

investors as large companies do, if their businesses fail, they are subject to bankruptcy.<sup>100</sup> Another commenter also points out that in purchasing equipment, small companies are subject to high deposit requirements and installation charges.<sup>101</sup>

38. Some parties suggest ways for the Commission to address financial impediments. One party suggests that the FCC should encourage lenders to provide non-personally guaranteed funds to small carriers under the same terms and conditions provided to larger carriers.<sup>102</sup> One commenter states that the Commission "must reinstate policies that will help level the playing field . . . [and] expand its financing policy to include the provision of capital needed by small businesses . . . if they are to compete with larger better capitalized companies with ready access to capital."<sup>103</sup> Another contends that the FCC must recognize that gaining access to a spectrum license itself is not enough -- the availability and cost of financing is critical to the success of PCS entrepreneurs.<sup>104</sup> Still another argues that the Commission does not consider the financial realities that entrepreneurs encounter and that exclude small businesses.<sup>105</sup>

39. Many parties address the Telecommunications Development Fund as a source of financing. Williams believes that because of its national and industry-wide scope, TDF

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<sup>100</sup> Small Business in Telecommunications Comments at 24. *Accord* Haycock Testimony at 5 (stating that small business owners often are forced to forego the protection of corporate status and waive personal liability limitations); CompTel Comments at 5 (asserting that it is not uncommon for small businesses to be required to waive personal liability limitations and sign personal guarantees).

<sup>101</sup> Haycock Testimony at 5.

<sup>102</sup> Nevadacom Comments at 2.

<sup>103</sup> Williams Testimony at 5.

<sup>104</sup> NextWave Comments at 4. NextWave further contends that while FCC auction rules have "opened the door for new entrants in the PCS industry and offer entrepreneurs better access to spectrum, these rules do nothing to address the problems faced by small businesses and entrepreneurs when seeking capital to build their networks." *Id.*

<sup>105</sup> Mobile Communications Holdings Comments at 3, 7-8. Some parties also identified specific financial impediments in certain telecommunications services. Many of these issues are addressed below in Part III.

will be substantially undercapitalized.<sup>106</sup> He claims that in contrast to TDF, existing minority-managed funds have greater capital even though they are more limited in focus.<sup>107</sup> Williams also projects that if the Fund could amass \$50 million in capital over the next three years, it would be able to provide seed capital for only 10-15 businesses. United Church of Christ and Minority Media and Telecommunications Council suggest that to improve TDF's capitalization, major competitors should be required to contribute to the TDF (like contributions are made to the Universal Service Fund).<sup>108</sup> Likewise, Williams contends that the FCC should provide incentives for institutional investors to invest in the TDF.<sup>109</sup>

40. As to TDF's policies, America's Carriers Telecommunication Association asserts that the Fund should not give priority to service proposals, e.g., to create a new technology, but rather, should assist small carriers, and as a result, TDF "will have a far better chance of actually advancing the public interests by creating the financial stability needed to do more venturesome projects."<sup>110</sup> National Association of Black Owned Broadcasters contends that the Fund should be used to provide equity investments, low interest loans and loan guarantees to minority businesses, to provide technical assistance and market research, and to augment the budget of the FCC's Office of Communications Business Opportunities.<sup>111</sup> McCarroll argues that anyone who applied for an SMR license before auctions were established and cannot afford to bid for one now in an auction should receive priority in TDF funding.<sup>112</sup> American Women in Radio and Television and Women of Wireless assert that TDF will be an important informational and financial resource for

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<sup>106</sup> Williams Testimony at 6.

<sup>107</sup> *Id.*

<sup>108</sup> United Church of Christ and Minority Media and Telecommunications Council Comments at 13.

<sup>109</sup> Williams Testimony at 6.

<sup>110</sup> America's Carriers Telecommunications Comments at 19-20.

<sup>111</sup> National Association of Black Owned Broadcasters Reply Comments at 19. National Association of Black Owned Broadcasters filed a motion to accept late-filed comments, which we grant.

<sup>112</sup> McCarroll Comments at 1-2.

small women-owned businesses.<sup>113</sup> They and Moore Broadcasting urge the FCC Chairman to appoint board members who understand the potential to create new businesses and who will ensure that businesses owned by women or minorities obtain access to capital.<sup>114</sup> Polka urges the Commission to use the TDF "in a positive way to encourage lending to small cable."<sup>115</sup>

41. Finally, Integrated Communications Group argues that the FCC should augment its efforts beyond TDF, and take "extraordinary measures" to remove market entry barriers. Specifically, it claims that the FCC should work with the Small Business Administration, industry, investment firms, insurance companies, banks, and institutional investors to create a larger pool of funds.<sup>116</sup>

## 2. *Commission Measures*

42. The record shows that financial obstacles create substantial impediments to small business entry in the telecommunications market. We recognize that the telecommunications industry is generally capital intensive<sup>117</sup> and that substantial financial resources are necessary for successful participation in most telecommunications sectors. The Commission is limited, however, in its authority -- and concomitant ability -- to remove financial impediments and obstacles. The FCC has no statutory jurisdiction over the

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<sup>113</sup> American Women in Radio and Television and Women of Wireless Comments at 42. See also B.K. McIntyre Comments at 3 ("it is critical that the FCC use effectively" TDF for new start up companies to gain necessary capital).

<sup>114</sup> American Women in Radio and Television and Women of Wireless Comments at 42; Moore Broadcasting Comments at 3. America's Carriers Telecommunications Association questions the wisdom of appointing as the interim chairman of TDF an officer of a Bell Operating Company (BOC). America's Carriers Telecommunications Association Comments at 14-15.

<sup>115</sup> Polka Testimony at 5.

<sup>116</sup> Integrated Communications Group Comments at 4.

<sup>117</sup> See, e.g., *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, Fifth Report and Order, 9 FCC Rcd 5532, 5571 (1994) (*Competitive Bidding Fifth Report and Order*); Mitchell & Vogelsang, *Telecommunications Pricing: Theory and Practice*, 7-19 (RAND, 1991); see also Small Business in Telecommunications Comments at 2 (stating that wireless telecommunications services have large capital outlay requirements).

financial industry. Thus, we cannot directly require banks, lenders, investors, or any other entity to finance small businesses, or any sized business, in the telecommunications industry.

43. The Commission, however, has taken measures to enhance access to capital for small businesses in the auctions process. Pursuant to Section 309(j) of the Communications Act, the Commission has taken steps to promote capital access for small businesses, businesses owned by minorities or women, and rural telecommunications businesses in the provision of certain spectrum-based services. These mechanisms facilitate access to capital by making the license costs more affordable for small businesses. Specifically, in several auctions, we provided bidding credits for small businesses to enhance their participation in seeking spectrum licenses and allowed successful small business bidders to pay for their licenses in installments over time.<sup>118</sup> For example, the PCS "F" block auction offered installment payments to facilitate small business participation. Upcoming auctions such as the Local Multipoint Distribution Services (LMDS) auction also will offer small business installment payments.

44. Additionally, as described in further detail below, Congress created the Telecommunications Development Fund and provided the Commission with a statutory role in its operation. The Fund is an important resource that will facilitate small business participation in the telecommunications market, and thereby help reduce the effects of financial impediments small businesses encounter. In addition, we will strongly consider the role of financial impediments in our ongoing implementation of Section 257.

45. As provided in Section 707 of the Telecommunications Act,<sup>119</sup> the Fund's mission is to promote access to capital for small businesses in the telecommunications industry, stimulate development of new technology, promote employment and training, and support universal service and the delivery of telecommunications services to underserved areas.<sup>120</sup> TDF is funded primarily by the interest earned on certain deposits for spectrum

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<sup>118</sup> See, e.g., *D, E & F Block Competitive Bidding Report and Order*, 11 FCC Rcd at 7875-7876; *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, Sixth Report and Order, 11 FCC Rcd 136, 161 (1996) (*Competitive Bidding Sixth Report and Order*). See also *Competitive Bidding Part 1 Rules NPRM*, FCC 97-60, at ¶¶ 33 and 36.

<sup>119</sup> Pub. L. No. 104-104, § 707, 110 Stat. 56 (codified at 47 U.S.C. § 614).

<sup>120</sup> See, e.g., Moore Broadcasting Comments at 3; National Cable Television Association Comments at 9; National Association of Black Owned Broadcasters Reply Comments at 9; United Church of Christ and Minority Media and Telecommunications

auctions,<sup>121</sup> and is authorized to make loans and extend credit to small businesses.<sup>122</sup> The FCC's Chairman is authorized to appoint a seven-member board of directors to the TDF, consisting of four representatives from the private sector, and one each from the Commission, Small Business Administration, and the Department of the Treasury.<sup>123</sup>

46. On November 20, 1996, the FCC Chairman appointed the full TDF board of directors.<sup>124</sup> As required by the Act, the board members have significant experience in finance, investment banking, government banking, communications law and administrative practice, and public policy.<sup>125</sup> We believe the combined expertise of the board will help provide funding for small communications businesses and promote technological innovation in the telecommunications industry.

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Council Comments at 13.

<sup>121</sup> The Fund's account consists of interest on deposits made to qualify for competitive bidding under Section 309(j)(8)(C) of the Act, funds that may be appropriated to the Commission for advancement to the Fund, contributions or donations accepted by the Fund, and repayment of credit extended by the Fund. 47 U.S.C. § 614(d).

<sup>122</sup> 47 U.S.C. § 614(e).

<sup>123</sup> 47 U.S.C. § 614(c)(1).

<sup>124</sup> FCC Public Notice, *Public Sector Board Members Appointed to the Telecommunications Development Board* (released Nov. 20, 1996). The TDF Board members are: Interim Chairperson, Solomon D. Trujillo, President and Chief Executive Officer, U.S. West Communications Group; Richard L. Fields, Managing Director of Allen & Company Incorporated; Thomas A. Hart, Jr., Partner, Ginsburg, Feldman & Bress; Debra L. Lee, President and Chief Operating Officer of BET Holdings, Inc. (Black Entertainment Television), Ginger Ehn Lew, Deputy Administrator, Small Business Administration; Kirsten S. Moy, Director, Community Development Financial Institutions (CDFI) Fund, Department of Treasury; and William E. Kennard, General Counsel, Federal Communications Commission.

<sup>125</sup> 47 U.S.C. § 614(c)(1).

47. Pursuant to the statute, the board is in the process of establishing general policies that will govern the overall structure and operation of the Fund.<sup>126</sup> TDF, a non-profit corporation,<sup>127</sup> is authorized to make loans, investments, or other extensions of credit to small businesses; to provide financial advice to small businesses; and to prepare research studies, financial analyses, or other services consistent with the purposes of the Fund.<sup>128</sup> The Board is currently in the process of creating a sustainable source of capital for small communications businesses and is investigating means to leverage the more than \$20.3 million in initial capitalization it has received to date from auction upfront payments in order to create a larger pool for small communications business loans and equity investments.

48. Since authorization of TDF in February 1996, OCBO has served as the principal support for TDF, conducting research regarding structural models for the TDF and gaps in financial and technical assistance for small communications businesses, disseminating public information and fielding inquiries regarding TDF. OCBO sends monthly mailings to over 2,300 small enterprises that include up-to-date information on the Fund. In addition, OCBO is compiling information on the types of financial and technical assistance requested of the Fund. This analysis will help the TDF board identify structural impediments to small business financing from other capital sources, and design a structure that will fill unmet needs and complement existing resources. OCBO will provide this information, as well as the comments and proposals submitted in this proceeding which pertain to TDF, to the TDF board of directors so that the board may consider this information as it develops the Fund's organizational structure and policies.

49. The full TDF board has met twice since December 1996<sup>129</sup> and is finalizing its review of market opportunities where TDF could direct its resources. TDF is commencing a search for a fund manager. The board also is working to develop TDF's structure to provide loans, equity investments and technical assistance.

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<sup>126</sup> 47 U.S.C § 614(c)(3). The statute requires the board to meet at the call of the Chairman or at least quarterly. The first meeting of the board was held on December 3, 1996.

<sup>127</sup> The Fund is to be administered as a not-for-profit organization. *Joint Explanatory Statement* at 211.

<sup>128</sup> 47 U.S.C. § 614(e).

<sup>129</sup> By statute, the TDF board is required to meet "at the call of its Chairman, but at least quarterly." 47 U.S.C. § 614(c)(3).

50. We are hopeful that TDF will be a significant source of funding for small telecommunications businesses and will thereby help to eliminate a major obstacle for small businesses. We shall continue to carefully monitor TDF's progress in this regard and, if necessary, make appropriate recommendations to the TDF board and to Congress.

51. To promote access to capital, and increase the FCC's understanding of how regulatory issues affect small communications business finance, OCBO has hosted two panel discussions on wireless finance. In March 1996, in coordination with the FCC's Wireless Telecommunications Bureau, OCBO held an "Auctions '96" conference and in February 1997, sponsored an "Auctions '97" conference. Both conferences featured panels on financing. The FCC will continue to hold such fora to learn more about the effect of our rules on small business finance, and to provide industry participants an opportunity to hear from capital sources about the factors they consider in deciding to invest in a small communications firm.

### *C. General Regulatory Obstacles*

52. Many of the market entry impediments identified by the commenting parties concerned general regulatory issues, and in particular, difficulties in obtaining access to the Commission itself, participating in Commission proceedings, and in obtaining information about new services.<sup>130</sup> As discussed below, the Commission already has taken several steps to eliminate many of these obstacles.

#### *I. Access to Commission Decisionmakers*

53. Several parties point out that, unlike large companies and associations, small businesses often do not have the time or resources to meet with Commission staff or participate in Commission proceedings.<sup>131</sup> Others note that many small businesses

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<sup>130</sup> Cable Telecommunications Association Comments at 9-10; Small Business in Telecommunications Reply Comments at n.1; Southwest Missouri Cable Comments at 4; American Mobile Telecommunications Association Comments at 11; Community Broadcasters Association Comments at 8-9.

<sup>131</sup> See, e.g., Cable Telecommunications Association Comments at 9-10 (small business representatives do not have time or money to walk the halls of FCC to attempt to influence final language of given rule; most rules are written regarding their impact on large business while effect of adopted rules on small business is unknown); American Mobile Telecommunications Association Comments at 11 (lack of available staff and resources to handle FCC regulatory compliance or participate in proceedings); Grossman Testimony at 2

historically have had little representation before the Commission and other federal or state bodies. As a consequence, these parties believe small businesses are frequently viewed as outsiders in the telecommunications industry.<sup>132</sup> One commenter claims that inability to participate in public meetings is a barrier.<sup>133</sup> Another party notes that because many small businesses lack representation and financial resources, they often are unaware of opportunities in the telecommunications industry and are unable to participate in the Commission's rulemaking process.<sup>134</sup>

54. In a similar vein, the Small Business Administration states that lack of information and access to the Commission's decision-making process acts as the chief impediment to small business' ability to challenge and eliminate market entry barriers that develop as a result of Commission rule makings.<sup>135</sup> Similarly, the Community Broadcasters Association asserts that small businesses need more access to Commission decisionmakers, key policy personnel, and Commissioners.<sup>136</sup> Along the same lines, the Cable Telecommunications Association contends that many small business representatives do not have time or money to "walk the halls" of the Commission in an effort to influence the final language of a given rule.<sup>137</sup>

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(need more access to Commission decisionmakers; takes dozen calls to get appointment); Small Business in Telecommunications Reply Comments at n.1 (problems communicating with FCC staff due to small businesses' funding obstacles); Zesiger Testimony at 12 (access to FCC's decisionmaking process acts as one of chief impediments to small business' ability to challenge and eliminate market entry barriers).

<sup>132</sup> See, e.g., Southwest Missouri Cable Comments at 4 (historically poor representation); B.K. McIntyre Comments at 1 (lack of historical participation); Voice-Tel Comments 16 (frequently viewed as outsider in telecommunications business).

<sup>133</sup> Grossman Testimony at 2-3. See also Community Broadcasters Association Comments at 8-9.

<sup>134</sup> Cable Telecommunications Association Comments at 9-10.

<sup>135</sup> Small Business Administration comments at 12.

<sup>136</sup> Community Broadcasters Association at 8-9.

<sup>137</sup> Cable Telecommunications Association at 9-10. See also Small Business in Telecommunications Reply Comments at n.1 (sympathizes with groups who have pointed out problems in communicating with Commission's staff due to their funding obstacles).

55. At the outset, we note that particular measures, both legislative and regulatory, have been created to ensure that the interests of small businesses are appropriately taken into account by federal agencies. At the legislative level are the Regulatory Flexibility Act (RFA),<sup>138</sup> and, most recently, The Small Business Regulatory Enforcement Fairness Act (SBREFA),<sup>139</sup> which Congress enacted as part of the Contract with America Advancement Act of 1996 (CWAAA),<sup>140</sup> that strengthens and broadens the existing mandate under the RFA.

56. For example, prior to the 1996 amendments to the RFA, the Small Business Administration had taken an active role in proceedings before federal agencies to insure that careful and meaningful consideration would be given to the impact on small business interests of an agency's proposed rules. However, neither that agency or any other person could directly challenge in court whether a federal agency had properly complied with the RFA requirements. The 1996 amendments to the RFA now provide for judicial review and include expanded authority for the Chief Counsel for Advocacy of the Small Business Administration to file *amicus curiae* briefs in court proceedings on the question of whether an agency properly complied with the RFA.

57. Other provisions of the new law expand on these efforts, e.g., Section 212 requires federal agencies to publish easily understood "small entity compliance guides" to assist businesses in complying with all regulations for which a final regulatory flexibility analysis is required. Section 213 requires federal agencies to establish within one year of enactment a program to answer inquiries of small entities seeking information on and advice about regulatory compliance, and Section 222 creates a Small Business and Agriculture Regulatory Enforcement Ombudsman within the Small Business Administration to give small businesses a confidential means to comment on agency enforcement activities. These requirements are intended to insure that small business interests are not locked out of the decisionmaking process of federal agencies, that administrative agencies give meaningful consideration to the impact of governmental regulation on small businesses, and that the interests of small businesses that might otherwise not be represented before an agency are properly weighed in the agency's decision-making process.

58. In response to these requirements, the Commission is developing compliance guides to assist small entities. Small entities can call the FCC for informal guidance on

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<sup>138</sup> Pub.L. No. 96-354, 94 Stat. 1164 (1980).

<sup>139</sup> Pub. L. No. 96-354, 94 Stat. 1164 (1996) (codified at 5 U.S.C. §§ 601-612).

<sup>140</sup> Pub. L. No. 104-121, 110 Stat. 847 (1996).

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compliance questions. Small entities and other businesses may also call the FCC's National Call Center<sup>141</sup> toll free at 1-888-Call-FCC to receive fact sheets and answers to routine questions. The Call Center will direct callers to the appropriate Bureau or Office staff for more detailed questions.

59. The Commission's Office of Communications Business Opportunities specifically addresses small business concerns.<sup>142</sup> The Commission is mindful of the financial and other difficulties that many small businesses face and of the limited resources that are available to them. As such, OCBO's primary mission is to promote opportunities for small business participation in the communications industry in order to increase competition, encourage innovation, increase employment opportunities, improve services to all communities, and increase the diversity of voices and viewpoints over the public airwaves. OCBO serves as the principal small business policy advisor to the Commissioners and is the Commission's primary resource for implementing SBREFA. It oversees the regulatory flexibility analysis process to ensure that small business interests are fully considered in Commission notice and comment rulemakings on common carrier, cable, wireless, mass media, international communication services and other FCC matters, and may facilitate meetings with FCC staff. OCBO ensures coordination and compliance with CWAAA provisions to increase agency responsiveness to small businesses.

60. OCBO also engages in extensive outreach and research. It provides information to the public, industry, trade organizations, and public interest organizations on the participation of small businesses, minorities, and women in various communications services. For example, OCBO has compiled and published various studies, including an overview of the communications market and the opportunities it provides for small businesses; sends monthly mailings to more than 2,300 small businesses and public interest organizations;<sup>143</sup> and responds to approximately 15,600 small business inquiries a year. OCBO also is the primary resource for research material on small businesses, minority and female ownership and employment in the communications industry. Finally, OCBO organizes and participates in numerous conferences throughout the country designed to

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<sup>141</sup> See also *infra* ¶ 200 (describes National Call Center).

<sup>142</sup> OCBO's address is Room 644, 1919 M Street, N.W., Washington, D.C. 20554; telephone number is: (202) 418-0990; and the e-mail address of OCBO's Consumer and Industry Affairs is: [kbeverly@fcc.gov](mailto:kbeverly@fcc.gov). In addition, OCBO has a homepage on the FCC's World Wide Web site.

<sup>143</sup> Small, minority-owned, and women-owned businesses may request to receive monthly mailings by contacting OCBO.

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increase small business participation in the telecommunications industry and the regulatory process.<sup>144</sup>

61. We also wish to emphasize that any interested party may file or participate in Commission proceedings and file comments before the Commission. To assist them, the Commission has published several Fact Sheets describing how to participate in Commission proceedings.<sup>145</sup> Moreover, as indicated above, and as a matter of general policy, we believe it is imperative to solicit the advice and perspectives of all interested parties, including small businesses. We have sought to do so by reaching out to groups who do not ordinarily visit the Commission or participate in its proceedings. For instance, prior to release of our NPRM implementing the local competition provisions of Section 251 of the 1996 Act, Commission staff held numerous discussions not only with BOCs and interexchange carriers, but with new and prospective entrants, state commission staff, cable operators, consumer advocates, and various public interest groups. The record in that proceeding included over 40,000 pages from 240 commenters, and included the views of such diverse groups as consumer advocates, state and local governments, small businesses, schoolteachers, libraries and medical associations. Similarly, in the Commission's Universal Service Proceeding, the Commission undertook an extensive outreach effort. The Federal-State Joint Board has held seven open meetings and heard from over 50 leading experts on issues such as providing services to schools, libraries and health care providers; maintaining universal service in rural, insular, and high cost areas; and competitive concerns raised by universal service.<sup>146</sup>

62. In addition, last year, the Commission adopted a Notice of Inquiry seeking suggestions from all interested parties on how best to streamline its processes and improve its delivery of services.<sup>147</sup> The *Commission Processes Notice of Inquiry* sought comment on ways the Commission could use computer technology, electronic filing, and the Internet to improve processing; how the Commission should expand its use of public meetings, fora, and roundtables; whether the Bureaus and Offices provide sufficient, meaningful, and useful

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<sup>144</sup> See *infra* ¶ 64 and Appendix B (describes OCBO conferences).

<sup>145</sup> FCC Fact Sheet, *How to Participate in the FCC Process* (May 1996). See also FCC Fact Sheet, *How to File Comments with the FCC* (Apr. 1995).

<sup>146</sup> Federal-State Joint Board on Universal Service held open meetings on April 12, 1996, June 5, 1996, June 19, 1996, September 13, 1996, October 17, 1996, and November 7, 1996, and January 14-15, 1997.

<sup>147</sup> *In the Matter of Improving Commission Processes*, Notice of Inquiry, 11 FCC Rcd 14006 (1996) (*Commission Processes Notice of Inquiry*).

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information, in a timely fashion; and how we can improve delivery of status information to the public. The Commission received nearly sixty formal comments, reply comments, letters, petitions, and motions in response to the *Commission Processes Notice of Inquiry*. The responses ranged from proposals for major policy initiatives to suggestions for minor adjustments in the way we do business. The Commission has released a report summarizing its efforts to date to improve internal processes and to improve Commission operations.<sup>148</sup>

63. Another vehicle the Commission has used to assist small businesses in the Commission's processes is the use of seminars. One of the first seminars the Commission held following passage of the 1996 Act was designed to help individuals participate in the Commission process.<sup>149</sup> This forum provided the general public with instruction on how to get information from the FCC, how to track specific issues, how to file comments, and how to understand FCC terminology. The Commission also has held two seminars about its World Wide Web site. These seminars included descriptions of the purpose and mission of the site, an overview of the site, presentations on new and future developments, detailed discussions of special topical and Bureau resources, and provided an opportunity for public feedback.<sup>150</sup>

64. Some commenters have offered suggestions in this proceeding for specific types of Commission seminars. For example, one party has recommended that the Commission co-sponsor seminars and workshops jointly with ethnic minority business organizations, groups and chambers of commerce in the various regions of the country.<sup>151</sup> Another commenter requested that the Commission sponsor a series of meetings with large

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<sup>148</sup> Report to the Commission, Office of Plans and Policy, *In the Matter of Improving Commission Processes: FCC Notice of Inquiry PP 96-17*, July 25, 1996.

<sup>149</sup> See FCC News Release, *Learn Your NOIs: FCC Open Forum on How to Participate in the FCC Process* (released May 2, 1996). The materials prepared for this forum are available from OPA and the FCC home page. To increase public access to the Commission's processes the session was broadcast live on C-SPAN. See Appendix B for a listing of Commission public meetings, fora and *en banc* hearings held to date, as well as conferences that Commission representatives have participated in as panelists and speakers.

<sup>150</sup> These fora, titled *How to Find FCC Information on the Internet*, were held on June 24, 1996 and October 22, 1996.

<sup>151</sup> Integrated Communications Group Comments at 5.

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and small businesses to facilitate cooperative efforts.<sup>152</sup> The Commission has held several seminars of the types recommended by these parties. For example, through OCBO, the FCC co-sponsored with Broadcast Capital Fund, Inc. two regional conferences in Las Vegas, Nevada and Los Angeles, California about opportunities for minorities in broadcasting. In addition, OCBO held "Auctions '96" and "Auctions '97" conferences that featured presentations by small and large businesses, as well as by FCC and other government staff. These conferences, which were open to the public and free of charge, served to disseminate information, facilitate access to FCC staff, and create opportunities for sharing ideas and concerns. As described in Part III below, the Compliance and Information Bureau also participated in numerous conferences that have been targeted to small businesses.<sup>153</sup>

65. In addition, on April 19-20, 1997, the FCC's Office of Workplace Diversity co-sponsored a conference with the National Association of Broadcasters (NAB) and Fayetteville State University in Fayetteville, North Carolina on participation in and access to the information superhighway by African-Americans and other minorities. At the Fayetteville conference, NAB held its first regional job fair to inform potential applicants about employment opportunities in the broadcasting industry. On May 15, 1997, OCBO is co-sponsoring a free conference with Bowie State University, the National Telecommunications and Information Administration of the Department of Commerce, and private sector members on universal service and access reform.

66. The Commission will consider the recommendations developed in this proceeding as it plans future public seminars. We will encourage bureaus and offices, particularly OCBO, the Wireless Telecommunications Bureau, the Office of Engineering and Technology, and the Compliance and Information Bureau to sponsor, on a regular basis, seminars on issues of importance to small businesses, including emerging technologies, spectrum opportunities, and financing of communications services. We also will encourage regional and local conferences, which are particularly valuable in reaching small businesses that are not able to attend conferences in Washington, D.C.

67. In addition to conducting numerous public seminars, the Commission has initiated an electronic comment filing effort which will make it easier for small businesses and organizations to file comments and review comments filed by others. On April 3, 1997, we adopted an *Electronic Filing Notice of Proposed Rulemaking*, which proposes the necessary rule changes for implementing the electronic filing system and invites comment on

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<sup>152</sup> Brown-Blackwell Comments at 7.

<sup>153</sup> See *infra* ¶¶ 207, 209.

implementation questions.<sup>154</sup> At present, parties must rely on the FCC's duplicating contractor to obtain copies of comments. The *Electronic Filing Notice of Proposed Rulemaking* proceeding, and internal initiatives to modernize systems for processing comments will create the legal, operational, and technical foundation to realize the full potential of electronic filing of rulemaking comments at the FCC. In several major proceedings, parties have been invited to file computer diskettes along with their comments, or to file informal comments via electronic mail. In proceedings where comments have been filed on diskettes, the public is able to view those comments online as long as they can access the World Wide Web site. A contract has been awarded to develop a new database system to receive, process, and make available comments in electronic form. Work is now proceeding on this database system, and initial programming is expected to be completed in mid-1997.

68. Further, the Commission has made it easier for the public to obtain access to Commission Offices and Bureaus and for the Commission to respond to general inquiries from the public. Today, all Commission Offices and Bureaus are accessible through the Commission's Internet site.<sup>155</sup> Each office has an e-mail address and personalized Web page with information about the office and where to direct inquiries. In addition, texts of Commission actions, including notices of proposed rulemaking, orders, public notices, press releases, and speeches are now available on the Internet. The Commission also has created a general FCC mailbox entitled "fccinfo" for electronic mail to the FCC.<sup>156</sup> This address can be used to ask general questions, provide comments, or to get help from the Commission. Fccinfo identifies each inquiry and directs it to the appropriate agency expert for a prompt response. In addition, as described above, the public may utilize the FCC's National Call Center.

69. We believe that all of the initiatives described above will significantly enhance the ability of small businesses to make their perceived barriers known to the Commission and its decisionmakers. We also shall continue to be sensitive to the special needs of small

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<sup>154</sup> *Electronic Filing of Documents in Rulemaking Proceedings*, Notice of Proposed Rulemaking, GC Docket No. 97-113, FCC 97-113 (released Apr. 7, 1997) (*Electronic Filing Notice of Proposed Rulemaking*). See also FCC News Release, *FCC Takes Steps to Initiate Electronic Comment Filing*, Rep. No. 95-96 (released June 24, 1996).

<sup>155</sup> The URL address for the FCC home page is <http://www.fcc.gov>.

<sup>156</sup> The general mailbox for e-mail to the FCC is located at [fccinfo@fcc.gov](mailto:fccinfo@fcc.gov). Freedom of Information Act (FOIA) requests can be sent to [fccfoia@fcc.gov](mailto:fccfoia@fcc.gov). See also FCC News Release, *FCC Upgrades on the Internet* (released June 6, 1995).

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businesses in this regard and to look for new ways to enhance their ability to have a voice in our decisionmaking process.

## 2. *Commission Procedure as an Obstacle*

70. The Cable Telecommunications Association maintains that another significant procedural barrier for small businesses is the manner in which Commission rules are proposed and adopted. According to the Cable Telecommunications Association, the current process serves as a barrier to entry and to the continued success of small businesses in the telecommunications marketplace because, in many instances, the agency's rulemaking process does not set forth any proposed rule or variations thereof that enables commenters to analyze the potential impact on small businesses before final rules are adopted. It acknowledges that SBREFA now requires the Commission to analyze the impact of any proposed rule and believes that, by forcing the Commission to change its current procedural processes, implementation of SBREFA should have a positive effect toward the elimination of market entry barriers. Nevertheless, the Cable Telecommunications Association believes that for the Commission to continue to issue non-specific, broad-based inquiries characterized as rulemakings will violate SBREFA because it does not provide an opportunity for meaningful comment on the impact a regulatory proposal will have on small businesses.<sup>157</sup> It strongly recommends that the Commission reinstitute the practice of putting out for public comment in notices of proposed rulemaking the actual proposed language or variations thereof of the rules the Commission is actually considering adopting.<sup>158</sup>

71. The Administrative Procedures Act (APA) requires an administrative agency to give "either the terms or substance of the proposed rule or a description of the subjects and issues involved."<sup>159</sup> Thus, it does not require an agency to set forth the actual text or variations of proposed rules. Nevertheless, we shall make every effort to ensure our rulemaking process complies with the spirit and letter of the APA and SBREFA by facilitating meaningful comment on the effects of our rulemaking proposals and carefully analyzing, and setting forth in that analysis, the effects of our final actions on small businesses. To the extent not precluded by statutory time constraints or the complex nature of the particular subject matters involved, we can further these goals by including in our rulemaking notices the text of actual proposed rules or variations thereof. However, many times the Commission expresses a range of options in its proposals, to solicit comment on

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<sup>157</sup> Cable Telecommunications Association Comments at 12-13.

<sup>158</sup> *Id.*

<sup>159</sup> 5 U.S.C. § 553(b)(3).

those options, and on the underlying issue, before concluding that one option is the best. We believe this practice is consistent with the APA and SBREFA and often allows small businesses and all commenters a fuller opportunity to be part of the FCC's decisionmaking process because their comments affect the Commission's choice of rules. We thus shall strongly encourage bureaus and offices when they craft rulemaking proposals for our consideration to set forth actual text of proposed rules where feasible and practicable, although comment on a range of options and issues also may be solicited.<sup>160</sup>

### 3. *Access to Information*

72. Several parties also claim difficulties in obtaining access to information about new communications services and related regulatory matters as market entry barriers.<sup>161</sup> To remedy this, the parties recommend that the Commission make documents and information accessible electronically to all parties and at costs that are reasonable to the general public and small businesses.<sup>162</sup>

73. We have taken many significant steps to ensure that information about new services and regulatory proceedings is made available. In fiscal years 1994 and 1995, Congress provided the Commission with resources to permit the agency to install up-to-date computer and voicemail technology. This investment in information technology has enhanced the Commission's staff productivity, increased our responsiveness to information request from the public, and has improved the public's access to Commission documents. In addition, OCBO and the Commission's Office of Public Affairs (OPA) have made a special effort to reach out to small businesses and others who have less experience in working with

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<sup>160</sup> It should be fully understood, however, that this may not be possible where statutory time constraints exist, where numerous broad issues exist that make publication of a particular rule or set of rules impractical or inappropriate, or where other extenuating circumstances warrant expeditious action that would preclude setting forth with particularity a specific rule or versions thereof in the notice. To the extent that parties and other interested persons believe that final rules adopted do not adequately address their concerns, they can seek redress through the reconsideration process, i.e., requesting the Commission to modify or otherwise reconsider its rules.

<sup>161</sup> See, e.g., Integrated Communications Group Comments at 5; B.K. McIntyre Comments at 1.

<sup>162</sup> Small Business Administration Comments at 12-13. See also B.K. McIntyre Comments at 3 ("FCC should be technologically neutral and provide easy access to information at a cost that is reasonable").

the Commission and who are uncertain about how to obtain information from the Commission.

74. OPA's Public Service Division provides a variety of information, such as Fact Sheets,<sup>163</sup> Information Bulletins and Brochures, and handles incoming phone calls and requests from walk-in visitors on all topics.<sup>164</sup> OPA maintains mailing lists and performs outreach activities to organizations, businesses and individuals who are interested in particular issues. These services are extremely helpful to small businesses located outside of the Washington, D.C. area that lack the resources that are needed to monitor Commission proceedings. OPA also has expanded its outreach to "nontraditional" media, including community and Spanish language newspapers nationwide.

75. Each day, OPA publishes the *Daily Digest* to help the public stay apprised of the Commission's many activities.<sup>165</sup> The *Daily Digest* contains a list of rulemakings, reports, public notices, speeches, and current events that are released by the Commission. Interested parties can obtain the *Daily Digest* over the Internet by subscribing to the

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<sup>163</sup> The Office of Public Affairs, Public Service Division has published Fact Sheets to help the public obtain information and participate in the Commission rule making process. They include, but are not limited to: FCC Fact Sheet, *How to Participate in the FCC Process* (released May 1996); FCC Fact Sheet, *How to Participate in the FCC Rule Making Process* (released May 1996); FCC Fact Sheet, *Hints on Filing Comments With the FCC* (released May 1996).

<sup>164</sup> The Office of Public Affairs is located at 1919 M Street, N.W., Room 254, Washington, D.C., (202) 418-0200. Interested parties who are unable to visit the FCC in person may obtain documents and services from the FCC's duplicating contractor, International Transcription Service Inc. (ITS) at 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857-3800.

<sup>165</sup> The *Daily Digest* is located on the FCC's world wide web site. The URL address is [http://www.fcc.gov/Daily\\_Releases/Daily\\_Digest/welcome.html](http://www.fcc.gov/Daily_Releases/Daily_Digest/welcome.html).

Commission's list-server<sup>166</sup> or through the Commission's fax-on-demand<sup>167</sup> phone line service.

76. Since passage of the Telecommunications Act, the Commission has received numerous requests for information about the Act and its implementation from consumers, the media and industry. To respond to these requests, the Commission issued a new Telecommunications Act Implementation Schedule.<sup>168</sup> In addition, OPA established a special Telecommunications Act home page on the Commission's web site to provide a central location for all public information regarding Commission actions to implement the law.<sup>169</sup> OPA also modified the Commission's Daily Digest to assist the public in tracking the Commission's proceedings that implement the law.<sup>170</sup>

77. OPA also publishes an *Information Seekers Guide* which contains detailed information about all of the Commission's reference rooms, duplicating contractors, and the various ways the public can obtain information at the Commission.<sup>171</sup> In addition, OPA is

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<sup>166</sup> Request for subscriptions to the Commission's list-server should be sent via e-mail to [subscribe@info.fcc.gov](mailto:subscribe@info.fcc.gov). See FCC Public Notice, *Daily Digest on Listserver* (released Oct. 30, 1995).

<sup>167</sup> The "fax-on-demand" service uses simple call and prompt instructions to send materials directly to a fax machine. Lengthy documents can be downloaded directly from the Commissions World Wide Web site at <http://www.fcc.gov>. The listserver provides only the *Daily Digest* and has recently expanded to include speeches.

<sup>168</sup> Information on the FCC's implementation of the Telecommunications Act can be obtained at <http://www.fcc.gov/implsched.html>; <http://www.fcc.gov/telecom.html>.

<sup>169</sup> FCC Daily Digest (released Feb. 27, 1996).

<sup>170</sup> FCC Daily Digest (released Feb. 28, 1996).

<sup>171</sup> *FCC Information Seekers Guide: How to Find Information at the FCC* (Jan. 1997). In addition, OPA has issued a Public Notice to inform small businesses on how they can obtain printouts of docketed proceeding and comments at the Commission's main reference center without incurring "expedited fees" from the Commission's Duplication Contractor. See FCC Public Notice, *Daily Digest on Listserver* (released Oct. 30, 1995). There are currently about 3,400 subscribers to the *Daily Digest* "listserver." This service, in addition to the call-in "fax on demand" service, allows the public to obtain copies of Commission information quickly, easily, and inexpensively. The Commission has developed a new

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actively consolidating additional public reference files into the main FCC Reference Center. This will enable the public to obtain all ownership, pending and granted licenses, and EEO files from one central location.<sup>172</sup>

78. In addition to the services provided by OCBO and OPA, another principal way in which the Commission has increased the public's access to Commission documents and participation in the Commission process is through the Internet. The availability of information on the Internet makes it much easier for small businesses and others to obtain Commission information and documents. The Commission created an Internet homepage in 1994, and since that time, many improvements have been made. The Commission's homepage offers an easy to use entry point to the Commission's online resources. The Commission's World Wide Web homepage now receives over 110,000 "hits" per day, indicating that many people are locating information online. Public notices, news releases, Commission decisions, speeches, and such general information as the telephone directory are all posted on this site.<sup>173</sup> Unlike documents that are purchased through the Commission's duplication contractor, all Commission documents on the Commission's Internet site are available for free.

79. In response to comments by Internet users, the Commission continues to take steps to improve services on the Internet. Last year, the Commission conducted two open fora on how to find FCC information on the FCC's World Wide Web site.<sup>174</sup> The addition of a search engine in Fall 1996 has made it much easier for the public to find information at

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"Digital Daily Digest and Index" automated system that captures descriptive data about all documents officially released by the Commission. The system's current use is to produce the *Daily Digest* for paper and electronic release. In the future, this system will allow Internet users to search for all documents using key words. Automatic lists now send the *Daily Digest* and Commission speeches to anyone who "subscribes" to this free service. Persons who are unable to obtain Commission documents via the Internet are encouraged to contact one of the Commission's distribution services or to read summaries of Commission documents that are published in the *Federal Register*.

<sup>172</sup> See FCC Public Notice, *Relocation of Mass Media Bureau's Equal Employment Opportunity Files* (released Mar. 7, 1996).

<sup>173</sup> See FCC Public Notice, *FCC Upgrades Services on the Internet. How to Get FCC Documents from the Internet* (released Apr. 6, 1995).

<sup>174</sup> These public fora were held on June 24, 1996 and October 22, 1996 and were conducted by the Office of Public Affairs.

the FCC web site.<sup>175</sup>

80. As discussed above, on April 3, 1997, the Commission adopted a *Notice of Proposed Rulemaking* to permit parties to electronically file formal comments using the Internet and electronic mail.<sup>176</sup> Testing of the electronic filing system, "Quick Start," is underway. In addition to making it easier for individuals and organizations to file comments, this new process also will enable all interested parties to obtain access to these comments. Today, interested parties located outside of the Washington, D.C. area typically have to order comments through the Commission's duplicating contractor.

81. Through these and other efforts, the Commission successfully disseminates much information about new telecommunications to the public and small businesses.<sup>177</sup>

### III. IMPEDIMENTS IN SPECIFIC SERVICES

#### A. Common Carrier Services

82. In the *Market Entry Barriers Notice of Inquiry*, the Commission sought comment on ways to eliminate market entry barriers and enhance opportunities for entrepreneurs and small businesses in wireline services.<sup>178</sup> Many of the obstacles identified by small businesses in the common carrier services relate directly to control of vital inputs by incumbent carriers and accordingly fall within the definition of policy-relevant entry barriers.<sup>179</sup> Examples of such barriers include: incumbent LEC refusal to comply with interconnection obligations; onerous conditions, such as high deposits for resale; incumbent

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<sup>175</sup> See FCC News Release, *FCC Web Site Search Engine Available; Finding Information Now Much Easier* (released Oct. 10, 1996).

<sup>176</sup> See *supra* ¶ 67.

<sup>177</sup> See also *infra* ¶¶ 131-132 (discusses outreach efforts by the Wireless Telecommunications Bureau) and ¶¶ 206-209 (discusses National Call Center and outreach efforts by the Compliance and Information Bureau).

<sup>178</sup> *Market Entry Barriers Notice of Inquiry*, 11 FCC Rcd at 6307.

<sup>179</sup> See *supra* ¶¶ 12-19.

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LEC monopoly control over subscriber list information; and incumbent LEC control and assignment of NXXs.<sup>180</sup>

83. Still other obstacles identified involve the Commission's own rules, policies, and processes. Commenting parties assert that these regulatory obstacles have evolved in a manner that favors incumbent carriers and thus create a tremendous disincentive for small businesses to enter the telecommunications marketplace. Examples of these perceived regulatory barriers include: the formal complaint process; regulatory filing burdens; support mechanisms for universal service; and the section 214 certification process. Below we discuss in greater detail the nature of the entry barriers identified in the common carrier services and report on Commission initiatives taken to date, or planned for the near future, that are designed to eliminate these barriers.

### *1. Interconnection and Resale Barriers*

84. Commenting parties raise a number of issues regarding interconnection and emphasize that aggressive enforcement of the interconnection and resale rights set forth in section 251 of the Communications Act, as amended, is essential for small businesses and new entrants to compete effectively in the telecommunications marketplace.<sup>181</sup> In addition, several commenting parties indicate that national implementation of the 1996 Act is essential because disparate regulations throughout the states would operate as a significant obstacle for small businesses.<sup>182</sup> Commenting parties claim that absent strong national standards,

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<sup>180</sup> An "NXX" code, or central office code, is the second three digits of a ten digit telephone number and identifies the carrier switch that serves the particular customer location. *See Administration of the North American Numbering Plan*, Report and Order, 11 FCC Rcd 2588, 2593-2594 (1995) (*Numbering Plan Order*).

<sup>181</sup> *See, e.g.*, America's Carriers Telecommunications Association Comments at 14; National Cable Television Association Comments at 13; Nevadacom Comments at 3-5; Telecommunications Resellers Association Comments at 20-21; Celltech Information Systems Comments at 4-5.

<sup>182</sup> *See, e.g.*, Competitive Telecommunications Association Comments at 10-11 ("dozens of different regulations are a serious obstacle to small carriers"); Working Assets Funding Comments at 10, 12 (complying with 50 different requirements poses a significant barrier); Haycock Testimony at 6 (small companies lack resources to comply with multiple regulatory requirements); Polka Testimony at 4 (advocating national mandatory arbitration procedure).

incumbent LECs will retain the ability to erect insurmountable barriers for new entrants, in particular small businesses.<sup>183</sup>

85. The Commission concurs that carrier compliance with, and our diligent enforcement of, the rights and obligations set forth in section 251 are absolutely necessary for achievement of the pro-competitive goals and policies of the 1996 Act. In August 1996, as required by the 1996 Act, the Commission adopted rules to implement sections 251 and 252 of the Act, which establish the basic obligations of carriers, especially in the local exchange and exchange access markets.<sup>184</sup> Section 251 establishes the general interconnection obligations for all telecommunications carriers,<sup>185</sup> delineates further obligations for LECs,<sup>186</sup> and prescribes additional requirements for incumbent LECs.<sup>187</sup> 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 establish specific interconnection arrangements.<sup>188</sup> The Commission's regulations implementing the local interconnection and resale provisions of the 1996 Act, however, have been partially stayed by the United States Court of Appeals for the Eighth Circuit.<sup>189</sup> In particular, the Eighth Circuit has questioned the Commission's jurisdiction to impose national pricing rules, including wholesale rates for resale. Accordingly, although the Commission remains fully committed to enforcement of our rules implementing the various interconnection and resale rights and obligations set forth in section 251, we may do so only to the extent those rules

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<sup>183</sup> See, e.g., Big Sky Teleconferencing Comments at 2 (alleging incumbent interexchange carrier refusal to provide interconnection in violation of section 251(a)(1)); Haycock Testimony at 3-4 (alleging countless abuses by incumbents that deter competition).

<sup>184</sup> See generally *First Local Competition Order*, 11 FCC Rcd 15499; *Implementation of the Local Competition Provisions the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) (*Second Local Competition Order*).

<sup>185</sup> 47 U.S.C. § 251(a).

<sup>186</sup> 47 U.S.C. § 251(b).

<sup>187</sup> 47 U.S.C. § 251(c).

<sup>188</sup> 47 U.S.C. § 252.

<sup>189</sup> See *Iowa Util. Board v. FCC*, No. 96-3221 and consolidated cases (8th Cir. Oct 15, 1996).

are not currently stayed by the appellate court. We will, however, continue to advocate national pricing rules in court.

## 2. *Enforcement and the Complaint Process*

86. In the *Market Entry Barriers Notice of Inquiry*, the Commission specifically requested comment on whether small businesses have particular difficulties regarding Commission rules or policies.<sup>190</sup> Several commenting parties identified the Commission's own formal complaint process as a barrier.<sup>191</sup> According to America's Carriers Telecommunication Association, formal complaints languish at the Commission for years without action.<sup>192</sup> It further alleges that complaints filed by incumbent carriers receive greater priority by the Commission than complaints filed by small carriers against such incumbents.<sup>193</sup> Excessive delay, according to the commenting parties, renders the complaint process ineffective as a tool to enforce the Communications Act and the Commission's rules, in particular the provisions of the 1996 Act designed to promote entry into the local telecommunications marketplace.<sup>194</sup>

87. To remedy the perceived barriers of the Commission's existing formal complaint process, commenting parties advocate that the Commission adopt a streamlined,

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<sup>190</sup> *Market Entry Barriers Notice of Inquiry*, 11 FCC Rcd at 6299-6300.

<sup>191</sup> *See, e.g.*, America's Carriers Telecommunications Association Comments at 6 (formal complaints languish without action); Competitive Telecommunications Association Comments at 12-13 (complaint process is costly, unwieldy, and time-consuming); Small Business in Telecommunications Comments at 39-40 (comprehensive overhaul of complaint process is necessary); Telecommunications Resellers Association Comments at 28 (complaint process is cumbersome and costly); Voice-Tel Comments at 17 (complaint process is not structured to provide special support required by small telecommunications entities).

<sup>192</sup> *See* America's Carriers Telecommunications Association Comments at 6.

<sup>193</sup> *Id.* at 7 (alleging that as many as 55 complaints filed by resellers against AT&T have languished unresolved for years at the Commission).

<sup>194</sup> *See, e.g.*, America's Carriers Telecommunications Association Comments at 4, 9; Nevadacom comments at 5.

highly expedited complaint process for resolving carrier-to-carrier disputes.<sup>195</sup> For example, America's Carriers Telecommunication Association proposes a procedure for resolving disputes between small, new entrants and incumbent LECs whereby disputes would be resolved by three-person FCC staff "teams" with the goal of rendering a decision within 30 days from receipt of the initial complaint. In addition, the procedure proposed by America's Carriers Telecommunication Association would allow for expedited appeals to the full Commission.<sup>196</sup> Another party proposes that the Commission use injunctive-type procedures to respond to requests for interim emergency relief pending action on a formal complaint.<sup>197</sup>

88. We agree that effective enforcement of the Communications Act and existing Commission rules and policies is imperative if small businesses are to participate fully in the telecommunications marketplace. In recognition of this need, the Commission released a notice of proposed rulemaking that proposes procedures designed to expedite the resolution of formal complaints against common carriers.<sup>198</sup> As some parties recommend in this proceeding, the *Formal Complaint NPRM* sets forth proposed procedures, including legal and evidentiary standards, for requests for cease-and-desist orders and other forms of interim relief designed to expedite disposition of formal complaints and associated requests for relief.<sup>199</sup> Although the Commission proposals for reform of the formal complaint process make no distinctions based on the size of the carrier, the Commission anticipates that what has become an obstacle for small businesses will likely be eliminated as a consequence of revising and expediting the complaint process for all common carriers.<sup>200</sup> Moreover, we recognize that the proposed procedures, which would require greater diligence by both

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<sup>195</sup> See America's Carriers Telecommunications Association Comments at 9-13; Telecommunications Resellers Association comments at 30-31; Nevadacom Comments at 4.

<sup>196</sup> America's Carriers Telecommunications Association Comments at 9-13.

<sup>197</sup> Blue Sky Teleconferencing and SaMComm Comments at 2-4.

<sup>198</sup> See *Implementation of the Telecommunications Act of 1996: Amendment of Rules Governing Procedures To Be Followed When Formal Complaints Are Filed Against Common Carriers*, Notice of Proposed Rulemaking, CC Docket No. 96-238, FCC 96-460 (released Nov. 27, 1996) (*Formal Complaint NPRM*).

<sup>199</sup> *Id.* at ¶¶ 60-62.

<sup>200</sup> *Id.* at ¶ 21 & n.53 (stating that the proposed revisions to the formal complaint process are designed to expedite the process for all carriers and eliminate the real and perceived barriers cited in the Section 257 proceeding).

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complainants and defendants, could be burdensome to some parties and, in particular, small businesses that may need to proceed without the assistance of legal counsel. The Commission has therefore proposed to waive potentially burdensome format and content requirements upon a showing of financial hardship or other public interest showing.<sup>201</sup>

89. Further, in response to suggestions regarding staffing necessary to ensure effective enforcement of and compliance with the Communications Act and the Commission's rules and policies,<sup>202</sup> new staff has been added to both the formal and informal complaints branches of the Enforcement Division within the Common Carrier Bureau. A review of staffing in the Audits Branch of the Accounting and Audits Division in the Common Carrier Bureau is likewise being undertaken.

90. Finally, a "paperless environment" is being implemented to increase the efficiency of the informal complaint process. The Consumer Protection Branch handles approximately 30,000 consumer complaints and inquiries about common carrier issues every year. Historically, the process for handling informal complaints and inquiries has relied heavily on paper files to log all interactions with consumers and carriers. In a paperless environment, all such correspondence submitted to the Common Carrier Bureau in paper form will be optically scanned and posted to an imaging database for processing. Conversion to a paperless environment designed to capture and log information as it arrives at the Common Carrier Bureau will increase efficiency by, among other things: providing a means for the Bureau to identify on-line the status of pending informal complaints and inquiries; facilitating rapid storage and management of documents associated with a particular complaint or inquiry; and providing Commission staff with a virtually real-time means of obtaining statistical information about complaints and inquiries.

### 3. *Information Filing Burdens*

91. Several parties have recognized that with movement to a competitive telecommunications marketplace, day-to-day regulatory filings are unnecessary and may serve

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<sup>201</sup> *Id.* at ¶ 44.

<sup>202</sup> See United Church of Christ and Minority Media and Telecommunications Council Comments at 7 (Common Carrier Enforcement Division should employ sufficient staff to conduct field investigations and ensure compliance with FCC rules and policies).