase the ability of wireless service providers in rural areas, including small business entities, to use spectrum resources flexibly and to offer a variety of services in a cost-effective manner.[51] Specifically, the Commission:

- Adopted a default definition of "rural" as a county with a population density of 100 persons or fewer per square mile;
- Determined that smaller licensing areas may be appropriate in some spectrum blocks to encourage deployment in rural areas, and that licensing areas will continue to be established on a service-by-service (or band-by-band) basis, as appropriate;
- Eliminated the cellular cross-interest rule, and transitioned to case-by-case competitive review for all applications relating to transactions involving cellular licenses;
- Allowed licensees, at their option, to grant a security interest in certain wireless licenses to the U.S. Department of Agriculture's Rural Utilities Service (RUS), subject to the Commission's prior approval of any transfer of control;
- Increased permissible power levels for base stations in certain wireless services that are located in rural areas or that provide coverage to otherwise unserved areas; and
- Amended its rules to permit certain geographic-area licensees to comply with construction build-out requirements by demonstrating that they provide "substantial service."

49. In the *Rural Further Notice of Proposed Rulemaking*, the Commission requested further comment regarding additional measures to promote access to spectrum in rural areas, such as .adopting a "keep what you use" approach to reclaim and re-license "unused" spectrum that may complement existing market-based mechanisms. The FNPRM also asked whether additional performance requirements might be appropriate for license terms subsequent to initial renewal; whether alternative use approaches, such as easements and underlays may be warranted; and whether certain incentives (like bidding credits or tax breaks) would further partitioning and disaggregation opportunities in rural areas.

3. Roaming

50. Roaming issues are of considerable importance to small businesses operating in rural communities. "Roaming" occurs when the subscriber of one commercial mobile radio service ("CMRS") provider utilizes the facilities of another CMRS provider, with which the subscriber has no direct pre-existing service or financial relationship, to place an outgoing call, to receive an incoming call, or to continue a call in-progress. Roaming most often occurs when a subscriber places or receives a call while physically located outside of the service area of its

[50] Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, *Notice of Proposed Rulemaking*, 18 FCC Rcd 20802 (2003) (*Rural Access NPRM*).

[51] Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, *Report and Order* and *Further Notice of Proposed Rulemaking*, 19 FCC Rcd 17652 (2004).

"home" CMRS provider.[52] During the Commission's review of certain mergers between national CMRS providers, rural operators have asserted that consolidation among national operators provide opportunities for anticompetitive roaming practices. In particular, concerns have been expressed that certain market consolidations may lead larger carriers to favor each other with "sweetheart" roaming deals or to charge higher premiums for customers of small rural carriers to roam on their networks. Rural operators have expressed to the Commission that availability of automatic roaming arrangements is crucial to a small carrier's ability to compete, because small carriers have limited service areas. Given the broad scope of the concerns raised – many of which seem to call for a reevaluation of the Commission's roaming rules and policies – the Commission decided to address those concerns in the context of a rulemaking proceeding.

51. In August 2005, the Commission released a *Memorandum Opinion and Order* and *Notice of Proposed Rule Making* that terminated the open proceeding relating to the automatic and manual roaming obligations of CMRS providers, and initiated a new proceeding to examine whether its roaming requirements applicable to CMRS providers should be modified, expanded, or eliminated.[53] The Commission has sought to develop a record, with up-to-date information on the state of roaming in the current CMRS marketplace in order to determine the appropriate regulatory regime for roaming services.[54] The Commission sought comment on whether there was evidence that national carriers were negotiating roaming agreements with small or rural carriers in an anti-competitive manner. In response, twenty-one parties filed comments and twenty-four parties filed reply comments. The record is extensive and all segments of the CMRS industry are represented. Commenters include nationwide carriers, large regional carriers, small and rural carriers, trade groups and associations. In addition to filing comments, numerous parties have given ex parte presentations to Commission staff.

4. Streamlining and Harmonization: Increasing Power Limits

52. In August 2005, the Commission released a *Report and Order* and a *Further Notice of Proposed Rulemaking* to streamline and harmonize various licensing provisions for certain wireless radio services.[55] In the *Report and Order*, among other things, the Commission eliminated the transmitter output power limit for Part 24 Broadband PCS base stations (radiated power limits continue to apply to power emitted from an antenna.) In the *Further Notice*, the Commission sought comment on a proposal to substantially increase radiated power limits for

[52] *See 2000 CMRS Roaming NPRM*, 15 FCC Rcd at 21629 ¶ 2; Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *Second Report and Order and Third Notice of Proposed Rulemaking*, 11 FCC Rcd 9462, 9464 ¶ 3 (1996) ("*Interconnection and Resale Obligations Second Report and Order*" and "*Interconnection and Resale Obligations Third NPRM*," respectively). Section 22.99 of the Commission's rules describes a "roamer" as "[a] mobile station receiving service from a station or system in the Public Mobile Services other than one to which it is a subscriber." 47 C.F.R. § 22.99.

[53] In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, *Memorandum Opinion & Order and Notice of Proposed Rulemaking* (rel. Aug. 31, 2005).

[54] In late December 2005, the reply comment date was extended 30 days to January 26, 2006 in order to give commenters sufficient time to review the complex technical, economic and competitive issues being raised in the proceeding. See In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, *Order* (rel. Dec. 14, 2005).

[55] Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, *Report and Order* and *Further Notice of Proposed Rulemaking*, 20 FCC Rcd 13900 (2005) (*"Report and Order"* and *"Further Notice"*).

Part 24 Broadband PCS and Part 27 AWS base stations. Proponents of the proposal argue that such power limit increases would: (1) create parity between narrow and wideband technologies with respect to aggregate radiated power produced by each while operating in different bandwidths; (2) reduce the costs of wireless broadband deployment in rural areas; and (3) permit higher-speed data services. The Commission noted, however, that increasing power limits could increase the risk of harmful interference, and sought comment on the effect increased radiated power could have on the potential for harmful interference to adjacent spectrum users and how such interference could be minimized.

5. Tribal Lands Initiatives

53. In the Telecommunications Act of 1996, Congress directed the Commission to ensure that all Americans have access to affordable telecommunications services.[56] Because many tribal lands, particularly those in the western U.S., are geographically isolated, providing basic telephone service to the reservation population may often require use of terrestrial wireless technology, satellite technology, or a combination of both. In June 2000, the Commission first adopted rules extending special bidding credits to entities that use licenses to deploy facilities and provide service to federally-recognized tribal areas that are either unserved by any telecommunications carrier or that have a telephone service penetration rate below 70 percent.[57]

54. In September 2004, the Commission took steps to provide further incentives for wireless telecommunications carriers to serve individuals living on tribal lands, in the *Tribal Lands Report and Order* and *Further Notice of Proposed Rulemaking*.[58] The amended rules increased the bidding credit available to qualifying applicants. The modifications, together with the Commission's targeted outreach efforts and commitment to consult with tribal governments on those telecommunications issues that uniquely affect Indian Country, further the Commission's goal of ensuring that tribal lands have access to affordable, quality telecommunications services.

6. Tower Siting Initiatives

55. The National Environmental Policy Act (NEPA) requires all Federal agencies to implement procedures to make environmental consideration a necessary part of an agency's decision-making process. As a licensing agency, the Commission complies with NEPA by requiring Commission licensees and applicants to review their proposed actions for environmental consequences. Under the National Historic Preservation Act (NHPA), federal agencies are required to consider the effects of federal undertakings on historic sites. Commission licensees and applicants must comply with NHPA procedures for proposed facilities that may affect historic sites, including tribal lands.

56. On October 5, 2004, the Commission entered into a Nationwide Programmatic Agreement (NPA) with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers to improve and streamline the review process

[56] *See* Telecommunications Act of 1996, § 706.

[57] Extending Wireless Telecommunications Services to Tribal Lands, *Report and Order* and *Further Notice of Proposed Rulemaking*, 15 FCC Rcd 11794 (2000).

[58] Extending Wireless Telecommunications Services to Tribal Lands, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 19078 (2004).

for tower constructions and other Commission undertakings.[59] Among other things, the NPA prescribed standard forms for submissions, and establishes timelines for action by State Historic Preservation Officers, to facilitate timely review. Also in October 2004, the Commission and the United South and Eastern Tribes, Inc. (USET) adopted voluntary best practices to guide FCC member applicants and USET member tribes in their review of the impact of wireless towers and related communications facilities on properties of religious or cultural significance.[60]

57. On October 6, 2005, the Commission released a declaratory ruling clarifying portions of the NPA that apply to the participation by federally recognized Indian tribes and Native Hawaiian organizations in the review of proposed communications tower or antennas on properties to which they attach religious or cultural significance.[61] The declaratory ruling provides that once an applicant has made two good faith efforts at contact over a 40-day period, the Commission will upon notice send the tribe or organization a final notification with a 20-day response period, after which the tribe or organization will be deemed to have no interest in review of the facility.

58. In addition, since February 2004, WTB has maintained the Tower Construction Notification System (TCNS), a database of information regarding geographic areas of interest identified by federally recognized Indian tribes and Native Hawaiian Organizations (NHOs). TCNS allows tower constructors electronically to identify and initiate communications with tribes and NHOs that have asserted a traditional religious and cultural interest in historic properties within the geographic area of a proposed tower. It provides a means for tribes and NHOs to respond electronically to the applicant's notification, and permits tribes and NHOs efficiently to provide other information about their review process. Over 23,000 proposed constructions notices had been submitted as of December 31, 2006. Further, WTB encourages tribes to narrow their geographic areas and to adopt efficient review policies. These tribal actions reduce entry barriers for small businesses by making it easier for them to complete the required review process.

7. Competitive Bidding Incentives

59. Throughout the history of its auctions program, the Commission has endeavored to carry out its Congressional directive to promote the involvement of "designated entities" (i.e. small businesses, rural telephone companies, and businesses owned by women and minorities) in the provision of spectrum-based services.[62] With this directive, Congress sought to encourage diversity among service providers, as well as the rapid deployment of new technologies. The Commission offers a number of incentives to encourage the participation of small businesses in the auction process, such as bidding credits. In the forty-three auctions completed by the Commission that offered small business bidding credits, 84% of the qualified bidders that

[59] In the Matter of Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, *Report and Order*, WT Docket 03-128, FCC No. 04-222 (October 5, 2004).

[60] *See* "FCC and United South and Eastern Tribes, Inc. Adopt Voluntary 'Best Practices' Concerning Protection of Historic Properties of Religious and Cultural Significance to Tribes in the Tower Siting Process," News Release (rel. October 25, 2004).

[61] In the Matter of Clarification of Procedures for Participation of Federally Recognized Indian Tribes and Native Hawaiian Organizations Under the Nationwide Programmatic Agreement, *Declaratory Ruling*, FCC No. 05-176 (October 6, 2005).

[62] 47 U.S.C. § 309(j)(4)(D).

identified themselves as rural telephone cooperatives were eligible for bidding credits, and 79% of all qualified bidders were eligible for bidding credits.

60. In April 2006, the Commission adopted the *CSEA Second Report and Order* and *Second Further Notice of Proposed Rulemaking* to clarify the rules governing the award of "designated entity" status to entities having material relationships with large in-region incumbent wireless service providers.[63] In the *Second Report and Order*, the Commission imposed additional eligibility requirements, and new limitations on leasing, to ensure that every recipient of the Commission's designated entity benefits uses its licenses to directly provide facilities-based telecommunications services for the benefit of the public. The new rules prohibit the award of designated entity benefits to any applicant or licensee that has "impermissible material relationships" or an "attributable material relationships" with one or more entities for the lease or resale of its spectrum capacity. The Commission also adopted a stricter ten-year unjust enrichment schedule for licenses acquired with bidding credits, to discourage speculation, and refined the reporting obligations of designated entities. By ensuring that recipients of designated entity benefits are bona fide small businesses using their licenses directly to provide facilities-based telecommunications services for the benefit of the public, these changes facilitate the participation of small businesses in the provision of spectrum-based services.

61. In the *Second Further Notice of Proposed Rulemaking* ("*Second FNPRM*"), the Commission sought comment on additional measures that might further augment the effectiveness of the Commission's rules concerning the eligibility of applicants and licensees for designated entity benefits. The *Second FNPRM* sought comment on further amendments, including whether "material relationships" should only affect designated entity eligibility when they are with entities that fall within a certain class, and whether the class should be defined based on certain financial benchmarks, particular spectrum interests, or geographic overlap. The *Second FNPRM* also sought to obtain additional economic evidence regarding how and under what circumstances an entity's size might affect its relationships and agreements with designated entity applicants and licensees.

62. In addition to clarifying the scope and meaning of "designated entities," the Commission adopted rules to safeguard the integrity of the competitive bidding process itself. The Commission established procedures designed to promote competition and economic efficiency in the auction of AWS licenses in the 1710-1755 MHz and 2110-2155MHz bands (Auction No. 66). Under the procedures adopted for Auction No. 66, unless a certain threshold level of likely competition among bidders existed before the bidding began, as indicated by the level of upfront payments made by prospective bidders, the Commission would withhold certain information on bidder interests and on bids and the identities of bidders that made them.[64] This information has typically been revealed prior to and during past Commission auctions. The Commission believes that this option will provide the Commission with an additional resource to

[63] Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, Second Report and Order* and *Second Further Notice of Proposed Rulemaking*, 21 FCC Rcd 4753 (2006), petitions for reconsideration pending.

[64] The Commission commenced Auction 66 on August 9, 2006, using the information disclosure procedures typically used during past FCC auctions. *See* Auction of Advanced Wireless Services Licenses rescheduled for August 9, 2006, *Public Notice,* FCC 06-71 (rel. May 19, 2006); Auction of Advanced Wireless Services: 168 Bidders Qualified to Participate in Auction No. 66; Information Disclosure Procedures Announced, *Public Notice,* DA 06-1525 (rel. July 29, 2006).

reduce the potential for anti-competitive bidding in auctions. Small bidders in particular may benefit in such circumstances by restricting the ability of larger bidders to target licenses sought by small bidders with relatively limited financial resources.

63. Also in connection with the auctions program, in 2005, the Commission implemented the Integrated Spectrum Auction System ("ISAS"), a new web-based auction application filing and bidding system that replaced two previous systems. The application enhancements include automated checking of data accuracy, improved application search functionality, and integration with FCC Form 602. The bidding system enhancements include easier navigation, customizable results, and allow for multiple types of auctions (*e.g.*, simultaneous multiple round auctions or simultaneous multiple round auctions with package bidding, and auctions with full information disclosure or limited information disclosure). As of July 2006, seven auctions have been completed using ISAS.

8. Small Geographic Areas/Spectrum Blocks

64. The Commission continues to enhance participation in spectrum auctions by entrepreneurs and other small businesses by auctioning spectrum licenses that comprise a range of spectrum block sizes and cover various geographic areas, such that small businesses may more readily obtain licenses that suit their needs. For example, in April 2004, the Commission released a notice of proposed rulemaking intended to reduce regulatory barriers to use of spectrum in the 18 GHz band for terrestrial fixed microwave systems.[65] The original rules designated channel sizes considered too large relative to the needs of operators carrying smaller volumes of traffic, but too small relative to the needs of private cable operators (PCOs), which are generally smaller multichannel video programming distributors (MVPDs). The revised rules, adopted in September 2006 eliminated these regulatory barriers to entry by small businesses, while providing MVPDs with technical flexibility and streamlined application procedures.[66]

65. In July 2004, to promote the deployment of wireless broadband services, the Commission released *Broadband Radio Service/Educational Broadband Service Report and Order* and *Further Notice of Proposed Rulemaking* that amended the rules governing the Broadband Radio Service ("BRS") and the Educational Broadband Service ("EBS") in the 2495-2690 MHz band.[67] In this order, the Commission replaced the old site-based licensing scheme with geographic area licensing, thus giving licensees increased flexibility while greatly reducing administrative burdens. In most cases, licensees can modify their facilities, and add new facilities, consistent with the new technical rules, without prior Commission approval. The Commission also eliminated obsolete and duplicative reporting and filing requirements for BRS and EBS licensees. In April 2006, the Commission modified the size of the geographic areas for transitioning licensees from the existing band plan to a new band plan.[68] The Commission

[65] *See* Rechannelization of the 17.7-19.7 GHz Frequency Band for Fixed Microwave Services under Part 101 of the Commission's Rules, *Notice of Proposed Rulemaking*, 19 FCC Rcd 7260 (2004).

[66] *See* Rechannelization of the 17.7-19.7 GHz Frequency Band for Fixed Microwave Services under Part 101 of the Commission's Rules, Report and Order, 21 FCC Rcd 10,900 (2006).

[67] Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking,* 19 FCC Rcd 14165 (2004).

[68] Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Third Memorandum Opinion* and *Order and Second Report and Order,* 21 FCC Rcd 5606 (2006).

reduced the transition area size from Major Economic Area ("MEA") to Basic Trading Area ("BTA"), which will reduce the burden on proponents initiating a transition, including small entities.[69]

66. In August 2005, the Commission modified the rules governing the auction of Advanced Wireless Services ("AWS") – originally adopted in October 2003 – increasing the amount of spectrum licensed in smaller geographic areas – Cellular Market Areas (CMAs) – from 10 MHz to 20MHz, thus providing greater opportunity for smaller rural or regional providers to obtain access to this spectrum at auction.[70] The Commission also provided an additional 10 MHz of spectrum licensed by Economic Areas (EAs).[71]

9. Disaster Relief

67. The Commission acted promptly in response to the devastation caused by Hurricanes Katrina, Rita, and Wilma in parts of Louisiana, Mississippi, Alabama, Texas, and Florida.[72] In response to the devastation caused by Hurricane Katrina, the Commission issued a *Public Notice* on September 1, 2005, announcing that pursuant to its authority to waive rules for good cause and to alleviate any additional burden that may be caused by filing requirements and regulatory deadlines, certain deadlines would be extended for license applications, construction permits, auction filings and payments for affected licensees and applicants in Louisiana, Mississippi, and Alabama.[73] On September 24, 2005, the Commission provided similar relief to applicants and licensees affected by Hurricane Rita in Texas, Louisiana, and the Gulf of Mexico.[74]

68. On October 28, 2005, following the devastation caused by Hurricane Wilma in certain parts of Florida, the Commission extended the payment deadline and waived the accrual of latter fees for installment payments for broadband personal communication services and

[69] There are 53 MEAs nationwide compared to 493 BTAs.

[70] *See* Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, *Report and Order*, 18 FCC Rcd 25162 (2003); *modified by* Service Rules for Advanced Wireless Services In the 1.7 GHz and 2.1 GHz Bands, *Order on Reconsideration*, 20 FCC Rcd 14058 (2005). There are 734 CMAs nationwide.

[71] There are 176 EAs nationwide.

[72] *See* "Wireless Telecommunications Bureau Announces Extension of Filing and Regulatory Deadlines for Wireless Licensees in Areas Impacted by Hurricane Katrina," *Public Notice*, DA 05-2406 (WTB rel. Sept. 1, 2005) (Hurricane Katrina Extension PN); "Wireless Telecommunications Bureau Announces Further Extension of Filing and Regulatory Deadlines for Wireless Licensees in Areas Impacted by Hurricane Katrina," *Public Notice*, DA 05-2865 (WTB rel. Oct. 31, 2005) (Hurricane Katrina Further Extension PN); "Wireless Telecommunications Bureau Announces Extension of Filing and Regulatory Deadlines for Wireless Licensees in Areas Impacted by Hurricane Rita," *Public Notice*, DA 05-2521 (WTB rel. Sept. 24, 2005) (Hurricane Rita Extension PN); "Wireless Telecommunications Bureau Announces Extension of Filing and Regulatory Deadlines for Wireless Licensees in Areas Impacted by Hurricane Wilma," *Public Notice*, DA 05-2778 (WTB rel. Oct. 25, 2005) (Hurricane Wilma Extension PN); "Wireless Telecommunications Bureau Announces Extension of Installment Payment Deadline for Broadband Personal Communications Services and Broadband Radio Service Licensees in Areas Impacted by Hurricane Wilma," *Public Notice*, DA 05-2824 (WTB rel. Oct. 28, 2005).

[73] Wireless Telecommunications Bureau Announces Extension of Filing and Regulatory Deadlines for Wireless Licensees in Areas Impacted by Hurricane Katrina, *Public Notice* DA 05-2520 (rel. September 24, 2005).

[74] Facilitating Restoration of Wireless Facilities in Areas Impacted by Hurricane Rita, *Public Notice* DA 05-2406 (rel. September 1, 2005).

broadband radio service licensees in the affected areas.[75] In addition to taking steps essential to provide assistance for affected licensees and applicants, including entrepreneurs and other small businesses, the Commission acted promptly to protect the hundreds of thousands of displaced residents of the affected states from being disconnected from their wireless service due to any inability to pay their wireless service bills in the wake of these hurricanes.

10. Application Processing and Filing

69. The Commission continues to take steps to ensure that its application processing and filing rules and policies do not undue present barriers for entrepreneurs and other small businesses. The Commission's goal is for all wireless licensees to have access to licensing information online and the ability to file license applications electronically without the need for high-end computer systems or specialized, hard-to-obtain software.[76] The Commission has achieved this goal for wireless services through the implementation of its Universal Licensing System ("ULS"). ULS is an online, interactive filing and research system which provides a number of capabilities to licensees and the general public. For example, applications may be filed online through ULS, and interested parties may search license and application data, view and print copies of applications, and map licenses and applications. Because electronic filing is both easily accessible and simple, ULS greatly reduces the cost of preparing wireless applications and pleadings, while increasing the speed of the licensing process for all licensees, including small businesses. Several separate licensing databases have been combined into the single ULS database platform, thus eliminating the need to conduct research on multiple database platforms. In July 2005, the WTB completed a multi-phase project to integrate BRS and EBS into the ULS. In October 2005, WTB deployed software to allow customers to automatically reset the FCC CORES password used to access ULS and other Commission electronic filing systems, which would previously have required manual intervention by FCC Customer Support staff. This upgrade was implemented as a direct result of customer requests for change; upon deployment of this feature 42,332 password resets were completed as of December 31, 2006.

70. In January 2006, the Commission announced it had further enhanced ULS to provide the public with an electronic method to submit pleadings regarding ULS applications and/or licenses pursuant to the Commission's rules and policies.[77] These enhancements provide interested parties with means to electronically file petitions and informal objections concerning ULS applications or licenses. Additionally, the ULS Application and License Search functionality now displays pleading information such as the type of pleading, the title of the pleading, and the date the pleading was submitted. By simplifying and expediting how users file pleadings, the burdens and costs of filing have been reduced. These improvements are of particular benefit to entrepreneurs and other small businesses.

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[75] Wireless Telecommunications Bureau Announces Extension of Installment Payment Deadline For Broadband Personal Communications Services and Broadband Radio Service Licensees in Areas Impacted by Hurricane Wilma, *Public Notice* DA 05-2824 (rel. October 28, 2005).

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

[77] Wireless Telecommunications Bureau Enhances the Commission's Universal Licensing System to Implement Electronic Filing for Pleadings, *Public Notice* DA-06-125 (rel. Jan. 20, 2006).

71. WTB continually works with the public and the industry to identify areas for improvement and to further facilitate and encourage electronic filing. As a result of WTB's efforts, 97.5 percent of all applications were filed electronically, and 72.1 percent of those were processed automatically in 2006. WTB also continues to maintain its website in a manner that provides online access to all released documents, Public Notices, and the current auction schedule (including maps and channel band plans). Small businesses benefit from this approach by on-line access to information about all types of WTB actions and proposed actions.

11. Outreach Efforts

72. WTB continues to make considerable efforts to reach out and provide information on the Commission's auction and licensing processes to all sections of the wireless telecommunications community, including entrepreneurs and other small businesses. The outreach program includes the operation of a booth at many industry trade shows, where Commission staff provides hands-on training in use of the ULS and auction bidding software over the internet. The Commission's outreach program also includes a webpage and an Auctions/ULS Hot Line.[78] Members of the Commission and its staff speak at numerous industry, trade association, public interest organization, and telecommunications user group conferences on opportunities in wireless services licensed by the Commission, and will continue with this outreach. For instance, in August 2005, the WTB was involved in an information exchange session with state wireless associations and Indian tribes, in Birmingham, Alabama. Furthermore, prior to the start of each auction, the WTB holds seminars for bidders to provide additional information about auction procedures. These seminars are offered free-of-charge and provide interested persons in specific auctions with the opportunity to see presentations on radio service and auction rules and observe a demonstration of the competitive bidding system. As a service to auction participants, an Auction Support telephone line is available to assist with auction-specific questions during the course of an auction event. Additionally, auction participants are able to place bids by telephone. This feature enhances the auction program by allowing bidders to call in their bids if they are either unable to access their computer, or if they are unfamiliar with the software and prefer auction experts to assist them. Telephonic bidding also enhances the accessibility of the auction bidding system to individuals with disabilities.

12. Universal Service Fund

73. Beginning on January 1, 1998, CMRS providers have been required to contribute to the federal Universal Service Fund ("USF") based on their interstate revenue or designated safe harbor percentage. Eligible telecommunications carriers ("ETCs") are eligible to receive support under the USF. In March 2005, the Commission released a *Report and Order* promulgating guidelines used in designating a wireless provider as an ETC, under which the prospective ETC must demonstrate how universal service support will be used to improve its coverage, service quality or capacity throughout the service area in which it seeks the ETC designation, and must make other showings.[79] These requirements were made applicable on a prospective basis to all ETCs previously designated by the Commission, and such ETCs were required to submit evidence of their compliance by October 1, 2006. The Commission encouraged, but did not require, state commissions to apply similar requirements to ETC

[78] The Auctions/ULS Hot Line telephone number is 1-888-225-5322.

[79] Federal-State Joint Board on Universal Service, *Report and Order*, 20 FCC Rcd 6371 (2005).

designation applications filed before them.[80] In August 2005, the WCB released an *Order* clarifying that CMRS providers may recover their USF contributions through rates charged for all of their services.[81] Because CMRS providers may utilize a safe harbor to calculate their assessments, they may use the same safe harbor in calculating a line item to recover their contributions from their customers.[82] Alternatively, CMRS providers are free to recover contributions through their standard service charges.

D. Wireline Competition Bureau

74. Pursuant to the statutory directive, the Wireline Competition Bureau (WCB) took numerous steps to identify and eliminate market entry barriers for entrepreneurs and other small businesses in the provision of telecommunications and information services and equipment. For example, the Bureau instituted proceedings that should provide increased incentives for broadband deployment, by *inter alia* eliminating the Title II and *Computer Inquiry* requirements applicable to wireline broadband Internet access services offered by facilities-based providers, and prohibiting state commissions from requiring incumbent local exchange carriers (LECs) to provide digital subscriber line (DSL) service to end users using competitive LEC unbundled voice lines. The Bureau also established unbundling obligations only for those facilities and markets where it would be uneconomic for a reasonably efficient provider to compete absent those network elements. WCB released orders approving the SBC-AT&T and Verizon-MCI mergers, which include numerous wholesale and retail telecommunications pricing and nondiscrimination conditions that can benefit smaller competitors and small business customers. Also benefiting small businesses were a number of Bureau actions that increased efficiency and transparency in the administration of the Universal Service Fund and intercarrier compensation mechanisms. WCB also released orders finalizing rules requiring carriers that provide telephone exchange service to provide subscriber list information to requesting directory publishers "on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions." A more detailed examination of WCB's activities is set forth below.

1. Broadband Deployment

75. Consistent with the U.S. Supreme Court's opinion in *NCTA v. Brand X*,[83] the Commission, in the *Wireline Broadband Internet Access Services Order*[84] concluded that, like

[80] Designation of Eligible Telecommunications Carriers (ETCs) is ordinarily handled by the states, pursuant to section 214(e)(6) of the Communications Act. The Commission, however, is directed to resolve petitions for ETC designation for carriers that are not subject to the jurisdiction of a state commission. This situation principally arises either where state law denies state commission jurisdiction over CMRS, on tribal lands, or in some of the territories of the United States.

[81] Federal-State Joint Board on Universal Service/Access Charge Reform, *Order*, 20 FCC Rcd 13779 (2005).

[82] *See also* Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review, WC Docket No. 06-122, FCC 06-94 (2006) (revising the interim wireless safe harbor).

[83] *National Cable & Telecommunications Ass'n et al. v. Brand X Internet Services*, 125 S. Ct. 2688 (2005).

[84] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33; *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337; *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10; *Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for*
(continued....)

cable modem service, wireline broadband Internet access services are information services having a telecommunications transmission component, and that an offering of wireline broadband Internet access service does not include a separate "telecommunications service" offering. The *Order* found that, subject to a one-year transition period, facilities-based wireline broadband Internet access service providers are no longer required to offer separately, and as a stand-alone telecommunications service under Title II, the wireline broadband transmission component (*i.e.*, transmission in excess of 200 kbps in at least one direction) of wireline broadband Internet access services. This requirement was part of the Commission's *Computer Inquiry* regime. Nevertheless, providers, if they choose to do so, may offer the wireline broadband transmission component of wireline broadband Internet access services as a stand-alone telecommunications service. In addition, the *Wireline Broadband Internet Access Services Order* immediately relieved BOCs of all other *Computer Inquiry* requirements with respect to wireline broadband Internet access services. The elimination of these requirements allows facilities-based wireline broadband Internet access services providers to respond to changing marketplace demands effectively and efficiently, spurring them to invest in and deploy innovative broadband capabilities that can benefit small businesses that depend on Internet access service to compete.

2. Triennial Review Remand Order

76. The Telecommunications Act of 1996 added section 251 to the Communications Act. Section 251 imposes specific obligations on telecommunications carriers designed to promote competition in local exchange markets across the country. In particular, section 251 establishes the general interconnection obligations for all telecommunications carriers, delineates further obligations for LECs, and prescribes additional requirements for incumbent LECs. Section 252 generally sets forth the procedures that state commissions, incumbent LECs, and new entrants must follow to implement the requirements of section 251 and to establish specific interconnection arrangements. As we stated in the *2003 Report*, the Commission continues to ensure carrier compliance with the rights and obligations set forth in section 251.[85]

77. In the *Triennial Review Remand Order*,[86] the Commission, responding to the decision of the D.C. Court of Appeals in *USTA I*,[87] reevaluated its unbundling rules to ensure that its regulatory framework remains current and faithful to Congress' pro-competitive market-opening provisions, based on judicial review. The *Triennial Review Remand Order* fulfills the

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Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises, WC Docket No. 04-242; *Consumer Protection in the Broadband Era*, WC Docket No. 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14872-14915, paras. 32-111 (2005) (*Wireline Broadband Internet Access Services Order*), *petitions for review pending*, *Time Warner Telecom v. FCC*, No. 05-4769 (and consolidated cases) (3rd Cir. filed Oct. 26, 2005).

[85] *2003 Report*, 19 FCC Rcd at 3100-3101, paras. 204-205.

[86] *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533 (2005) (*Triennial Review Remand Order*), *aff'd by Covad Communications Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006).

[87] *United States Telecom Ass'n. v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) (*USTA I*).

commitment the Commission undertook in its 1999 *UNE Remand Order*[88] to reexamine, in three years, the list of network elements that incumbent LECs must offer to competitors on an unbundled basis, and responds to several significant judicial rulings issued since the Commission last conducted a comprehensive review of its unbundling rules.[89] The Commission's previous attempt at creating unbundling rules[90] was struck down in part by the D.C. Circuit in *United States Telecom Association v. FCC* (*USTA II*) on March 2, 2004.[91]

78. Among other actions, in the *Triennial Review Remand Order*, the Commission reconsidered its impairment standards for unbundling network elements. The Commission revised its standards, as required by the *USTA II* decision, to impose unbundling only for facilities and markets where it would be uneconomic for a reasonably efficient competitor to compete absent particular network elements. These standards relate impairment in high-capacity loops and transport to the number of business lines and fiber-based collocators in a wire center. These revised standards aid competitors, including entrepreneurs and other small businesses, by enabling them to innovate and provide certainty as they provide telecommunications services, while also limiting the disincentive effects of unbundling obligations on incumbent LECs, including small incumbent LECs.

3. Merger Applications for SBC Communications Inc. and AT&T Corp., and Verizon Communications Inc. and MCI, Inc.

79. On February 22, 2005, AT&T and SBC filed transfer of control applications with respect to AT&T's domestic section 214 authorization, its international licenses and authorizations, its wireless licenses, and its experimental radio service licenses. On March 11, 2005, MCI and Verizon filed transfer of control applications with respect to MCI's domestic section 214 authorization, its international licenses and authorizations, and its wireless licenses. The Commission approved both merger applications on October 31, 2005, and the orders were released on November 17, 2005.[92]

80. The *Orders* approving the mergers adopted as conditions of the approval certain wholesale and retail telecommunications pricing and nondiscrimination commitments made by the applicants that may benefit smaller competitors and small business customers. Although the

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[88] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*UNE Remand Order*) (subsequent history omitted).

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

[90] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17102, para. 197 (2003) (*Triennial Review Order*), *corrected by* Errata, 18 FCC Rcd 19020 (2003) (*Triennial Review Order Errata*), *aff'd in part, vacated and remanded in part, and remanded in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

[91] *United States Telecom Ass'n. v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*).

[92] *SBC Communications Inc. and AT&T Corp., Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290 (2005); *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC 18433 (2005).

Commission found that the transactions were not likely to have anticompetitive effects in the market for mass market services, enterprise services, or Internet services, the Commission took comfort from voluntary commitments related to special access, stand-alone DSL service, the Commission's Internet Policy Statement, and Internet backbone services, and adopted those commitments as conditions for approval of the mergers. For example, the commitments related to special access include the reporting of special access performance data, which could allow entrepreneurs and other small businesses to see the quality of special access provisioning and help to make judgments about quality differences between competitors. In addition, the Commission took comfort from the applicants' commitments to maintain at least as many settlement-free U.S. peering arrangements for Internet backbone services with domestic operating entities as they did in combination on the Merger Closing Date, and to post their peering policy on a publicly accessible website, and to post any revisions on a timely basis. The Commission noted that these commitments help respond to the unique concerns expressed by rural carriers regarding a potential lack of options for access to Internet backbones at reasonable rates, terms, and conditions.

4. Local Telephone Competition and Broadband Data Gathering and Reporting

81. In compliance with the 1996 Act's directive to promote local telephone competition and to ensure rapid deployment of broadband services to all Americans, the Commission publishes information on the status of telephone competition and broadband deployment twice yearly based on data it gathers from its Form 477.[93] In November 2004, the Commission modified this form in order to collect more detailed data on broadband deployment and to diminish administrative burdens on small entities.[94] Separately, the Commission also acted to assist small entities in completing the form.

82. In the November 2004 Order, the Commission extended the Form 477 data collection by five years and modified its collection of local telephone competition and broadband data. The Commission concluded that improvements to the program, including collecting more granular information about the status and degree of broadband deployment and requiring all facilities-based broadband providers, local exchange carriers, and facilities-based mobile telephony providers to participate in the program, were necessary to ensure that the Commission can continue effectively to evaluate broadband and local competition developments as they affect all Americans.

83. The *Data Gathering Order* improved the quality of gathered data in two ways. First, based on its experience over nearly five years, the Commission eliminated previous Form 477 reporting thresholds.[95] The Commission found that excluding entities with subscriber lines below a certain threshold from the reporting requirements unduly restricted the Commission's understanding of broadband deployment and local telephone competition in rural and underserved areas, which undermined Congress' charge to the Commission to make

[93] Information about Form 477 is available at http://www.fcc.gov/broadband/data.html in the section entitled "Form 477 Highlights."

[94] *Local Telephone Competition and Broadband Reporting,* Report and Order, 19 FCC Rcd 22340 (2004) (*Data Gathering Order).*

[95] *Data Gathering Order*, 19 FCC Rcd at 22345, para. 8.

determinations based on the "availability of advanced telecommunications to all Americans."[96] The Commission also concluded that having more accurate information about the development of local telephone service competition in rural and underserved markets would assist the Commission in its review of portability and eligibility policies. Second, in order to better understand broadband deployment trends, and more accurately assess the impact of its policies on deployment, the Commission imposed requirements that filers report whether their services fell within five "speed tiers" based on the information transfer rate in the connection's faster direction.[97]

84. The Commission took significant steps to minimize the reporting burdens for small entities by eliminating several requirements associated with local telephone service. Specifically, the Commission eliminated the requirement that incumbent LECs report information about how they provision the wholesale local telephone service connections they provide to unaffiliated carriers. Additionally, incumbent LECs are no longer required to report concerning their provisioning of unbundled network elements (UNEs) to unaffiliated carriers or special access circuits in general.[98]

85. The Commission assisted small entities in two other ways. The Commission published a Small Entity Compliance Guide to assist small entities in understanding and complying with the requirements of the Local Telephone Competition and Broadband Data Gathering Program.[99] In addition, the Commission conducted a Data Collection Workshop to explain the modified program and made the workshop materials available on its website.[100] The Commission also maintains a set of Form 477 Frequently Asked Questions (FAQ) on its website.[101]

86. In various proceedings, the Commission made it easier for filers, including small entities, to comply with the Commission's filing requirements. For Form 477, the Commission allowed filers to file certification statements by email and fax and eliminated the requirement that filers provide redacted versions of their filings in order to protect confidential information.[102] For Form 43-02, the Uniform System of Accounts (USOA) Report, Table C-5 was modified to require carriers to file annual SEC 10K reports with the Commission electronically, rather than

[96] *Data Gathering Order*, 19 FCC Rcd at 22345-47, paras. 8-12 (quoting section 706 of the 96 Act).

[97] *Data Gathering Order*, 19 FCC Rcd at 22347-48, para. 14. The five speed tiers for the faster direction are (1) greater than 200 kbps and less than 2.5 mbps, (2) greater than or equal to 2.5 mbps and less than 10 mbps, (3) greater than or equal to 10 mbps and less than 25 mbps, (4) greater than or equal to 25 mbps and less than 100 mbps, and (5) greater than or equal to 100 mbps. Connections in each of the five speed tiers are faster than 200 kbps in the slower direction. *Id.*

[98] *See Data Gathering Order*, 19 FCC Rcd at 22351-52, paras. 22-23.

[99] *Small Entity Compliance Guide, Local Telephone Competition and Broadband Reporting*, DA 05-1676 (2005), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-05-1676A1.doc.

[100] The recorded audio/video file of the workshop and associated presentation materials are at http://www.fcc.gov/realaudio/workshops.html as the item dated 6/29/05.

[101] The Form 477 FAQ are available at http://www.fcc.gov/broadband/broadband_data_faq.html.

[102] Instead, filers may now request confidential treatment of their data by using a drop-down box located on Form 477's first page. *See* Form 477 available at http://www.fcc.gov/Forms/Form477/477.xls.

by paper copy.[103] Finally, in Form 499A, the Commission made it easier for state and local governmental entities to identify themselves as tax exempt, whereas previously these small governmental entities were required to send a letter to the Commission certifying their IRS tax-exempt status.[104]

5. Pay Telephone Compensation

87. Section 276 of the Communications Act directs the Commission to "promote the widespread deployment of payphone services to the benefit of the general public."[105] In pursuit of this mandate, section 276(b)(1) also directs the Commission to establish "a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call."[106] In 2004, the Commission reexamined the per call rate for "dial-around" calls made from payphones.[107] "Dial-around" calls are coinless calls where the caller uses a carrier other than the payphone's presubscribed long distance carrier. In some cases, the caller may enter a code to reach his or her preferred long distance carrier (*e.g.*, 1-800-CALL-ATT). Alternatively, the caller might make a toll-free call (*e.g.,* 1-800-FLOWERS). In this type of call, the flower company will pay (or "subscribes to") a long distance carrier for a toll-free number that its customers can use to make long distance calls to the company without incurring toll charges.

88. The payphone compensation rules, which became effective on July 1, 2004, ensure that payphone service providers (PSPs) are fairly compensated for each and every completed, payphone-originated call.[108] These rules define the carriers responsible for compensating PSPs as "Completing Carriers" and, among other obligations, require them to implement a tracking system and to compensate the PSPs on a quarterly basis. On October 20, 2004, the Commission adopted an *Order on Reconsideration* that clarified and modified those rules.[109] The *Order on Reconsideration* provides parties flexibility to agree to alternative compensation arrangements where facilities-based carriers owe compensation to payphone owners, so that Completing Carriers – many of which are entrepreneurs and other small businesses – may avoid the expense of instituting a tracking system. The *Order* also modified the rules to permit Internet posting and electronic transmission of documents in lieu of paper service

[103] *In re Revision of ARMIS Annual Summary Report (FCC Report 43-01), ARMIS USOA Report (FCC Report 43-02), ARMIS Joint Cost Report (FCC Report 43-03), ARMIS Access Report (FCC Report 43-04), ARMIS Service Quality Report (FCC Report 43-05), ARMIS Customer Satisfaction Report (FCC Report 43-06), ARMIS Infrastructure Report (FCC Report 43-07), ARMIS Operating Data Report (FCC Report 43-08), ARMIS Forecast of Investment Usage Report (FCC Report 495A), and ARMIS Actual Usage of Investment Report (FCC Report 495B) for Certain Class A and Tier 1 Telephone Companies*, Order, 20 FCC Rcd 1048, 1050, para. 5 (2004).

[104] These entities may identify their IRS status on line 604 of the revised form. *See* Form 499A available at http://www.fcc.gov/Forms/Form499-A/499a0706.pdf.

[105] 47 U.S.C. § 276(b)(1).

[106] 47 U.S.C. § 276(b)(1)(A).

[107] *Request to Update Default Compensation Rate for Dial-Around Calls from Payphones*, WC Docket No. 03-225, Report and Order, 19 FCC Rcd 15636 (2004).

[108] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 18 FCC Rcd 19975 (2003).

[109] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-128, Order on Reconsideration, 19 FCC Rcd 21457 (2004).

requirements, allow carriers to take advantage of clearinghouse audit procedures to establish compliance, and give PSPs the right to negotiate with the location provider. As a result, small payphone providers will be fairly compensated, making the payphone market more competitive.

6. Intercarrier Compensation

a. Competitive LEC Access Charges

89. To ensure that competitive LEC access rates are just and reasonable, the Commission sought to eliminate regulatory arbitrage opportunities that previously existed with respect to tariffed competitive LEC access services. As part of this effort, the Commission in 2004 clarified several issues relating to interstate switched access services provided by competitive LECs to interexchange carriers (IXCs).[110]

90. To reduce access rate disputes between IXCs and competitive LECs, thereby eliminating significant financial uncertainty for both groups of carriers, the Commission in 2001 set a benchmark rate for competitive LEC access rates. Competitive LEC access rates at or below the benchmark would be presumed just and reasonable. In 2004, the Commission clarified that a competitive LEC is entitled to charge the full benchmark rate if it provides an IXC with access to the competitive LEC's own end-users. The Commission also found that the rate a competitive LEC charges for access components when it is not serving the end-user should be no higher than the rate charged by the competing incumbent LEC for the same functions. The Commission further clarified that any presubscribed interexchange carrier charge (PICC) imposed by a competitive LEC qualifying for the rural exemption under the rules may be assessed in addition to the rural benchmark rate if, and only to the extent that, the competing incumbent LEC charges a PICC. In addition, the Commission identified permissible ways in which competitive LECs may structure their rates if they serve a geographic area with more than one incumbent LEC. The Commission also found that originating 8YY traffic is governed by the same benchmark as other competitive LEC interstate access traffic.

b. Intercarrier Compensation for ISP-Bound Traffic

91. In October 2004, the Commission granted in part and denied in part a petition filed by Core Communications, Inc. seeking forbearance from the Commission's rules regarding intercarrier compensation for Internet service provider (ISP)-bound traffic.[111] Core sought forbearance from four requirements: the rate caps, growth caps, mirroring, and new markets rules. Rate cap requirements refer to the Commission's declining cap on intercarrier compensation for ISP-bound traffic, beginning at $.0015 per minute-of-use and declining to $.0007 per minute-of-use. Growth cap requirements refer to the Commission's imposition of a cap on total ISP-bound minutes for which a LEC may receive this compensation, which was equal to the total ISP-bound minutes for which the LEC was previously entitled to compensation, plus a 10 percent growth factor. Under the mirroring rule, the Commission found that the rate caps for ISP-bound traffic should apply only if an incumbent LEC offered to exchange all traffic subject to section 251(b)(5) at the same rates. The new markets rule applied when two carriers were not exchanging traffic pursuant to an interconnection agreement prior to the adoption of the

[110] *Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, CCB/CPD File No. 01-19, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd 9108 (2004).

[111] *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C.§ 160(c) from Application of the ISP Remand Order*, WC Docket No. 93-171, Order, 19 FCC Rcd 20179 (2004).

ISP Remand Order. In this situation, if an incumbent LEC has opted into the federal rate caps for ISP-bound traffic, the two carriers must exchange this traffic on a bill-and-keep basis during the interim period.

92. The Commission found that the growth caps and new markets rules no longer served the public interest and granted forbearance of these rules. Market developments since 2001, including decreased growth of dial-up ISP traffic, reduced arbitrage opportunities; moreover, the Commission found that these concerns were outweighed by the public interest in creating a uniform compensation regime. The Commission found that Core had not demonstrated that enforcement of the rate caps or mirroring rule is no longer necessary to ensure that charges and practices are "just and reasonable," or to prevent rates that are "unjustly or unreasonably discriminatory." The Commission, therefore, retained these rules.

7. Universal Service

93. Section 254 of the Act charges the Commission with ensuring comparability between urban and rural rates and services;[112] promoting access to the public network by low income consumers;[113] promoting the availability of telecommunications and advanced services in all regions of the nation;[114] and effectuating access to telecommunications and advanced services by schools, libraries, and rural health care providers.[115] Following the *2003 Report*, the Commission, through its Universal Service programs, helped to ensure that the requirements and principles set out in section 254 were advanced. While promoting the goals of universal service, the Commission's actions consistently considered the impact of its policies on small entities. As the examples provided below indicate, the Commission often recognizes the important role played by and unique circumstances faced by small entities in the communications marketplace.

a. Contribution Methodology

94. In 2006, the Commission made interim changes to the universal service fund's contribution methodology. The Commission revised its contribution requirements to increase the wireless safe harbor from 28.5 percent to 37.1 percent. In addition, the Commission expanded the scope of entities required to contribute to include interconnected voice-over-Internet-Protocol (interconnected VoIP) providers.[116] These providers, like wireless carriers, may base their contribution revenues on either actual revenues, a traffic study, or on a safe harbor percentage of 64.9 percent.[117] Significantly, the Commission retained the *de minimis* exception, which

[112] 47 U.S.C. § 254(g).

[113] 47 U.S.C. § 254(j).

[114] 47 U.S.C. § 254(b)(3).

[115] 47 U.S.C. § 254(h).

[116] *Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format*, WC Docket No. 06-122, 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Further Notice of Proposed Rulemaking, FCC 06-94 (rel. Jun. 27, 2006).

[117] *Id*. at paras. 51-57.

excludes from contribution those entities whose payment would be less than $10,000 during the course of the year.[118] The interim modifications to the contribution methodology will help ensure the stability and sufficiency of the universal service fund while the Commission considers more fundamental change. The stability and sufficiency of the universal service fund is critical to the numerous small, rural carriers and others that depend on the fund to reduce to the costs associated with providing telecommunications and advanced services to the various communities served by these entities.

b. Hurricane Katrina and Universal Service

95. In the fall of 2005, Hurricane Katrina devastated a substantial portion of America's Gulf Coast. In response to this devastation and to ensure the continued flow of support from the universal service fund, the Commission directed the Universal Service Administrative Company to continue payments under the High Cost program based upon earlier-filed data if carriers in Louisiana, Mississippi, and Alabama (areas served by a number of small, rural carriers) filed the required data late, to consider a late-filed Form 466 as timely filed and make payments for services under the Rural Health Care program, and to waive any other related deadlines that are necessary.[119] The Commission extended filing deadlines for carriers serving these states to no later than January 26, 2006. In the *Hurricane Katrina Emergency Order*, the Commission also provided a streamlined process for additional relief on a case-by-case basis beyond that date. In addition, the Commission waived the recordkeeping requirements associated with the Universal Service fund for entities in these states. The Commission also extended eligibility for the Lifeline and Link-Up programs to all residents of these areas, many of whom own and operate small businesses. The actions taken in the *Hurricane Katrina Emergency Order* helped small telecommunications entities and other small business owners in the Gulf Coast through what many have called the worst natural disaster to hit America.

c. High Cost Support

96. Over the years the Commission has recognized that certain compliance obligations associated with the High Cost Support Mechanism may create burdens for certain small, rural carriers. As a result, the Commission often provides relief to these entities through its waiver process. This process requires a showing of good cause to waive a rule and affords the Commission an opportunity to make its determination based on the specific circumstances that an individual carrier is encountering. Through this process, the Commission is able to tailor relief to address the specific needs of these small, rural carriers. Over the last three years, the Commission has granted numerous requests from small, rural carriers for relief.[120] The relief

[118] *Id*. at para. 8.

[119] *Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up; Federal-State Joint Board on Universal* Service, CC Docket Nos. 02-6, 96-45, WC Docket Nos. 02-60, 03-109, Order, 20 FCC Rcd 14774 (2005) (*Hurricane Katrina Emergency Order*).

[120] The Commission granted high cost and study area waivers in 2005 and 2006. These waivers apply to rural carriers, which are defined as carriers with less than 100,000 lines and therefore includes small carriers. *See, e.g, Sully Telephone Association, Inc. and Reasnor Telephone Company*, LLC, CC Docket No. 96-45, Order, 20 FCC Rcd 19190 (2005) (waiver of the study area boundary freeze); *Direct Communications Cedar Valley, LLC and Qwest Corporation*, CC Docket No. 96-45, Order, 20 FCC Rcd 19180 (2005) (allowing Direct to be treated as average schedule company thereby permitting Direct to avoid the burdens and costs of performing cost studies); *Blue Valley Telecommunications, Inc. and United Telephone Company of Kansas*, CC Docket No. 96-45, Order, 20 FCC Rcd 19166 (2005) (waiver of the study area boundary freeze, which allowed Blue Valley to avoid burden and cost of filing its own interstate tariff); *Alliance Communications Cooperative, Inc. and Hills Telephone Company, Inc., East Ascension Telephone Company, LLC, Columbus Telephone Company*, CC Docket No. 96-45, Order, 20 (continued....)

ensured that these small, rural carriers were able to continue to provide service in these rural areas.

97. In 2005, the Commission also modified its rules to encourage investment in rural exchanges.[121] In deciding a petition for reconsideration, the Commission amended section 54.305 of its rules, which governs the safety valve mechanism, to make it consistent with the Commission's intent in adopting the safety valve mechanism, which is to provide additional support to rural carriers that make substantial investment after acquiring exchanges.[122] Under the rule, rural carriers were not able to include their first year investment in newly-acquired exchanges.[123] This had the effect of discouraging investment during the first year or penalizing rural carriers for investments made during the first year as a result of conditions placed by state commission on the acquisition.[124] The Commission's modification provided small, rural carriers the incentive needed to upgrade their exchanges to better serve their rural populations.

98. Also in 2005, the Commission clarified that section 36.605 of the Commission's rules provides that carriers may qualify for safety net additive support in more than one year.[125] Specifically, the Commission granted requests for review of decisions by the Universal Service Administrative Company (USAC) filed by Darien Telephone Company, Inc. (Darien), Logan Telephone Cooperative, Inc. (Logan), and Roanoke & Botetourt Telephone Company (R&B) pursuant to sections 54.719 and 54.722 of the Commission's rules.[126] USAC's decisions

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FCC Rcd 18250 (2005) (waiver of local switching support reporting deadline, applies to carriers with less than 50,000 lines); *Madison River Telephone Company, LLC, Mebtel Inc. d/b/a/ Mebtel Communications and BellSouth Telecommunications, Inc*., CC Docket No. 96-45, Order, 20 FCC Rcd 19173 (2005) (waiver of study area boundary freeze, allowing rural company to avoid burden and costs of filing its own interstate tariffs); *Sioux Valley Telephone Company and Hill Telephone Company, Inc*., CC Docket No. 96-45, Order, 20 FCC Rcd 8071 (waiver of study area boundary freeze, allowing rural company to avoid burden and costs of filing its own interstate tariffs); *Partner Communications Cooperative and Iowa Telecommunications Service, Inc. d/b/a Iowa Telecom*, CC Docket No. 96-45, Order, 21 FCC Rcd 4404 (2006) (waiver of study area boundary freeze, allowing rural company to avoid burden and costs of filing its own interstate tariffs); *Communications Cooperative and Iowa Telecommunications Service, Inc. d/b/a Iowa Telecom*, CC Docket No. 96-45, Order, 21 FCC Rcd 2858 (2006) (waiver of study area boundary freeze, allowing rural company to avoid burden and costs of filing its own interstate tariffs); *Dixon Telephone Company, Lexcom Telephone Company, and Citizens Telephone Company of Higginsville Missouri*, CC Docket No. 96-45, Order, 21 FCC Rcd 1717 (2006) (Commission found that waiver of filing deadline for data reporting associated with local switching support was in the public interest because failure to waive would result in the loss of such support for an entire year, which would have a significant impact on a small carrier's capacity to ensure that consumers have and maintain access to service at just, reasonable, and affordable rates).

[121] *Federal-State Joint Board on Universal Service, National Telephone Cooperative Association Petition for Reconsideration*, CC Docket No. 96-45, Order and Order on Reconsideration, 20 FCC Rcd 768 (2005).

[122] *Id*.

[123] *Id*. at 768-70, paras. 2-6.

[124] *Id*. at 772, para. 11.

[125] *See Federal-State Joint Board on Universal Service, Darien Telephone Company, Inc., Logan Telephone Cooperative, Inc., and Roanoke & Botetourt Telephone Company, Requests for Review of Decisions of the Universal Service Administrative Company*, CC Docket No. 96-45, Order, FCC 06-112 (rel. Aug. 7, 2006) (*Safety Net Additive Order*).

[126] *See* 47 C.F.R. §§ 54.719, 54.722; Darien Telephone Company, Inc., CC Docket Nos. 96-45 & 00-256, Request for Review of an Administrator Decision (filed May 2, 2005) (Darien Request for Review); Logan Telephone Cooperative, Inc., CC Docket Nos. 96-45 & 00-256 (Logan request for Review), Request for Review of an (continued....)

significantly reduced the companies' safety net additive support, and deducted previously dispersed safety net additive support from their universal service support payments. USAC had recalculated the companies' safety net additive support pursuant to the Wireline Competition Bureau's (Bureau's) guidance in interpreting section 36.605 of the Commission's rules.[127] The Commission found that the Bureau's interpretation that safety net additive support should be based only on the carriers' first qualifying year incorrectly limits the support these carriers should have received. Consistent with the policies underlying the Commission's adoption of the safety net additive support rules,[128] the Commission concluded that carriers should receive safety net additive support for each year in which they qualify.[129] This Order helps to eliminate entry barriers for rural carriers by providing additional universal service support to those carriers that have made significant investment in rural infrastructure.

8. Joint Actions on Intercarrier Compensation and Universal Service

a. MAG Plan for Access Charge and Universal Service Reform

99. In February 2004, the Commission took additional steps to provide rate-of-return carriers greater flexibility to respond to changing marketplace conditions.[130] In the *Second MAG Order*, the Commission modified the "all-or-nothing" rule to permit rate-of-return carriers to bring recently acquired price cap lines back to rate-of-return regulation. This action was advocated by small and mid-sized incumbent LECs. In modifying the rule, the Commission reduced the administrative costs and uncertainties of such acquisitions for rate-of-return carriers.

100. The Commission also granted rate-of-return carriers the authority immediately to provide geographically deaveraged transport and special access rates, subject to certain limitations. The Commission permitted rate-of-return carriers to define both the scope and number of zones, provided that each zone, except the highest-cost zone, accounts for at least 15 percent of its revenues from those services in the study area. Granting rate-of-return carriers more flexibility to deaverage these rates enhances the efficiency of the market for those services

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Administrator Decision (filed May 2, 2005); Roanoke & Botetourt Telephone Company, CC Docket Nos. 96-45 & 00-256, Request for Review of an Administrator Decision (filed May 2, 2005) (R&B Request for Review).

[127] *See* 47 C.F.R. § 36.605; Letter from Jeffrey J. Carlisle, FCC, to Irene Flannery, USAC, dated Jan. 14, 2005 (Carlisle Letter).

[128] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, 11277-82, paras. 77-90 (2001) (*Rural Task Force Order*); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, High-Cost Universal Service Support, WC Docket No. 05-337, 21 FCC Rcd 5514 (2006) (*RTF Extension Order*) (extending the rules adopted in the *Rural Task Force Order* on an interim basis until the Commission concludes its rural review proceeding and adopts changes, if any, to those rules as a result of that proceeding).

[129] The Commission directed USAC to refund to Darien, Logan, and R&B the safety net additive support that was deducted from the companies' universal service support payments, and to recalculate their safety net additive support. *Safety Net Additive Order*, at paras. 1, 8. On a going forward basis, all carriers may qualify for safety net additive support in each year that they meet the requirements in section 36.505 of the Commission's rules. 47 C.F.R. § 36.605.

[130] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 00-256 and 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122 (2004) (*Second MAG Order*).

by allowing prices to be tailored more easily and accurately to reflect costs and, therefore, facilitates competition in both higher and lower cost areas. This is another step in facilitating the ability of rate-of-return carriers that offer deaveraged UNE rates to establish access and UNE rates that reflect common zone boundaries.

101. Finally, the Commission merged the Long Term Support (LTS) mechanism with the Interstate Common Line Support (ICLS) mechanism. LTS was a legacy of the transition to a competitive interstate long distance market after the breakup of AT&T. LTS and ICLS duplicatively provided support directed to the rate-of-return carriers' interstate common line costs. ICLS is narrowly tailored to individual carriers' support requirements under the current interstate access rate structure, acting as the residual source of revenue for rate-of-return carriers and ensuring that they can recover their common line revenue requirements while providing service at an affordable rate. LTS, on the other hand, normally provided each carrier with a fixed level of support grown annually by inflation and might bear little relevance to a particular carrier's support requirements. Although LTS effectively served the purposes it was designed to serve, it was not designed to meet the requirements of the rate-of-return access charge rate structure in place after the first *MAG Order*. Merging LTS into ICLS made the interstate access rate structure and universal service mechanisms simpler and more transparent, while ensuring that rate-of-return carriers maintain existing levels of universal service support.

102. The Commission continued its access charge reform efforts by granting a partial waiver allowing rate-of-return carriers to reduce from twenty-four to five the number of end user common line (EUCL) charges they may assess on customers of certain T-1 services, without foregoing recovery of the associated EUCL revenue from the ICLS universal service fund.[131] The Commission granted this waiver after concluding that derived channel T-1 service and PRI ISDN service appear to have comparable costs; therefore, the five-EUCL-charge assessment applicable to PRI ISDN service should also be applicable to derived channel T-1 service. This waiver request grant served to bring EUCL assessments more in line with costs and to eliminate artificial price incentives that would favor PRI ISDN services over T-1 services. The Commission found that, absent a waiver, the harm caused by assessing twenty-four EUCL charges on derived channel T-1 services was particularly acute in rural areas because many rate-of-return carriers do not offer PRI ISDN services.

b. Prepaid Calling Cards

103. The Commission took steps necessary to protect the federal universal service program and promote stability in the market for prepaid calling cards.[132] The Commission took immediate action to clarify that certain calling card services are telecommunications services, not enhanced services, on which access charges may be assessed. Revenues from these services must also be included in calculating federal universal service contributions. Immediate action on this issue was necessary to preserve universal service and provide regulatory certainty while the Commission considers systemic reform of the universal service and intercarrier compensation

[131] *NECA Petition to Amend Section 69.104 of the Commission's Rules*, WC Docket No. 04-259, RM-10603, Order Granting Petition for Rulemaking, Notice of Proposed Rulemaking, and Order Granting Partial Interim Waiver, 19 FCC Rcd 13591 (2004).

[132] *Regulation of Prepaid Calling Card Services*, WC Docket Nos. 03-133 and 05-68, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4826 (2005); WC Docket No. 05-68, Declaratory Ruling and Report and Order, FCC 06-79 (June 30, 2006).

regimes. The Commission found that any uncertainty regarding the regulatory requirements applicable to prepaid calling cards creates incentives for providers to reduce exposure to charges they may owe or evade them altogether. The Commission's actions in this proceeding will provide a level regulatory playing field for calling card providers, thereby reducing the potential for continued "gaming" of the system. In the absence of these actions, uncertainty regarding applicability of the Commission's rules could stifle continued market innovation and encourage providers to adapt their products solely to evade contribution to universal service funding mechanisms. By leveling the playing field for all providers, the Commission encourages market entry and efficient development and innovation in the prepaid calling services industry.

9. Subscriber List Information/Directory Assistance Reconsideration Orders

104. In the *SLI/DA First Report and Order*, the Commission concluded that LECs must provide competing Directory Assistance (DA) providers that qualify under section 251(b)(3) of the Telecommunications Act of 1996 with nondiscriminatory access to the LECs' local directory assistance databases, and must do so at nondiscriminatory and reasonable rates.[133] In 2004, the Commission finalized its rules implementing section 222(e) of the Communications Act, which requires carriers that provide telephone exchange service to provide subscriber list information to requesting directory publishers "on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions."[134] The *SLI/DA Memorandum Opinion* denied requests to modify certain aspects of the complaint procedures, notification requirements, and unbundling requirements established in the *SLI/DA First Report and Order*, and affirmed other aspects of the *Order* that were subject to petitions for reconsideration.[135] It eliminated a requirement that carriers provide requesting directory publishers with notice of changes in subscriber list information in circumstances where customers choose to cease having their numbers listed.[136] It also modified the contract disclosure requirement to allow carriers to withhold from disclosure those portions of their contracts that are unrelated to the provision of subscriber list information and to subject such disclosures to confidentiality agreements.[137]

105. Subsequently, on April 29, 2005, the Commission adopted an *Order on Reconsideration* reaffirming its commitment to promote access by competitive directory assistance providers to directory assistance information of local exchange carriers.[138] The

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[133] *Provision of Directory Listing Information under the Communications Act of 1934, as Amended*, CC Docket No. 99-273, First Report and Order, 16 FCC Rcd 2736 (2001) (*SLI/DA First Report and Order)*.

[134] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information,* CC Docket No. 96-115, Memorandum Opinion and Order on Reconsideration, 19 FCC Rcd 18439 (2004) (*SLI/DA Memorandum Opinion*).

[135] *SLI/DA Memorandum Opinion*. 19 FCC Rcd at 18440-18450.

[136] *SLI/DA Memorandum Opinion*, 19 FCC Rcd at 18443, para. 6.

[137] *SLI/DA Memorandum Opinion*, 19 FCC Rcd at 18444-18445, paras. 7-10.

[138] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Provision of Directory Listing Information Under the Communications Act of 1934, As Amended*, CC Docket Nos. 96-115, 96-98, and 99-273, Order on Reconsideration, 20 FCC Rcd 9334 (2005) (*SLI/DA Reconsideration Order*). On September 16, 2005, InfoNXX filed a petition for clarification or, in the alternative, reconsideration of the *SLI/DA Reconsideration Order*. The petition is pending.

SLI/DA Reconsideration Order reasserted its previous decision that the imposition of contractual restrictions by a providing LEC on competing DA providers' use of DA information (including limits on resale and prohibitions on use for purposes such as sales solicitation, telemarketing, and directory publishing) is inconsistent with the nondiscriminatory access requirements of section 251(b)(3). The *Order* clarified that competing DA providers may not use data obtained pursuant to section 251(b)(3) of the Act for purposes not permitted by the Act, the Commission's rules, or state regulations, and that the use of similar data for directory publishing is governed separately under section 222(e) of the Act. [139] The *Order* further reaffirmed the Commission's conclusion that LECs are required to provide nondiscriminatory access to their entire local DA database, including local DA data acquired from third parties.[140]

106. These reconsideration orders benefit small competitive DA providers and small directory publishers by reducing the burdens they encounter in obtaining subscriber list information from carriers, thus ensuring the ability of these entities to provide service on a competitively neutral basis. In addition, these requirements will have a positive economic impact on some competitive LECs. Many competitive LECs, both small and large, rely upon small competitive DA providers to outsource their DA services; the requirements should result in more competition in the DA arena, and, therefore, a savings to these competitive LECs.

E. Office of Engineering and Technology

107. The Office of Engineering and Technology (OET) took a number of actions in the last three years that will remove barriers and lessen burdens for small businesses. These actions include those specifically intended to do so, and those of a more general nature that will result in such effects. It reduced time to market and regulatory costs for new unlicensed devices by expanding the role of domestic Telecommunications Certification Bodies (TCB) and by pursuing additional Mutual Recognition Agreements (MRA) to ease the marketing of domestically-produced devices in other countries. It also expanded its Electronic Equipment Authorization System to provide full integration of new policies and regulations in a number of respects. Additionally, OET further reduced time to market and regulatory costs for these devices by establishing a web based inquiry system to provide speedy and consistent answers to questions about equipment authorization procedures and rules To provide additional entrepreneurial opportunities and to provide better tools for all businesses, the Commission expanded the spectrum available for use by as well as the permissible capabilities of innovative unlicensed devices, made way for the introduction of advanced ultra-wideband (UWB) technology, and finalized rules for U-NII radios. It also adopted rules for terrestrial use of a satellite band for new advanced wireless services, initiated a proceeding to explore the potential for new uses for the TV broadcast band, and adopted rules to govern the country's use of the electrical utility infrastructure to carry broadband services directly to homes and businesses. Finally, the Commission has begun to explore the development of a spectrum-sharing test-bed to study the feasibility of more intensive use of shared spectrum to provide additional spectrum availability and better tools to individuals and businesses, and to provide a business opportunity for the development of such devices.

[139] *SLI/DA Reconsideration Order*, 20 FCC Rcd at 9339-9344, paras. 8-13.

[140] *SLI/DA Reconsideration Order*, 20 FCC Rcd at 9344-9347, paras. 14-18.

1. Telecommunications Certification Bodies

108. The Commission is taking several actions to both streamline further and to simplify the processes for authorization of equipment. The Commission established standardized testing procedures, reduced the number of products excluded from TCB certification, and undertook regular and extensive training of the private TCBs resulting in the expansion of the types of equipment that the TCBs can authorize. As a result, TCBs have authorized over 90 percent of all applications for equipment certification in the last three years, speeding new devices to market for the benefit of the numerous small companies who produce devices that are subject to the equipment approval process. Additionally, this increased the workload and productivity of the independent test labs that provide equipment certifications and related services.

2. Mutual Recognition Agreements

109. The Commission also significantly expanded its Mutual Recognition Agreements (MRAs) with other countries, whereby the signatories to an MRA mutually agree to recognize the validity of equipment authorizations sanctioned by the other countries, thereby greatly increasing the ease of international marketing for makers of all kinds of equipment. During the past three years the Commission has implemented the APEC Tel MRA with Canada, Singapore and Hong Kong. As of August 2006, there were over 280 organizations designated as Conformity Assessment Bodies to test or approve equipment to foreign technical requirements. The list of designated U.S. Conformity Assessment Bodies, as well as the list of participating countries, continues to grow. The majority of Conformity Assessment Bodies located in the United States are small businesses. These measures thus enhance market opportunities for small businesses and manufacturers that supply parts and services to telecommunications service providers, and also to those that engage in compliance testing of equipment, most of which are small start-up enterprises. These measures also promote competition in the provision of telecommunications products and electronic equipment and, in turn, speed delivery of products to the public.

3. Electronic Equipment Authorization

110. Upgrades to the Commission's data base of equipment authorization records have automated the full integration of new policies and regulations into equipment authorization processing for both FCC- and TCB-filed applications. For instance, Commission rulemakings and new policies introduced upgrades to reflect new technology developments in cognitive radio / software defined radio; provide for electronic filing of changes to grantee code demographic information and information related to transfer in control of business ownership; implement a new short term confidentiality procedure to allow shipping and distribution of authorized equipment, while maintaining the confidentiality of information available to the public after marketing; streamlining of the TCB processes to further ensure consistency in the processing of applications by all TCBs; and revision of the monitoring and assessment of TCBs, to ensure that TCBs are operating in a manner consistent with the rules, and in a manner that demonstrates that TCBs, in both the US and MRA partner economies, are providing excellent service in acting on behalf of the Commission to issue grants of authorization.

4. Knowledge Data Base (KDB)

111. The Commission has developed a web based inquiry system to help answer questions about equipment authorization procedures and rules. The inquiry system and the associated archive collectively is part of a Knowledge Data Base (KDB) system. The

Commission has continued to develop and improve the KDB, which also provides published records of Commission policies and staff rule interpretations; and a template for the equipment authorization public to request information and present inquiries. The published records are fully searchable, and are updated and maintained based on current technology trends and new policies and procedures. In addition, the web interface in the KDB provides the public with a vehicle to request information or responses to inquiries. The KDB provides a data base of previous responses, as well as publications, for Commission staff to review to ensure standardization in providing information and to facilitate rapid response.

5. Expanded Utility for Unlicensed Devices

112. The Commission, in July 2004, made changes to its Part 15 rules to allow unlicensed device manufacturers, including small businesses, to develop expanded applications for unlicensed devices.[141] These rule changes removed unnecessary regulatory impediments to the deployment of advanced technologies for unlicensed wireless networking. For example, the amended rules specifically provide for the use of "smart antennas" which focus their radio transmission according to the geographic locations of their users. In addition these rules also allow unlicensed device operators, including wireless Internet service providers (WISPs), greater flexibility to modify their systems. WISPs are generally small businesses that use unlicensed devices to provide broadband service for rural and underserved areas.

6. Ultra-Wideband Technology

113. In June of 2006, the Commission issued a Memorandum Opinion and Order that finalized the rules for unlicensed National Information Infrastructure (U-NII) devices operating in the 5.47-5.725 GHz band.[142] Along with the MO&O, the Commission published the Compliance Measurement Procedures for these devices. This completes the proceeding began in 2003 to make an additional 255 megahertz of spectrum available for unlicensed uses. This action aligns the frequency bands used by U-NII devices in the United States with bands used in other parts of the world, thus decreasing development and manufacturing costs for U.S. manufacturers, including small businesses, by minimizing (in some cases eliminating) the design changes that will be necessary for products to be used in many different parts of the world. This also will benefit small businesses by allowing them access to a new range of unlicensed devices for wireless broadband access.

7. Broadband over Power Line

114. In October of 2004, the Commission adopted rules for broadband over power line (BPL) systems, a new type of carrier current technology that provides access to high speed broadband services using electric utility companies' power lines.[143] This new technology offers the potential for the establishment of a significant new medium for extending broadband access

[141] *Modification of Parts 2 and 15 of the Commission's Rules for unlicensed devices and equipment approval.*, Report and Order in ET Docket 03-201, 19 FCC Rcd 13539 (2004).

[142] *Revision of Parts 2 and 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) devices in the 5 GHz band*, Memorandum Opinion and Order in ET Docket 03-122, 21 FCC Rcd 7672 (2006).

[143] *Amendment of Part 15 regarding new requirements and measurement guidelines for Access Broadband over Power Line Systems*, ET Docket 04-37, and *Carrier Current Systems, including Broadband over Power Line* Systems, Report and Order in ET Docket 03-104, 19 FCC Rcd 21265 (2004).

to American homes and businesses. This new technology has the potential to enhance broadband access for consumers and businesses, and also creates new business opportunities for manufacturers, suppliers and installers of BPL equipment and technology, and for the vendors providing such service. In August of 2006, the Commission affirmed its rules, and sanctioned the use of older equipment for repairs and expansion of service in existing areas for a limited period, thus reducing their costs before transitioning to newer equipment.[144]

8. Cognitive Radio

115. The Commission modified its rules its rules for cognitive or "smart" radios in March of 2005.[145] The changes benefit manufacturers and operators of these smart radios, including small businesses, by eliminated unnecessary requirements. For example, these modified rules eliminate the requirement that a manufacturer supply radio software (source code) to the Commission because such software is generally not useful for certification review and may have become an unnecessary barrier to entry. In addition, manufacturers may now market radios that have the hardware-based capability to transmit outside authorized United States frequency bands, but have software controls to limit operation to the authorized frequency band when used in the United States. This will help manufacturers, particularly small businesses, by avoiding the need to produce two radios, one for use within the United States, and one for use in other countries.

9. U-NII Radio

116. In June of 2006, the Commission issued a Memorandum Opinion and Order that finalized the rules for unlicensed National Information Infrastructure (U-NII) devices operating in the 5.47-5.725 GHz band.[146] Along with the MO&O, the Commission published the Compliance Measurement Procedures for these devices. This completes the proceeding began in 2003 to make an additional 255 megahertz of spectrum available for unlicensed uses. This action aligns the frequency bands used by U-NII devices in the United States with bands used in other parts of the world, thus decreasing development and manufacturing costs for U.S. manufacturers, including small businesses, by allowing the same products to be used in many parts of the world. This also will benefit small businesses by offering them an expanded range of unlicensed devices for wireless broadband access.

10. New Uses for the TV Broadcast Band

117. In May of 2004 the Commission initiated a proceeding to allow unlicensed radio transmitters to operate in the broadcast television spectrum at locations where that spectrum is not being used to transmit TV signals. This spectrum is referred to as "TV white spaces." The Commission stated in its *Notice of Proposed Rulemaking*[147] that the proposed unlicensed use of

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[144] *Amendment of Part 15 regarding new requirements and measurement guidelines for Access Broadband over Power Line Systems*, ET Docket 04-37, and *Carrier Current Systems, including Broadband over Power Line* Systems, Memorandum Opinion and Order in ET Docket 03-104, 21 FCC Rcd 9308, (2006).

[145] *Facilitating Opportunities for Flexible, Efficient, and Reliable Spectrum Use Employing Cognitive Radio Technologies*, Report and Order in ET Docket 03-108, 20 FCC Rcd 5486 (2005).

[146] *Revision of Parts 2 and 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII)devices in the 5 GHz band*, Memorandum Opinion and Order in ET Docket 03-122, *supra*.

[147] *Unlicensed Operation in the TV Broadcast Bands*, Notice of Proposed Rulemaking in ET Docket 04-186, 19 FCC Rcd 10018 (2004).

the TV white spaces would provide for more efficient and effective use of the TV spectrum and would have significant benefits for the public by allowing the development of new and innovative types of unlicensed broadband devices and services for businesses and consumers. The Commission further stated that because transmissions in the TV band are subject to less propagation attenuation than transmissions in the spectrum where existing broadband unlicensed operations are permitted, allowing unlicensed operation in the TV bands could benefit wireless internet service providers (WISPs) by improving the service range of their existing operations, thereby allowing WISPs to reach new customers.

11. Digital Television

118. The Commission has taken additional important steps to further local television stations ability to offer digital service to the public in competition with cable, satellite, and wireline carrier based digital video services. These steps include the adoption of rules requiring that all new broadcast television receivers, including those with screen sizes smaller than 13 inches and TV receiver products with no screens such as set-top receiver devices, be capable of receiving off-the-air digital television signals beginning March 1, 2007.[148] This requirement will ensure that viewers are able to receive the service of broadcast television stations, most of which are small businesses, when analog broadcast television ceases in 2009. In addition, the Commission, in conjunction with television broadcasters, has developed a tentative plan for the channels that stations will use for operation after the DTV transition ends. This plan, which must be completed through rulemaking, identifies a channel for assignment to each existing television station. The early identification of the channels that broadcasters will use in the post-transition environment will allow stations time to plan their moves to those channels in a cost-effective manner.

12. Wireless Operations in the 3650-3700 MHz Band

119. The Commission adopted rules that provide for nationwide, non-exclusive, licensing of terrestrial wireless operations, utilizing technology with a contention-based protocol, in the 3650-3700 MHz band.[149] These rules permit further deployment of advanced telecommunications services and technologies to all Americans, especially in the rural heartland, thus promoting the objectives of Section 706 of the Telecommunications Act of 1996. The Commission also adopted a streamlined licensing mechanism with minimal regulatory entry requirements in the 3650-3700 MHz band to encourage multiple entrants and to stimulate the rapid expansion of wireless broadband services, especially in rural America. The 3650-3700 MHz band is well suited to respond to the needs expressed by the growing number of entrepreneurial wireless internet service providers that currently bring broadband services to consumers, particularly those living in rural areas. The costs involved in the selection and use of frequencies by affected entities, including small businesses, should be minimal because of the availability of an on-line database to assist with that effort. Furthermore, these minimal costs will be shared by all entities that use the 3650-3700 MHz band. The streamlined licensing

[148] *Digital Television Receiving Capability*, Second Report and Order in ET Docket 05-24 , 20 FCC Rcd 18607 (2005).

[149] In the Matter of Wireless Operations in the 3650-3700 MHz Band; Rules for Wireless Broadband Services in the 3650-3700 MHz Band; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band; Amendment of the Commission's Rules With Regard to the 3650-3700 MHz Government Transfer Band, Report and Order and Memorandum Opinion and Order in ET Docket 04-151 et al, 20 FCC Rcd 6502 (2005).

approach will provide a means for prospective licensees to obtain a license in that band in a manner that minimizes costs and associated regulatory barriers.

13. Medical Device Radio Communications

120. In July 2006, the Commission initiated a rulemaking proceeding to establish a new service for advanced medical radio communication devices in the 401-406 MHz band.[150] An ever-increasing number of medical devices are coming to rely upon radio transmissions for critical aspects of their functionality, and these devices are improving the health care of all Americans by providing relief and recovery of function from many types of illness and injury. The Commission proposed designating an additional two-megahertz of spectrum for these devices (at 401-402 MHz and 405-406 MHz), adjacent to the existing three-megahertz Medical Implant Communications Service band (at 402-405 MHz), for a total of 5 megahertz specifically designated for medical device radiocommunications. The Commission's proposed licensing approach would not require individual transmitter licensing, but rather would be accomplished through adherence to applicable technical standards and other operating rules to minimize the administrative burden on prospective licensees. Thus, regulatory barriers to small businesses in this new service should be minimal. In addition, the Commission and OET have granted several rule waivers to permit the prompt introduction of medical implant devices that do not fully conform to existing rules by small businesses.

14. Spectrum Sharing Innovation Test-Bed

121. In July 2006, the Commission issued a *Public Notice*, requesting that interested parties submit comments and information on a Spectrum Sharing Innovation Test-Bed ("Test-Bed") program to study the feasibility of increasing the efficient use of spectrum that is shared between federal and non-federal users.[151] In the *Public Notice*, the Commission noted that, in May 2003, the President established a "Spectrum Policy Initiative" by issuing an Executive Memorandum to initiate an examination of the existing legal and policy framework for spectrum management in order to better optimize the use of U.S. spectrum assets for federal and non-federal users. The Commission was encouraged to participate in this review and to provide input to the National Telecommunications and Information Administration on these issues. The *Public Notice* sought comment on a variety of questions, including the amount of spectrum and geographic areas to be used for the Test-Bed, whether the Test-Bed should encompass a single experiment or multiple experiments, and how Test-Bed candidates should be selected. Many comments, encompassing a number of innovative ideas, were received to the *Public Notice*.[152] The Test-Bed provides opportunities for entrepreneurs to perform experiments in areas of their choosing. Some possibilities are dynamic spectrum access techniques, new technologies for

[150] Investigation of the Spectrum Requirements for Advanced Medical Technologies; Amendment of Parts and 95 of the Commission's Rules to Establish the Medical Device Radio Communications Service at 401-402 and 405-406 MHz; DexCom, Inc. Request for Waiver of the Frequency Monitoring Requirements of the Medical Implant Communications Service Rules; Biotronik, Inc. Request for Waiver of the Frequency Monitoring Requirements for the Medical Implant Communications Service Rules, Notice of Proposed Rulemaking in ET Docket 06-135 et al., 21 FCC Rcd 8164 (2006).

[151] *Federal Communications Commission Seeks Public Comment On Creation Of A Spectrum Sharing Innovation Test-Bed,* Public Notice in ET Docket 06-89, 21 FCC Rcd 6693 (2006).

[152] *See* http://gullfoss2.fcc.gov/cgi-bin/websql/prod/ecfs/comsrch_v2.hts

public safety, and streamlined spectrum coordination processes between federal and non-federal users. Thus, the Test-Bed may assist in further reducing regulatory barriers for small businesses.

122. With these new allocations, rules, and spectrum management principles, the Commission anticipates the development of a broad range of new devices and communications options that will stimulate economic development and the growth of new industries, and promote the ability of manufacturers—including entrepreneurs and other small businesses—to compete more effectively in both domestic and global markets.

F. Media Bureau

123. The Media Bureau develops, recommends, and administers policy and licensing programs relating to electronic media, including cable television, broadcast television, and radio in the U.S. and its territories. The Media Bureau also handles post-licensing matters regarding Direct Broadcast Satellite service. The Media Bureau is strongly committed to the principles and policies of Section 257 and has sought to achieve a better understanding of issues affecting small telecommunications entities. In June 2004, the Media Bureau issued a *Public Notice* seeking public comment on constitutionally permissible ways to further the mandates of Section 257, as well as Section 309(j) of the Communications Act, which requires the Commission to promote opportunities in the allocation of spectrum-based services for small businesses and businesses owned by women and minorities.[153] In view of the Supreme Court decision in *Adarand v. Pena*, which subjects all governmental racial classifications to a strict scrutiny standard under the Constitution's equal protection clause, the Commission sought comment, including empirical data and analytical studies, to augment a series of studies on market entry barriers completed in 2000, and to refresh the record. Further, the Bureau has added a section to the Commission's annual report to Congress on the status of competition in the market for the delivery of video programming addressing competitive issues in small and rural markets.[154] Often rural cable operators and telephone companies are small businesses that serve very small numbers of subscribers.

124. Similarly, in its many proceedings, the Media Bureau has adopted a number of measures to remove barriers to entry for entrepreneurs and other small businesses. In addition, the Media Bureau instituted several web-based initiatives that make the task of contacting the Commission, filing requisite forms and applications, and staying abreast of current information simpler and more cost efficient. A more thorough discussion of several specific Media Bureau actions to eliminate market entry barriers and promote opportunities for entrepreneurs and other small businesses follows below:

1. Broadcast Ownership Rules

125. Pursuant to Section 202(h) of the Communications Act, the Commission periodically reviews its broadcast regulations pursuant to the mandate of Congress to modify or eliminate those rules found no longer necessary in the public interest as a result of competition. On June 21, 2006, the Commission adopted a Further Notice of Proposed Rulemaking

[153] *Media Bureau Seeks Comment on Ways to Further Section 257 Mandate and to Build on Earlier Studies*, Public Notice, DA 04-1690, 19 FCC Rcd 10491 (2004).

[154] *See e.g., Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 05-255, Twelfth Annual Report, 21 FCC Rcd 2503 (2006).

("*FNPRM*") initiating the 2006 quadrennial review.[155] The *FNPRM* also seeks comment on how to address the issues raised by the Court of Appeals in *Prometheus v. FCC*, with respect the court's remand of certain of the Commission's decisions in the 2002 biennial review of the media ownership rules. In the *FNPRM*, the Commission invited comment on proposals filed in the proceeding to advance minority and disadvantaged businesses and to promote diversity. Included in the record are recommendations and proposals from the Commission's Federal Advisory Committee on Diversity in the Digital Age.[156] The committee is chartered to make recommendations to the Commission regarding policies and practices that will further enhance the ability of minorities and women to participate in telecommunications and related industries. The committee is chartered through March 8, 2007.

2. Cable Ownership Rules

126. In the cable ownership rulemaking proceeding, a principle goal is to foster a diverse, robust, and competitive market in the acquisition and delivery of multichannel video programming. In particular, the Commission is reviewing its 30% national subscriber, or horizontal, limit and its 40% channel occupancy, or vertical, limit. The channel occupancy rule, specifically, seeks to ensure that cable operators affiliated with video programmers carry not only their own programming networks but also unaffiliated networks, thereby fostering diversity of cable programming. On May 17, 2005, the Commission released a *Second Further Notice of Proposed Rulemaking* regarding horizontal and vertical limits that seeks comment on the proposals in the record, on recent developments in the industry, and on certain tentative conclusions.[157] The Commission asked commenters to supplement the record where possible by providing new evidence and information to support the formulation of horizontal and vertical limits, and invited parties to undertake their own studies in order to further inform the record.

3. Localism Initiative

127. The Commission has a long-standing policy to foster broadcast "localism," which it has defined in terms of the responsiveness of broadcasters to the needs and interests of their communities of license.[158] As part of the Commission's efforts to enhance localism among radio and television broadcasters, in 2003, the Commission's Localism Task Force conducted a series of public hearings around the country, including in Monterey, CA, Rapid City, SD, Charlotte, NC, and San Antonio, TX, in which numerous members of the public and others representing interested parties expressed their views.[159] In addition, the Commission issued a *Notice of Inquiry* ("*NOI*") seeking comment from the public on how broadcasters are serving the interests

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[155] *2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 06-121, Further Notice of Proposed Rulemaking, FCC 06-93 (rel. July 24, 2006).

[156] *See* Letter from Julia Johnson, Chairperson, Federal Advisory Committee on Diversity in the Digital Age to Kevin J. Martin, Chairman, FCC (June 8, 2006) (filed in MB Docket 02-277).

[157] *The Commission's Cable Horizontal and Vertical Ownership Limits*, MM Docket No 92-264, Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 9374 (2005).

[158] *Broadcast Localism,* MM Docket No. 04-233, Notice of Inquiry, 19 FCC Rcd 12425 (2004) (the "*Broadcast Localism NOI*").

[159] The Localism Task Force was formed prior to the reporting period in order to advise the Commission on steps it can take and, if warranted, to make legislative recommendations to Congress, that would strengthen localism in broadcasting.

and needs of their communities; whether the Commission needs to adopt new policies, practices, or rules designed to promote localism in broadcast television and radio; and what those policies, practices, or rules should be.[160] In response to the *NOI*, the Commission as of June 2006 has received more than 82,000 written comments from broadcasters, broadcast industry organizations, public interest groups, and members of the public.

4. Digital Transition

128. In 2004, the Commission adopted a Report and Order in its second periodic review of the transition of over-the-air television broadcasting to digital transmission.[161] Included are a number of policies that take into consideration the needs and interests of small businesses during the transition. Specifically, the *Second Periodic Review* Report *and Order* provides for a later replication and maximization interference protection deadline for smaller stations (not affiliated with a top-four network) and those in smaller markets. In addition, smaller stations and those in smaller markets that will move to another channel post-transition are permitted to serve only 80% (rather than 100%) of the number of viewers served by the 1997 replication coverage area by the July 2006 deadline to carry-over their authorized maximized service area to their new channel. To assist stations facing severe financial constraints or obstacles beyond a station's control that are specific to the DTV transition process, the item permits these stations to apply for a six-month waiver of the interference protection deadline.

129. The *Second Periodic Review Report and Order* also permits certain stations with an in-core NTSC channel paired with an out-of-core DTV channel, as well as stations with two out-of-core channels, to surrender their out-of-*core* DTV channel before the end of the transition and operate in analog on their in-core channel.[162] *The* item also permits single-channel DTV stations out of the core, upon Commission approval, to elect not to construct DTV facilities and instead give up their out-of-core DTV channel in return for a DTV channel inside the core. Upon approval from the Commission, these stations will "flash-cut" to digital operations on their in-core channel. This "flash-cut" policy will assist stations with an out-of-core DTV channel that are concerned about the cost of constructing DTV facilities outside the core that cannot be operated after the transition. In addition, the *Second Periodic Review Report and Order* permits satellite stations to surrender one of their paired channels and flash cut from analog to digital transmissions by the end of the transition period. This flash-cut option should provide significant financial relief for satellite stations, many of which are small and all of which serve communities unable to support a full-service station.

5. DTV Low Power Television

130. In 2004, the Commission established rules, policies, and procedures for the digital conversion of low power television (LPTV), Class A TV stations, TV translator stations, and TV

[160] *Broadcast Localism NOI* at 12425.

[161] *Second Periodic Review of the Commission's Rules and Policies Affecting Conversion to Digital Television, Public Interest Obligations of TV Broadcast Licensees,* Report and Order, 19 FCC Rcd 18279 (2004) ("*Second Periodic Review Report and Order*").

[162] After the transition to digital television, DTV service will be limited to a "core spectrum" consisting of current television channels 2 through 51. Licensees operating outside of these channels (*i.e.*, channels 52-69) are on "out-of-core" channels.

booster stations.[163] LPTV stations operate at reduced power levels and serve much smaller geographic regions than full-service stations. An LPTV station may be the only television station in an area providing local news, weather, and public affairs programming. Many LPTV stations air "niche" programming, often locally produced, to residents of specific ethnic, racial, or special interest communities. A TV translator station is a low power television broadcast station that receives the signal of a television station and simultaneously retransmits it on another TV channel. Licensees often use these stations to deliver the only free over-the-air television service available to rural communities. The Commission is aware that many low power licensees, including smaller entities, operate with limited budgets. Accordingly, every effort was taken to craft rules that impose the least possible burden on all licensees, including smaller licensed entities.

131. The *Report and Order* allows low power broadcasters additional time, as compared to full-service broadcasters, to transition from analog to digital service. Allowing additional time for the low power DTV transition is less disruptive to low power broadcasters and will minimize potential loss of service. The *Report and Order* also allows applicants to seek digital channels between 52-69 on a limited secondary basis. The Commission found that this approach will provide stations with greater flexibility to seek channels where an in-core channel cannot be identified. The *Report and Order* adopts interference rules and methodology to provide the needed flexibility for stations to engineer new digital operations without undermining established interference protection rights of existing broadcasters. The equipment rules will enable stations to use much of their existing equipment, thus reducing the overall cost of digital implementation. The Commission considered adoption of stricter rules but concluded that such rules would interfere with low power stations being able to successfully propose and construct new DTV facilities and to afford to convert their analog facilities. In furtherance of the digital transition, on January 26, 2006, a Public Notice announced the scheduling of a window for the filing of applications for digital companion channels for LPTV, TV translator and Class A TV television permittees and licensees.[164]

6. Digital Audio Broadcasting

132. Many U.S. radio stations are currently converting to a new transmission technology, digital audio broadcasting ("DAB). While there is no mandatory transition for radio stations as there is for television stations, radio broadcasters are *motivated* to convert to digital broadcasting as a means of competing against new digital audio technologies by offering consumers enhanced sound fidelity and other services, including multiple streams of audio programming. Small broadcasters stand to benefit these new competitive opportunities. Implementation of digital audio broadcasting is voluntary, thus, broadcasters can initiate the service on their own time frame and defer costs as they deem appropriate.

133. To expedite and facilitate the conversion process, the Commission released a *Further Notice of Proposed* Rulemaking *and Notice of Inquiry* ("*Further Notice*" "*NOI*") in

[163] *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television* Stations, MB Docket No. 03-185, Report and Order, 19 FCC Rcd 19331 (2004) ("*Report and Order"*).

[164] *Announcement of Filing Window for LPTV and TV Translator Digital Companion Channel Applications from May 1, 2006 through May 12, 2006*, Public Notice, DA 06-123 (rel. Jan 26, 2006).

April 2004.[165] The *Further Notice* and *NOI* solicit comment on a wide range of service and operational issues important to the development of DAB. The *Further Notice* sought comment on whether radio stations should be permitted to use their signal to transmit high definition audio, multiple program streams, and datacasting services. The *Further Notice* also asked how the Commission should apply its current programming and operational requirements, such as the political broadcast rules and the station identification rules, to DAB broadcasts. Other technical issues, including AM nighttime and dual antenna issues, were raised, as well as digital service by noncommercial stations and low power FM stations. The *NOI* sought comment on digital audio content control and international matters, among other issues.

7. Electronic Filing

134. The Commission continues to provide enhanced electronic filing systems to the various media industries. Electronic filing relieves filers of the burdens of the time and costs of paper filing. Several of the forms used by cable and broadcast media have undergone electronic conversion during the reporting period, allowing applicants and other users to file Commission documents with greater speed and efficiency.

8. Cable Operations and Licensing System

135. One initiative in this area is the implementation of the Cable Operations and Licensing System (COALS). COALS makes Cable Television Relay Service license and various MVPD information more accessible to and more usable by Commission staff in carrying out our regulatory responsibilities. This ability has enabled the Commission staff to speed up processing and to easily monitor spectrum use and competitive conditions in the MVPD marketplace. It also promotes more effective implementation of our spectrum management and broadband policies. It also enhances the availability to the industry and the public of cable system and multichannel video programming systems information.

136. In this past three years, software was implemented to allow for electronic filing of several required forms; FCC Form 320 (annual signal leakage report), FCC Form 321(notification of usage of aeronautical frequencies), FCC Form 324 (notification in change in name, mailing address, or operational status of cable system) and FCC Form 325 (signal and frequency distribution data). After the software was available for a six month period, electronic filing of these forms became mandatory.[166]

a. Consolidated Database System

137. The Media Bureau continues to update and make additional forms available for electronic filing through its Consolidated Database System (CDBS). Broadcast stations use CDBS to file forms, requests, and station updates (such as applications, licenses, renewals, EEO and ownership reports) with the Media Bureau. Currently, CDBS supports electronic filing of a number of FCC forms, including several of the most frequently utilized broadcast applications, such as, FCC Form 301 (Application for Construction Permit for Commercial Broadcast Station), FCC Form 302-DTV (Application for Digital TV Broadcast Station License), FCC

[165] *Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service*, MM Docket No. 99-325, Further Notice of Proposed Rulemaking and Notice of Inquiry, 19 FCC Rcd 7505 (2004).

[166] See *Media Bureau Implements Mandatory Filing of FCC Form 320, 322, 324, and 325 Via Coals,* Public Notice, 19 FCC Rcd 13053 (2004); *Media Bureau Implements Mandatory Filing of FCC Form 321*, Public Notice, 20 FCC Rcd 2095 (2005).

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

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

9. Radio Application Streamlining Proceeding

139. In 2005, the Commission commenced a proceeding to consider changes in the procedures for making certain amendments to the FM Table of Allotments, as well as other changes to our procedures for making certain modifications to broadcast facilities.[167] These proposals are intended to reduce backlog in, and streamline, our FM allotment procedures and, to a lesser extent, streamline certain procedures pertaining to AM broadcast applications. In most instances, these proposals will reduce the burdens on all broadcasters, including small entities, compared to current procedures. The Commission sought specific comments on the burden the proposals may have on small broadcasters. The Commission recognized that there may be unique circumstances these entities may face and stated that it would consider appropriate action for small broadcasters at the time when a Report and Order is considered in this proceeding.

10. Section 621 Proceeding

140. On December 20, 2006, the Commission adopted a Report and Order that implements rules and provides guidance in implementing Section 621(a)(1) of the Communications Act of 1934, as amended, which prohibits franchising authorities from unreasonably refusing to award competitive franchises for the provision of cable services. This Report and Order, released on March 5, 2007, finds that the existing operation of the local franchising process in many jurisdictions constitutes an unreasonable barrier to entry that impedes the achievement of the interrelated federal goals of enhanced cable competition and accelerated broadband deployment. The item finds that the following actions each constitute an unreasonable refusal to award a competitive franchise within the meaning of Section 621(a)(1), and prohibits such actions: (1) an LFA's failure to issue a decision on a competitive application within the timeframes specified in the Report and Order; (2) an LFA's refusal to grant a competitive franchise because of an applicant's unwillingness to agree to unreasonable build-out

[167] *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes off Community of License in the Radio Broadcast Services*, MB Docket No. 05-210, Notice of Proposed Rule Making, 20 FCC Rcd 11169 (2005).

mandates; (3) an LFA's refusal to grant a competitive franchise because of an applicant's unwillingness to agree to a variety of franchise fee requirements that are impermissible under Section 622 of the Act; (4) an LFA's refusal to grant an application based upon a new entrant's refusal to undertake certain obligations relating to public, educational, and government channels ("PEG") and institutional networks ("I-Nets"); and (5) an LFA's refusal to grant a franchise based on issues related to non-cable services or facilities. See Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101 (2006).

G. Consumer & Governmental Affairs Bureau

1. Slamming

141. On March 17, 2003, the Commission released a Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking that clarified and strengthened the Commission's carrier change rules, and sought comment on whether to modify the minimum content requirements for third party verifications of a consumer's intent to switch carriers.[168] The *Third Order on Reconsideration* is one of a series of orders implementing Section 258 of the Communications Act, which prohibits any telecommunications carrier from submitting or executing an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service, a practice known as "slamming."[169] In the *Third Order on Reconsideration*, the Commission clarified the circumstances under which local exchange carriers can be held liable for unauthorized carrier changes, modified the "drop-off" requirement to allow carriers' sales agents, under certain circumstances, to remain silent on the line during the third party verification of a customer's intent to switch carriers, and discontinued the requirement that carriers file FCC Form 478 slamming reports.

142. On July 16, 2004, the Commission released a First Order on Reconsideration in Docket 00-257 and Fourth Order on Reconsideration in Docket 94-129 that addressed issues raised in petitions for reconsideration of the streamlined bulk customer transfer rules concerning the authorization and verification requirements for the carrier-to-carrier sale or transfer of subscriber bases.[170] The Commission clarified that acquiring carriers should pay switching fees for acquired customers unless a state regulatory agency has ordered the exiting carrier to pay; denied requests for modification of the notice requirements under the streamlined carrier change procedures; denied a request for a change to the carrier freeze rules; and declined to require that switchless resellers obtain carrier identification codes.

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[168] *See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003) (*Third Order on Reconsideration* and/or *Second FNPRM*).

[169] 47 U.S.C. § 258(a); Telecommunications Act of 1996.

[170] In the Matter of the 2000 Biennial Review, Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers; Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket Nos. 00-257 and 94-129, First Order on Reconsideration in Docket and Fourth Order on Reconsideration 19 FCC Rcd 13,432 (2004) (First Order on Reconsideration and Fourth Order on Reconsideration).

143. On November 24, 2004, the Commission released a Fifth Order on Reconsideration in Docket 94-129 which denied petitions filed by a number of independent LECs seeking reconsideration of the Commission's verification requirement for in-bound carrier change request calls.[171] This *Fifth Order on Reconsideration* clarified that the slamming rules would not be triggered with respect to new lines or new installations. Finally, the *Fifth Order on Reconsideration* denied a petition asking that credits made to consumers before a slamming complaint had been filed be considered "unpaid" when calculating liability, or be deducted from the amount owed the authorized carrier by a carrier found liable for slamming.

144. We anticipate that these clarifications and amendments will eliminate or minimize any possible confusion for all affected carriers, including small entity carriers. We note that the clarification of our streamlined bulk customer transfer rules will enhance the ability of carriers to comply with the authorization and verification requirements for the carrier-to-carrier sale or transfer of subscriber bases. The streamlined certification and notification process has significantly reduced the burden on carriers and Commission resources while still protecting consumers' interests. In addition, we note that the elimination of the requirement that carriers submit to the Commission reports regarding complaints they receive alleging unauthorized carrier changes (form 478) will alleviate the administrative burdens associated with filing the reports. Finally, we note that allowing a carrier's sales representatives to remain on the line, under certain circumstances, during a third party verification of a subscriber's intent to switch carriers, will likely reduce the costs for upgrading networks.

2. Customer Account Record Exchange (CARE)

145. On February 10, 2005, the Commission adopted new rules to help ensure that consumers' phone service bills are accurate and that their carrier selection requests are honored and executed without undue delay.[172] The rules specify a number of situations in which carriers must share customer information with each other. The standards adopted were based, in large measure, on a consensus proposed by a coalition of carriers comprised of local exchange carriers (LECs) and interexchange carriers (IXCs). This coalition estimated that implementation of these rules will reduce slamming and billing-related complaints by as much as 50 percent. The Commission also pointed to evidence demonstrating that information needed by carriers to execute customer requests in a timely and efficient manner and to properly bill customers was not being consistently provided by all LECs and by all IXCs. The Commission noted that complaints to its own Consumer Centers also indicated continuing problems caused by lack of information sharing among companies.

146. While the Commission specified what type of information must be shared, it did not specify the method carriers should use, allowing them to share customer account information pursuant to state-mandated data exchange requirements, privately negotiated agreements with other carriers, or voluntarily-established business rules, including the voluntary, industry-developed standards known as the Customer Account Record Exchange (CARE) process. This

[171] *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Fifth Order on Reconsideration, 19 FCC Rcd 22926 (2004) (*Fifth Order on Reconsideration*).

[172] *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on all Local and Interexchange Carriers,* CG Docket No. 02-386, Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 4560 (2005) (*CARE Order*).

approach should minimize the potential costs or burdens associated with implementing the information sharing requirements, particularly for small and rural carriers. In addition, the Commission declined to adopt specific timeliness measures and instead require notifications regarding customer account information to be completed promptly and without unreasonable delay and to require that carriers exercise reasonable efforts to ensure that the data transmitted is accurate. This, too, should minimize the potential burden on smaller carriers.

147. Accompanying the *CARE Order* was a Further Notice of Proposed Rulemaking (CARE FNPRM) seeking comment on whether the rules should be extended to situations in which consumers change LECs. The *CARE FNPRM* specifically asked whether the Commission should require all local service providers to participate in the exchange of customer account information and if so, what information local service providers should be required to supply.

3. Telecommunications Relay Service

148. Title IV of the Americans with Disabilities Act of 1990 (ADA), which is codified at Section 225 of the Communications Act,[173] requires that common carriers offering telephone voice transmission services also offer Telecommunications Relay Service (TRS) so that persons with hearing and speech disabilities have access to the telephone system.

149. Title IV aims to further Congress's goal of universal service by providing to individuals with hearing or speech disabilities telephone services that are "functionally equivalent" to those available to individuals without such disabilities. Since 1993, the Commission has taken numerous steps to increase the availability of TRS and further the goal of functional equivalency.[174]

a. Captioned Telephone Declaratory Ruling

150. On August 1, 2003, the Commission released a *Declaratory Ruling*[175] addressing a Petition for Clarification filed by Ultratec, Inc. (Ultratec) requesting that the Commission clarify that captioned telephone service is a form of TRS eligible for reimbursement from the Interstate TRS Fund.[176] The Commission concluded that captioned telephone service is a form of TRS eligible for compensation from the Interstate TRS Fund.

151. This item imposes a regulatory burden on the Interstate TRS Fund administrator, requiring it to compensate eligible providers of captioned telephone service for the costs of providing interstate service. The Interstate TRS Fund is a not-for-profit organization, and therefore is a "small organization." A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[177]

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[173] *See* 47 U.S.C. § 225; 47 C.F.R. § 64.601 *et seq.* (implementing regulations).

[174] *See generally* 47 C.F.R. § 64.604 (the TRS "mandatory minimum standards"); *see also Telecommunication Services for Individuals with Hearing and Speech Disabilities*, *and the Americans With Disabilities Act of 1990,* Report and Order and Request for Comments, CC Docket No. 90-571, FCC 91-213, 6 FCC Rcd 4657 at ¶ 34 (July 26, 1991). The mandatory minimum standards are intended to ensure that TRS is provided in a manner that is functionally equivalent to voice telephone service.

[175] *Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, CC Docket No. 98-67, 18 FCC Rcd 16121 (August 1, 2003).

[176] Ultratec, Petition for Clarification, Telecommunications Services for Individuals with Hearing and Speech Disabilities (filed April 12, 2002).

[177] 5 U.S.C. § 601(4).

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

b. TRS Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking

153. On June 30, 2004, the Commission released a *Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking* (*2004 TRS Report & Order and FNPRM*)[178] addressing cost recovery and other matters relating to the provision of TRS. In this *2004 TRS Report & Order and FNPRM*, the Commission established new rules and amended existing rules governing TRS in order to further advance the functional equivalency mandate of Section 225. First, the Commission adopted the per minute reimbursement methodology for IP Relay. The per-minute reimbursement methodology simplifies the compliance and reporting requirements for small entities by permanently adopting the interim methodology. Second, the Commission established new mandatory minimum standards that require TRS providers to offer additional features available to voice telephone users. These amended and new rules improve the overall effectiveness of TRS and help ensure that persons with hearing and speech disabilities have access to the telephone system consistent with the goal of functional equivalency mandated by Congress. Because these new service requirements are similar to pre-existing requirements, there is a minimal impact on small business. In addition, the new requirements do not adversely impact small business entities because these features are only required when technologically feasible. The Commission does not require providers to purchase new equipment or upgrade their equipment to accommodate these new requirements.

154. The *2004 TRS Report & Order and FNPRM* adopts rules that improve the effectiveness of TRS and ensure access to the nation's telephone system for persons with hearing and speech disabilities, while imposing the least amount of regulation possible. Because cost-prohibitive and unduly burdensome measures were rejected by the Commission, no arbitrary and unfair burdens were imposed on smaller entities.

c. VRS Speed of Answer Report and Order

155. On July 19, 2005, the Commission released a *Report and Order*[179] addressing three issues related to the provision of Video Relay Service (VRS), a form of TRS: (1) the adoption of a speed of answer rule for VRS; (2) whether VRS should be required to be offered 24 hours a day, 7 days a week (24/7); and (3) whether VRS providers may be compensated for providing VRS Mail. The Commission concluded that because speed of answer is central to the provision of "functionally equivalent" TRS, and VRS is now a widely used form of TRS, VRS providers must provide service in compliance with the speed of answer rule adopted in the order to be eligible for compensation from the Interstate TRS Fund. The *Report and Order* also

[178] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Dockets 90-571 and 98-67 and CG Docket 03-123, FCC 04-137, 19 FCC Rcd 12475 (June 30, 2004)(*2004 TRS Report and Order & FNPRM*).

[179] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, CC Docket No. 98-67 and CG Docket No. 03-123, FCC 05-140, 20 FCC Rcd 13168 (July 19, 2005).

concludes that VRS must be offered 24/7 and that VRS providers may be compensated for providing VRS mail.

156. The Commission believes that these actions do not have a significant economic impact; however, in the event that they do, we also note that there are not a substantial number of small entities that will be affected by these actions. Currently, only eight entities are providing VRS and being compensated from the Interstate TRS Fund. We expect that only one of the providers noted above is a small entity under the SBA's small business size standard. In addition, the Interstate TRS Fund administrator is the only entity that will be required to pay to eligible providers of VRS the costs of providing interstate service.

d. ASL-to-Spanish VRS Order on Reconsideration

157. On July 19, 2005, the Commission released an *Order on Reconsideration* [180] concluding that American Sign Language (ASL)-to-Spanish VRS is a form of TRS compensable from the Interstate TRS Fund. The Commission concluded that non-shared language Spanish translation VRS - *i.e.*, relay service in which the CA translates what is signed in ASL into spoken Spanish (rather than English), and vice versa - is a form of TRS compensable from the Fund. Like VRS, the Commission did not mandate this form of TRS.

158. The Commission concluded that it is essential that members of the large Spanish-speaking population in this country who are deaf or hard of hearing, and for whom ASL is their primary language, have the means to communicate via the telephone system with persons without such disabilities who speak Spanish, in keeping with the goal of universal service. The Commission also concluded that allowing compensation from the Interstate TRS Fund for ASL-to-Spanish VRS will not have an appreciable impact on the required size of the Fund. Therefore, the requirements of the *Order on Reconsideration* do not have a significant economic impact on a substantial number of small entities.

e. Two-line Captioned Telephone Order

159. On July 19, 2005, the Commission released an *Order*[181] granting a request for clarification that two-line captioned telephone service is a type of TRS eligible for compensation from the Interstate TRS Fund. The Commission also adopted allocation methodology for determining the number of inbound two-line captioned telephone minutes that should be compensated from the Interstate TRS Fund.

160. The Commission recognized that two-line captioned telephone service is simply a variation of captioned telephone service that offers the same functionality while also offering the user additional features. Because these additional features represent another step forward toward functional equivalency, the Commission clarified that two-line captioned telephone service, like one-line captioned telephone service, is a type of TRS eligible for compensation from the Interstate TRS Fund.

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[180] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order on Reconsideration, CC Docket No. 98-67 and CG Docket No. 03-123, FCC 05-139, 20 FCC Rcd 13140 (July 19, 2005).

[181] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67 and CG Docket No. 03-123, FCC 05-141, 20 FCC Rcd 13195 (July 19, 2005).

161. The Commission does not believe this clarification will have a significant economic impact; however, in the event that it does, the Commission also notes that there are not a substantial number of small entities that will be affected by our action. Currently, only four providers are providing captioned telephone service and being compensated from the Interstate TRS Fund. We expect that only one of the providers noted above may be a small entity under the SBA's small business size standard. In addition, the Interstate TRS Fund Administrator is the only entity that will be required to pay to eligible providers of two-line captioned telephone service the costs of providing interstate service.

f. VRS/IP Relay Certification Report and Order, and Order on Reconsideration

162. On December 12, 2005, the Commission released a *Report and Order, and Order on Reconsideration*[182] addressing the issue of the certification and oversight of VRS and IP Relay providers seeking compensation from the Interstate TRS Fund. The Commission concluded that the public interest is best served by Commission certification of common carriers desiring to offer VRS and IP Relay service and receive compensation from the Fund. The Commission found that certifying common carriers providing VRS and IP Relay services would enhance, thereby giving consumers greater choice. In addition, the Commission anticipated that new providers would bring innovation to the provision of VRS and IP Relay, both with new equipment and new features. The Commission also concluded that federal certification would likely reduce the costs of entry of new service providers (by eliminating the need to seek state certification or contracting with a state or another TRS provider) and that additional competition would help to lower the cost of VRS and IP Relay services. Therefore, the requirements of the *Order* do not have a significant economic impact on a substantial number of small entities.

163. Currently, only eight providers are providing VRS and being compensated from the Interstate TRS Fund. We expect that only one of the providers noted above is a small entity under the SBA's small business size standard. In addition, the Interstate TRS Fund administrator is the only entity that will be required to pay to eligible providers of VRS and IP Relay services the costs of providing interstate service.

g. VRS Interoperability Declaratory Ruling and FNPRM

164. On May 9, 2006, the Commission released a Declaratory Ruling and Further Notice of Proposed Rulemaking (*Declaratory* Ruling),[183] addressing a petition that requested the Commission declare that a VRS provider may not receive compensation from the Interstate TRS Fund if it blocks calls to competing VRS providers.[184] The Commission concluded that the practice of restricting the use of VRS to a particular provider is inconsistent with the TRS regime as intended by Congress, and raises serious public safety concerns. The Commission further concluded that all VRS consumers must be able to place a VRS call through any of the VRS

[182] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Order on Reconsideration, CG Docket No. 03-123, FCC 05-203, 20 FCC Rcd 1719 (December 12, 2005).

[183] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Further Notice of Proposed Rulemaking (FNPRM), CG Docket No. 03-123, FCC 06-57, (May 9, 2006).

[184] *See* California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH or Petitioner), *Petition for Declaratory Ruling on Interoperability*, CC Docket No. 98-67, CG Docket No. 03-123, filed February 15, 2005.

providers' service, and all VRS providers must be able to receive calls from, and make calls to, any VRS consumer. As consumers increasingly rely on VRS as their preferred means of using TRS to access the telephone system, the Commission found that it is in the public interest that all VRS consumers can place and receive calls through any VRS providers' service in the event of emergency and urgency. Therefore, this *Declaratory Ruling* concluded that providers must ensure that all VRS consumers can place and receive calls through any of the VRS providers' service in order to receive compensation from the Interstate TRS Fund.

165. The Interstate TRS Fund administrator compensates the VRS providers for reasonable costs of providing VRS. In order to be compensated for the costs of providing VRS, the providers are required to meet the applicable TRS mandatory minimum standards.[185] Reasonable costs of compliance with this *Declaratory Ruling* are compensable from the Fund. Because the providers may be compensated for the costs of compliance within a reasonable period of time, we do not believe that the providers are burdened by this requirement. Therefore, the *Declaratory Ruling* does not have a significant economic impact on a substantial number of small entities.

166. Currently, only eight providers are providing VRS and being compensated from the Interstate TRS Fund. We note that two of the providers noted above are small entities under the SBA's small business size standard. Because two of the affected providers will be promptly compensated within a reasonable period for complying with this *Declaratory Ruling*, we concluded that the number of small entities affected by our decision in this Order is not substantial.

h. VRS 10-minute Rule Order

167. On June 16, 2006, the Commission released the *Order*[186] addressing two issues concerning the provision of VRS, raised in the FNPRM in the *2004 TRS Report and Order & FNPRM*.[187] The Commission clarifies that if the calling party or the VRS communications assistant (CA) finds that they are not communicating effectively given the nature of the call, the 10-minute in-call replacement rule does not apply and the VRS provider may have another CA handle the call. Given the complexity of sign language, the Commission concluded that the public interest is best served by permitting a VRS provider to have another CA handle the call if a CA cannot effectively communicate with the calling party and by permitting a VRS CA to ask questions to the calling party during call set-up, when necessary to gain an understanding of the nature of the call to ensure effective communication. Because this *Order* clarified only how VRS CAs may handle VRS calls in particular circumstances, the requirements of the *Order* do not have a significant economic impact on a substantial number of small entities.

168. Currently, only eight providers are providing VRS and being compensated from the Interstate TRS Fund. We note that two of the providers noted above are small entities under the SBA's small business size standard. In addition, the Interstate TRS Fund Administrator is the only entity that compensates eligible providers of VRS.

[185] *See generally* 47 C.F.R. § 64.604(c)(5)(iii)(E).

[186] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CG Docket No. 03-123, FCC 06-81 (June 16, 2006).

[187] *See 2004 TRS Report & Order and FNPRM*, 19 FCC Rcd at 12569, paras. 248 & 249.

H. Enforcement Bureau

169. Since its inception in 1999, the Enforcement Bureau took a number of steps to reduce barriers to entry for small businesses. The Enforcement Bureau made it easier and less costly for small businesses to bring anti-competitive behavior to the Commission's attention, and to resolve disputes with other carriers. The Commission took strong enforcement action to deter illegal, anti-competitive behavior on the part of the largest carriers. And, when small businesses themselves are the targets of enforcement actions, the Commission tailors its enforcement actions to their size.

1. Complaint Mediation

170. To expedite problem solving among common carrier industry participants, the Enforcement Bureau's Market Disputes Resolution Division engages in informal mediation of most formal complaints and pre-complaint disputes. This type of alternative dispute resolution facilitates private resolution, obviating the need for costly litigation. This also frees Commission resources for unresolved disputes that result in formal complaints, and, therefore, reduces the average amount of time it takes the Commission to decide those complaints. The Enforcement Bureau mediated over fifty disputes in 2005 and successfully resolved almost two-thirds of those disputes.

2. Pole Attachments

171. Section 224 of the Act[188] authorizes the Commission to regulate the rates, terms, and conditions imposed by utilities on cable or telecommunications attachments to utilities' poles in order to assure that such rates, terms and conditions are just and reasonable. The Bureau's enforcement of this provision thus ensures that small, competing carriers obtain the necessary access to utilities' poles on a non-discriminatory basis. For example, the Commission decided a pole attachment case last year, upholding a CLEC's claim that Georgia Power (an electric utility) imposed unjust and unreasonable conditions on the CLEC's attachments to Georgia Power's poles.[189]

3. Investigations

172. The Enforcement Bureau's Investigations and Hearings Division investigates allegations of anticompetitive or discriminatory conduct by telecommunications carriers, which could result in barriers to market entry by small competitors. The Enforcement Bureau designs these investigations to identify, correct, and deter violations of the Communications Act and the Commission's Rules through monetary forfeitures and other enforcement tools. The investigations also enable the Enforcement Bureau to spot significant industry problems and identify bad actors, without the filing of formal complaints.

4. Small Cable System Waivers

173. The Enforcement Bureau, through its Office of Homeland Security, issued a Public Notice granting 38 small cable television systems extensions to temporary waivers of the requirement in Section 11.11(a) of the Commission's Rules that cable systems serving fewer than 10,000 subscribers from a headend install Emergency Alert System (EAS) equipment and

[188] 47 U.S.C. § 224.

[189] *Knology, Inc. v. Georgia Power Company*, 20 FCC Rcd 2424 (Feb. 9, 2005).

begin transmitting national EAS alerts and weekly and monthly EAS tests by October 1, 2002.[190] The Enforcement Bureau granted the temporary waivers based on a showing that the cost of installing EAS equipment would impose a financial hardship on the small cable systems. Most of the systems that received waivers serve fewer than 100 subscribers per headend.

5. Forfeitures

174. Finally, in determining the amount of monetary forfeitures to impose on small businesses, the Commission applies section 503(b)(2)(D) of the Act, which requires the Commission to consider a target's ability to pay.[191] The Commission reduced proposed forfeitures on this basis in numerous cases. This analysis includes applications, as necessary, of Section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which requires, *inter alia*, that federal agencies establish a "policy or program . . . to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity."[192] Since 2003, the Enforcement Bureau issued three *Notices of Apparent Liability* to companies claiming small entity status.

III. LEGISLATIVE PROPOSALS

175. Section 257(c)(2) requires the Commission to make legislative proposals which identify statutory market entry barriers that Congress can eliminate, consistent with the public interest, convenience, and necessity.[193]

A. New Tax Incentive Program

176. We propose that Congress adopt a new tax incentive program that would authorize the provision of tax advantages to eligible companies involved in the sale of communications businesses to small firms, including those owned by women and minorities. The proposed program could permit deferral of the taxes on any capital gain involved in such a transaction, as long as that gain is reinvested in one or more qualifying communications business(es). The proposed program could also permit tax credits for sellers of communications properties who offer financing to small firms. Additional conditions might include restrictions on the size of the eligible purchasing firm, a minimum holding period for the purchased firm, and a cap on the total value of eligible transactions. The provision of tax advantages has proven to encourage the diversification of ownership and to provide opportunities for entry into the communications industry for small businesses, including disadvantaged businesses and businesses owned by minorities and women.

IV. CONCLUSION

177. With this *2006 Triennial Report*, the Commission has detailed actions taken during the last three years to enact rules which have the effect of lessening or eliminating market entry barriers for entrepreneurs and small telecommunications businesses. In so doing, we have

[190] *See EAS Waiver Extensions Granted to Very Small Cable Systems*, Public Notice, DA 06-1373 (rel. July 3, 2006).

[191] 47 U.S.C. § 503(b)(2)(D); *see The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17,087, 17,101, para. 27 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (*Policy Statement*); 47 C.F.R. § 1.80(b)(4), Note to (b)(4).

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

[193] 47 C.F.R. § 257(c)(2).

sought to meet our mandate under Section 257. We continue to strive towards the goal embodied in the statute, to promote policies favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.

178. We hereby submit this *2006 Triennial Report* to Congress.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
APPROVING IN PART, DISSENTING IN PART

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

I dissented from the Commission's previous Section 257 Report to Congress because the Commission both failed to meet its statutory reporting requirement and to take meaningful steps to identify and eliminate market barriers faced by small businesses in the communications industry. Unfortunately little has changed in the past three years. This Report, like the last one, will lead many to believe that the FCC does not take small business concerns seriously.

Small business is the engine that drives America's economy. Recognizing this, Congress directed the FCC to examine market entry barriers confronting small businesses and entrepreneurs and then to detail the efforts the FCC has taken to eliminate these barriers. Section 257 rightly creates a critical reporting requirement for the Commission. This requirement is our opportunity to explain what the Commission is doing to promote small business entrepreneurship and hopefully to demonstrate that the Commission is not catering to industry giants at the expense of small enterprises.

Instead we will send Congress another report that fails to meet the statutory obligation. In place of a serious report that identifies market entry barriers faced by small business and proactive steps the Commission is taking to eliminate these barriers, we once again have a slapdash cataloging of miscellaneous Commission actions over the past three years. This failure is all the more glaring because the Commission has had an open proceeding to examine ways to further our Section 257 mandate since ***June 2004*** that has never been brought to conclusion. That proceeding itself was tardy, seeking comment on market entry barrier studies released by the Commission in ***December 2000***. Indeed, serious questions have been raised recently in the media ownership proceeding as to whether the Commission even has an accurate count of the race, gender, and ethnicity of broadcast licensees. Given this history, it is no wonder that this Report falls so short of the mark.

Sadly, my dissenting statement of three years ago is equally applicable today:

> So why did the Commission fail to report on new initiatives designed to eliminate market barriers for small businesses, and thereby fail to comply with the statute? It may be because this Commission does not have a small business record to brag about.
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> We should be more forthright with Congress. We should admit that the Commission has not articulated a plan for how to eliminate market barriers for small business. We should recognize that we have created too few new rules designed specifically to help small businesses. And maybe most importantly, we should realize that some of this Commission's actions – indeed more than a few – have harmed small businesses.

This last point is particularly relevant today in light of the pending media ownership proceeding and the objections raised by the Third Circuit to the ill-starred loosening of media consolidation undertaken by the previous Commission. Although this report only covers the three-year period ending December 31, 2006, we stand at a similar crossroads today. Down one road we could take real action on the dozens of proposals we have before us to reduce entry barriers for minorities, women, and other small businesses. Down the other road is a headlong rush to loosen further our few remaining media ownership rules, opening up a new bazaar of consolidation before we provide avenues for minorities, women and small business to purchase stakes in radio and television stations. We made the wrong choice in 2003. Why on earth would we want to repeat that near-disaster?

I support the item insofar as it recommends that Congress adopt a new tax incentive program. A properly structured tax certificate program could help reverse the shameful minority and female ownership trends in recent years. But as welcome as this recommendation is, it does not let the Commission off the hook for addressing this issue in a comprehensive manner, nor can it be allowed to serve as a smoke screen for additional consolidation that will only make the problem worse.

STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
APPROVING IN PART, DISSENTING IN PART

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

Under Section 257, the Commission has an obligation to act in affirmative ways "to promote the policies and purposes of [the Communications] Act favoring a diversity of media voices." The Commission is supposed to make efforts to identify and eliminate "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services." I dissent in part to this Report, because it illustrates the Commission's failure to promote opportunities for small businesses, as well as those owned by women and people of color, either as providers or consumers of broadband, telecommunications or media services. Notwithstanding the many inadequacies in this Report, I approve in part because herein we recommend to Congress the reinstatement of the tax incentive program for small businesses, particularly those owned by women and minorities.

As this Report reveals, the Commission has not done a good job in using the Office of Communications Business Opportunities (OCBO) as its "principal small business policy advisor." During the three-year period covered in this report, the Commission has failed to charge OCBO - independently or in conjunction with a Bureau or Office - with developing or launching any significant policies, plans or programs to further the concerns of small businesses. As a consequence of the Commission's misguided priorities, OCBO – which was formed specifically to address the concerns of small businesses and has very talented staff with subject matter expertise – has not played a meaningful role in the policy development process at the Commission.

These failings are particularly disappointing because small businesses play a driving role in creating jobs and developing new technologies. Over the past decade, small businesses have created two out of every three new jobs, employed forty percent of high tech workers, and produced far more patents than similarly focused large firms. Small businesses also purchase a massive amount of telecommunications services, spending approximately $25 billion each year, according to a recent Wall Street Journal report.

Unfortunately, the FCC collects little reliable data about extent of broadband services available to small businesses in the U.S. or the more general state of competition among providers of telecommunications services for businesses. In a report released at the end of last year, the U.S. Government Accountability Office (GAO) recommended that the Commission collect additional data to monitor competition and to assess customer choice through, for example, price indices and availability of competitive alternatives. GAO found that "without more complete and reliable measures of competition, [the] FCC is unable to determine whether its deregulatory policies are achieving their goals."

The lack of information about the small business market is particularly troubling because broadband creates economic opportunities that were previously unattainable. Broadband can connect entrepreneurs to millions of new distant potential customers, facilitate telecommuting,

and increase productivity. Much of the economic growth we have experienced in the last decade is attributable to productivity increases that have arisen from advances in technology, particularly in telecommunications. These new connections increase the efficiency of existing businesses and create new jobs by allowing new businesses to emerge, and spur new developments such as remote business locations and call centers.

The little data that we have suggests a less than rosy picture for small businesses. Many have only one choice of provider for broadband services, which deprives them of innovative alternatives and can result in higher prices. Even where there are competitive options, alternative providers rely heavily on inputs from incumbents. GAO found that competitive providers serve, on average, less than six percent of the buildings with demand for dedicated access, leaving 94 percent of the market served by only incumbent providers. These inputs are used not only by large businesses, but also by other communications providers, including independent wireless, satellite, and long distance providers that serve small businesses. It is noteworthy that the U.S. Small Business Administration Office of Advocacy recently commented that "[t]he combination of high prices and few alternatives creates an insurmountable burden to small carriers trying to conduct business in the telecommunications market."

Regarding small business access to the provision of wireless services, this Order describes rules that have been adopted to clarify the award of "designated entity" (DE) status to eligible entities, additional eligibility requirements and new limitations on leasing for such designated entities. The narrow adjustments to the DE program that were adopted fell far short of making the meaningful modifications to the DE program that are necessary to provide opportunities for a diverse group of licensees. I think it is essential that we revisit our policies in this respect to ensure that all bidders, including small businesses have opportunities to bid, particularly where wholesale service is a compelling option for new and diverse providers.

Regarding media issues, the Commission has consistently failed to consider the impact of its policies on small businesses – particularly small women and minority owners of broadcast outlets, and small cable operators. While the Commission claims that it "fully recognizes the role that small communications businesses play in a robust American economy," the Commission does not report the fact it has delayed meaningful relief to minority broadcast station owners and new entrants, and has repeatedly increased the regulatory burden on small cable businesses.

In *Prometheus v. FCC*, the Third Circuit took the Commission seriously to task for failing to consider the impact of potential rule changes on minority media ownership. The Court also faulted the Commission for sidelining our proposals of our own Diversity Advisory Committee and the Minority Media and Telecommunications Council to advance minority and disadvantaged businesses. The Court directed that "[t]he Commission's rulemaking process in response to our remand order should address these proposals at the same time." Yet, in its July 2006 Further Notice, the Commission could only muster up a few pat questions on this vital subject. On August 23, 2006, the Diversity and Competition Supporters – representing a broad array of minority and women's organizations – rightly asked the Commission to seek further comment on the specific proposals. There the matter has sat for nearly a year before the Commission sought public comment. After a year of inaction, the Commission gave small, women and minority businesses only 60 days to comment on dozens of proposals. This is hardly the conduct of a Commission that is serious about small businesses or fostering a diversity of media voices.

Regarding small cable operators, the Chairman proposed an order that would have required small operators with limited bandwidth capacity to carry three versions of same broadcast signals (triple carriage – analog, standard digital and high-definition digital). The proposed order also forbade small cable operators from using industry-accepted compression technologies to maximize their capacity. While the majority of the Commission was able to defeat such a burdensome proposal, this Commission, over my objection, refused to grant waivers to small cable system operators from the obligation to carry the analog and high-definition digital signals of all broadcast stations that are entitled to mandatory carriage.

Unlike the major multiple system operators and Local Exchange Carriers, small system operators face serious financial and technological resource constraints, and the Commission should have considered these limitations. We cannot achieve our goal of promoting rural broadband if the Commission forces small rural cable operators to use their limited capacity for uses other than what the market and their customers demand, including broadband. While I am pleased that the Order acknowledged that waivers may be necessary, it is not fair to ask these tiny rural systems to engage lawyers in Washington when a simple exemption would have sufficed.

Moreover, the Commission's approach to granting set-top box waivers was also troublesome. A cable operator should not have to be unprofitable or willing to meet a congressional deadline for over-the-air broadcasters to go all-digital, in order to qualify for a set-top box waiver. This uncertain, ad-hoc decision-making led to absurd results. For example, we gave a waiver to a new market entrant that is bigger than the entire cable industry and has over 300,000 subscribers, while smaller cable operators are required to deploy much more expensive set-top boxes to their customers.

For all these reasons, I approve in part and dissent in part from this Report.