

anti-competitive purposes.²⁰³ Another commenting party proposes relaxed tariff filing requirements for all but the largest carriers.²⁰⁴

92. As demonstrated by recent orders, the Commission is committed to eliminating or streamlining tariff filing and other reporting requirements applicable to entities providing common carrier services.²⁰⁵ In eliminating filing and reporting requirements, the Commission has been mindful to ensure that information regarding carriers and their services will be publicly available in order to protect consumers and to assist consumers and small businesses, in particular resellers, in comparing carriers' service offerings. For example, the Common Carrier Bureau's decision, pursuant to delegated authority, to eliminate thirteen reporting requirements was motivated in large part by the fact that the information provided in such reports is already publicly available in other reports filed by the carriers or else that the incentives for discrimination, which initially prompted the reporting requirements, no longer exist.²⁰⁶ The Commission believes that its actions taken with respect to reporting requirements will facilitate increased participation by entrepreneurs and small businesses in

²⁰³ See Independent Telephone & Telecommunications Alliance Comments at 7. See also United States Telephone Association Reply Comments at 7-8 (proposing that LECs with fewer than 2% of subscriber lines installed nationwide file simplified, historically based access tariffs).

²⁰⁴ See Telecommunications Resellers Association Comments at 16-19.

²⁰⁵ See *Revision of Filing Requirements*, Report and Order, 11 FCC Rcd 14110 (1996) (*Revision of Filing Requirements Order*). See also *Implementation of the Telecommunications Act of 1996: Reform of Filing Requirements and Carrier Classifications*, Order and Notice of Proposed Rulemaking, 11 FCC Rcd 11716, 11718 (1996) (amending the Commission's rules to specify that carriers may now file the Automated Reporting Management Information System (ARMIS) 43-0 quarterly report and the 43-06 semi-annual Service Quality report on an annual basis); FCC Public Notice, *Common Carrier Bureau Seeks Suggestions on Forbearance*, DA 96-798 (released May 17, 1996) (requesting suggestions on specific regulatory rules or requirements that meet the statutory standards for forbearance). The Commission also has eliminated tariff filing requirements for interstate, domestic, interexchange services offered by nondominant interexchange carriers. This detariffing order, however, has been stayed by the United States Court of Appeals for the D.C. Circuit. See *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order, CC Docket No. 96-61, FCC 96-424 (released Oct. 31, 1996), *stay granted sub nom., MCI Telecommunications Corp. v. FCC*, No. 96-1459 (D.C. Cir. Feb. 13, 1997).

²⁰⁶ See generally *Revision of Filing Requirements Order*, 11 FCC Rcd 14110.

the provision of telecommunications services, while preserving their ability to obtain sufficient information to make rational market entry decisions.

4. *Impact of Commission Proceedings on Small Telcos*

93. Several commenting parties express concern that the Commission has failed to consider the potential adverse impact that its proceedings may have on small or rural incumbent LECs by automatically assuming the dominance of rural incumbent LECs and thus avoiding analysis under the Regulatory Flexibility Act.²⁰⁷

94. The Commission continues to believe that incumbent LECs do not qualify as small businesses, as defined by the Small Business Administration, because they are dominant in their field of operation due to their current control of bottleneck facilities. Our assessment, however, may change in the future as local telecommunications markets become fully competitive. In the meantime, the Commission nevertheless has adopted the practice of including a discussion of the potential impact of Commission rules on small incumbent LECs.²⁰⁸ In addition, as suggested by at least one commenting party,²⁰⁹ the Commission has considered the impact on small carriers when revising the structural safeguards applicable to incumbent LECs as mandated by the 1996 Act.²¹⁰

²⁰⁷ See National Telephone Cooperative Association Comments at 8-12; Small Business Administration comments at 14-15; United States Telephone Association Reply Comments at 3. *But see* AT&T Reply Comments at 7-9 (incumbent LEC control of bottleneck facilities compels conclusion that they are dominant in their field of operation).

²⁰⁸ See, e.g., *Local Competition Order*, 11 FCC Rcd at 16145; *Implementation of the Infrastructure Sharing Provisions in the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 6634, Appendix C at ¶¶ 5-11 (released Feb. 7, 1997); *Revision of Filing Requirements Order*, 11 FCC Rcd at 14127, Appendix B.

²⁰⁹ See Independent Telephone & Telecommunications Alliance Comments at 6.

²¹⁰ See, e.g., *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 17539, 17662-17666 (1996) (considering small incumbent LECs within regulatory flexibility analysis); *Implementation of Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149, FCC 96-489, ¶¶ 102, 105 (released Dec. 24, 1996) (considering impact of regulation on small service

5. *Existing Universal Service Funding Mechanisms*

95. America's Carriers Telecommunications Association notes that the current method for accessing charges for the support of Universal Service and Lifeline Assistance penalizes small carriers for achieving success as measured by the number of presubscribed lines served.²¹¹ In other words, according to America's Carriers Telecommunications Association, the looming reality that any small interexchange carrier will have to shoulder a portion of the financial burden for universal service once it reaches a certain size operates to discourage such small carriers from expanding their existing interexchange operations or from providing interexchange service in the first place. America's Carriers Telecommunication Association proposes that the Commission amend part 69 of its regulations to fund Universal Service and Lifeline Assistance through a broad-based charge rather than through charges assessed upon a small segment of interexchange carriers.²¹²

96. In implementing the Joint Board's recommendations regarding reform of the mechanisms for preserving and advancing universal service, the Commission has already recognized the concern expressed by America's Carriers Telecommunication Association by adopting competitively neutral mechanisms for calculating universal service support.²¹³ Specifically, in the recently adopted *Universal Service Report and Order*, the Commission has required that any telecommunications carrier providing any interstate telecommunications service for a fee to the public (or to such classes of eligible users as to be effectively available to the public), and certain other providers of telecommunications, must contribute

providers).

²¹¹ American Carriers Telecommunications Association Comments at 15. Under the currently existing rules, Universal Service and Lifeline Assistance are funded through charges assessed monthly by the National Exchange Carrier Association, Inc. on interexchange carriers that (i) use local exchange switching facilities to provide interstate or foreign telecommunications services and (ii) have at least 0.05% of the total common lines presubscribed to interexchange carriers nationwide. See 47 C.F.R. §§ 69.116, 69.117, 69.603(d).

²¹² America's Carriers Telecommunications Association Comments at 15.

²¹³ See *Federal-State Joint Board on Universal Service*, Report and Order, FCC 97-157 (adopted May 7, 1997) (*Universal Service Report and Order*). See also *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, 91 (1996) (*Joint Board Universal Service Recommended Decision*).

to the funding of universal service.²¹⁴ The Commission also has determined that the contributions likewise must be determined in a competitively neutral manner based on end-user telecommunications revenues.²¹⁵ We are thus confident that the concerns raised by America's Carriers Telecommunication Association about the currently existing funding mechanisms for Universal Service and Lifeline Assistance have been and are being fully explored and resolved in the universal service proceeding.

97. In a related vein, some commenting parties suggest that the Commission streamline, or forbear from, its policy of requiring study area waiver petitions for companies seeking to acquire, and subsequently add, additional telephone exchanges to their existing study areas.²¹⁶ These parties claim that the procedure required for obtaining study area waivers serves as yet another hurdle for small telecommunications carriers venturing to expand service through the acquisition of exchanges.²¹⁷

98. In general, a carrier must apply to the Commission for a waiver of the frozen study area²¹⁸ if it desires to sell or purchase an exchange. In evaluating petitions seeking a

²¹⁴ *Universal Service Report and Order*, FCC 97-157.

²¹⁵ *Id.*

²¹⁶ See National Telephone Cooperative Association Comments at 4-6; United States Telephone Association Reply Comments at 4-5; Pederson Testimony at 1-2.

²¹⁷ National Cable Television Association Comments at 4-6.

²¹⁸ A study area is a geographical segment of a carrier's telephone operation, which in general corresponds to a carrier's entire service territory within a state. See 47 C.F.R. Part 36, Appendix. For jurisdictional separations purposes, the Commission froze all service area boundaries effective November 15, 1984. The Commission took such action primarily to ensure that carriers do not set up high cost exchanges within their existing service territories as separate study areas to maximize interstate cost allocations. See *U.S. West Communications, Inc. and Eagle Telecommunications, Inc.*, Memorandum Opinion and Order on Reconsideration, FCC 97-136 (released Apr. 18, 1997) (providing clarification of issues relating to application of one-percent guideline); *MTS and WATS Market Structure: Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, Decision and Order, 50 Fed. Reg. 939 (1985) (adopting with minor modifications the Joint Board's recommendations issued in *MTS and WATS Market Structure: Amendment of the Commission's Rules and Establishment of a Joint Board*, Recommended Decision and Order, 49 Fed. Reg. 48, 325 (1984)).

waiver of the rule freezing study areas, the Commission applies a three-prong test: (i) the change in the study area must not adversely affect the Universal Service Fund support program; (ii) the state commission having regulatory authority must not object to the change; and (iii) the public interest supports the change.²¹⁹ In evaluating whether a study area change would have an adverse impact on the distribution level of the Universal Service Fund, the Commission applies a "one-percent guideline" to study area waiver requests filed after January 5, 1995.²²⁰ Specifically, a study area waiver is unlikely to be granted if it would result in an annual aggregate shift in universal service assistance in an amount equal to or greater than one percent of the total Universal Service Fund, unless parties can demonstrate an extraordinary public interest benefit.²²¹

99. As described in the preceding paragraph, the 1984 freeze of study area boundaries is tied directly to the rules and procedures for jurisdictional separations and Universal Service support. We just completed the first step in the process of effecting sweeping reform of the mechanisms for preserving and advancing universal service. We also will soon commence a proceeding to review our jurisdictional separations rules. Accordingly, we believe that it is premature to consider United States Telephone Association's streamlining proposal. Nevertheless, we shall carefully consider and evaluate the merits of any such proposals in future proceedings.

6. *Impartial Administration of NXXs*

100. Voice-Tel, which is a franchise under which individually owned and operated small business communications consultants provide voice messaging services, describes difficulties encountered as the result of allegedly improper administration of central office codes (i.e., NXXs) by incumbent LECs.²²² Voice-Tel states that it has encountered multiple

²¹⁹ See *U.S. West Communications, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1772 (1995) (*U.S. West Order*).

²²⁰ See generally *U.S. West Order*.

²²¹ *Id.* at 1774.

²²² Voice-Tel Comments at 7-9. See also Working Assets Funding Service Comments at 8 (numbering plans must be administered fairly and efficiently). Similarly, other commenting parties claim that many incumbent LECs offering subscriber list information impose unreasonable terms and refuse to offer updates. See Association of Directory Publishers Comments at 7-8; America's Carriers Telecommunications Association Comments at 14. But see Yellow Pages Publishers Association Comments at 3 (examination of

instances of LEC service problems including, for example, LEC failure to update translation tables to assignment of numbers reserved for the LEC's own internal use.²²³ As a consequence, Voice-Tel's voice-messaging customers often become disgruntled and blame Voice-Tel because they are unable to access their mailboxes.²²⁴

101. The Commission agrees that access to numbering resources is essential to all entities, not just small businesses, desiring to participate in the telecommunications industry. The concerns raised over numbering plan administration have been, or are in the process of being, addressed by the Commission. For example, the newly added section 251(e)(1) of the Communications Act requires the Commission to create or designate one or more impartial entities to administer numbering and to make such numbers available on an equitable basis.²²⁵ Even prior to the passage of the 1996 Act, the Commission announced the establishment of the North American Numbering Council (NANC) and directed that central office code administration be transferred from the LECs to a neutral entity selected to serve as the North American Numbering Plan Administrator (NANP Administrator).²²⁶ To ensure efficient and

provision of subscriber list information under Section 257 is redundant); Pacific Bell Reply Comments at 5 (issues under consideration in other proceedings should not be considered in Section 257 proceeding). Regarding the provision of subscriber list information, the Commission intends to consider the impact on small businesses when implementing section 222(e) of the Communications Act, as amended. *See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Notice of Proposed Rulemaking, 11 FCC Rcd 12513 (1996). We anticipate adopting an order implementing section 222(e) sometime during the first half of 1997.

²²³ *Id.* at 7-9.

²²⁴ *Id.*

²²⁵ *See* 47 U.S.C. § 251(e)(1).

²²⁶ *See Numbering Plan Order*, 11 FCC Rcd at 2608. Prior to this transfer, central office code assignment has been, and will continue to be, handled by the following incumbent LECs: Alascom, Ameritech, Bell Atlantic, BellSouth, Cincinnati Bell, GTE, NYNEX, Pacific Bell, Southern New England Telephone, SBC, and U.S. West. *Id.* at 2594 & n.20.

impartial number administration, the Commission has required that the new NANP Administrator not be aligned with any particular telecommunications industry segment.²²⁷

102. While the new NANP Administrator has not yet been selected, the process of selection is progressing. NANC, through various working groups, is developing a plan for the transfer of central office code administration. NANC anticipates that it will be recommending a NANP Administrator meeting the criteria of Section 251(e)(1) by May 15, 1997, and the shifting of the numbering administration functions of the current NANP Administrator to the new impartial NANP Administrator is scheduled to occur three months after the Commission acts on that recommendation, with the shift of CO code administration to occur eighteen months after current NANP Administration functions have been transferred.

103. In the interim period prior to the transfer, Bellcore and the incumbent LECs will continue their existing numbering administration functions. The Commission, however, has declared that any attempts to delay or deny central office code assignments, or to charge different "code opening" fees for different providers of telecommunications services, would violate sections 251(b)(3) and 202(a) of the Telecommunications Act, as well as the Commission's numbering guidelines.²²⁸ The Commission remains committed to closely monitoring actions by incumbent LECs as central office code administrators until those functions are transferred to the new NANP Administrator.²²⁹

104. In addition, the Commission has specifically declined to allow states to serve as central office code administrators.²³⁰ Although states are authorized to handle matters involving implementation of new area codes, the Commission has expressly prohibited states from implementing service or technology-specific area code overlays.²³¹ Moreover, to ensure that small businesses do not suffer competitive disadvantages, we have mandated that state commissions choosing to implement an all-services area code overlay must include: (i) mandatory 10-digit dialing by all customers between and within area codes in the area covered by the overlay; and (ii) the availability of at least one NXX in the existing area code

²²⁷ See *id.* at 2590, 2613.

²²⁸ See *Second Local Competition Order*, 11 FCC Rcd at 19392.

²²⁹ *Id.* at ¶ 335.

²³⁰ *Id.* at ¶ 315.

²³¹ *Id.* at ¶¶ 285, 319-322.

to every telecommunications carrier authorized to provide telephone exchange service, exchange access, or paging service in the affected area code at least 90 days before introduction of the overlay.²³²

105. The Commission believes that these actions adequately address any entry barriers that small businesses may have previously faced due to incumbent LEC control of central office code assignment. In addition, as further evidence of an ongoing commitment to eliminating obstacles faced by small telecommunications businesses, the Commission has recently launched a home page for the NANC to facilitate open participation in, and wide-spread dissemination of information regarding, numbering plan administration.²³³

7. *Preemption of Onerous State Requirements*

106. Several commenting parties cite perceived onerous state regulatory requirements as one of the major obstacles to small business entry into, and expanded participation in, common carrier services.²³⁴ For example, National Cable Television Association and Small Cable Business Association request that the Commission provide strong leadership in preempting municipal attempts to impose burdensome and costly requirements and to extract concessions and revenues from cable operators seeking to expand into telecommunications under the guise of so-called "telecommunications permits." These commenting parties claim that the cost of challenging the municipal requirements or meeting the demands of the municipalities will hinder significantly attempts by small cable operators to diversify into telecommunications services.²³⁵ In addition, these same commenting parties

²³² See *id.* at ¶ 286.

²³³ The URL address for the NANC home page is http://www.fcc.gov/bureaus/common_carrier/www/NANC.

²³⁴ See, e.g., America's Carriers Telecommunications Association Comments at 15 (identifying overly demanding anti-slamming regulations, specific billing requirements, unreasonable financial burdens); OpTel Reply Comments at 1 (identifying overly restrictive local requirements for the provision of telecommunications services by cable systems); Small Cable Business Association Reply Comments at 6 (identifying overly restrictive requirements imposed via "telecommunications permits" for entry by small cable businesses).

²³⁵ See National Cable Television Association Comments at 4-12; Small Cable Business Association Reply Comments at 6.

request that the Commission preempt municipal regulation of telecommunications services that extends beyond legitimate and routine right-of-way management.²³⁶

107. The Commission stands ready to enforce the general prohibition set forth in section 253 of the Communications Act, as amended, as reflected in the decisions issued to date by the Commission preempting state and local legal requirements that violate section 253.²³⁷ Specifically, section 253(a) prohibits any state or local requirement that prohibits or has the effect of prohibiting any entity from providing any interstate or intrastate telecommunications service.²³⁸ Indeed, the policy objectives set forth in the 1996 Telecommunications Act, in particular section 257(b), make clear that the Commission must endeavor to promote a marketplace in which decisions to diversify into various segments of the telecommunications marketplace are driven solely by sound business judgment, not regulatory constraints. As required by statute, however, the Commission will consider any preemption request pursuant to section 253 on a case-by-case basis, after notice and opportunity for comment, depending on the facts presented.²³⁹

108. For example, in both the *Classic Telephone Order* and the *Connecticut Order*, the Commission held that the state or local legal requirements at issue prohibited or had the effect of prohibiting any entity from providing interstate or intrastate telecommunications services. The Commission concluded that absolute prohibitions on the provision of service fall squarely within the scope of actions Congress intended to proscribe under Section 253(a). Moreover, the Commission found that the legal requirements were not otherwise permitted pursuant to Sections 253(b) or 253(c), which preserve certain authority of state and local governments to regulate universal service, protect consumers, manage the public rights-of-

²³⁶ See National Cable Television Association Comments at 10; Small Cable Business Association Reply Comments at 6. See also OpTel Reply Comments at 1.

²³⁷ See *Classic Telephone, Inc. Petition for Preemption Declaratory Ruling and Injunctive Relief*, Memorandum Opinion and Order, 11 FCC Rcd 13082 (1996), *petition for review docketed sub nom. City of Bogue, Kansas and City of Hill City, Kansas v. FCC*, No. 96-1432 (D.C. Cir. filed Nov. 22, 1996), *petition for review held in abeyance pending further Commission action*, No. 96-1432 (D.C. Cir. filed Jan. 14, 1997) (*Classic Telephone Order*); *New England Public Communications Council Petition for Preemption Pursuant to Section 253*, Memorandum Opinion and Order, 11 FCC Rcd 19713 (1996) (*Connecticut Order*).

²³⁸ 47 U.S.C. § 253(a).

²³⁹ See 47 U.S.C. § 253(d).

way, and impose compensation requirements for the use of the public rights-of-way.²⁴⁰ In both orders, the Commission preempted the state or local legal requirement at issue and required the state or local authority to act in a manner consistent with Sections 253 and the opinions expressed in the orders.

B. Wireless Services

109. Some commenters argue that many market entry barriers in the wireless telecommunications services relate to Commission rules, policies and practices that create disincentives for small businesses to participate in the wireless telecommunications services. These include: the Commission's spectrum assignment decisions and its construction requirements, application processing, and enforcement practices. As was the case with common carrier services, other obstacles identified by commenters relate to the control of vital inputs by incumbent facilities-based carriers, including the reluctance of facilities-based carriers to negotiate resale agreements. Many commenters also express views concerning our competitive bidding incentives for small businesses in spectrum-based wireless services. We address all of these issues below.

1. Spectrum Assignment Policies

110. Commenters indicate that our spectrum assignment decisions, and specifically the assignment of spectrum for large geographic service areas and in large spectrum blocks, create a barrier to entry for small businesses. Small Business in Telecommunications explains that wide-area geographic systems are more capital intensive to construct and operate than other types of systems. For example, Small Business in Telecommunications notes that such systems require more capital in order to construct numerous sites, employ a larger sales force, and build a larger distribution network, often including several telephone lines to route billing traffic. Moreover, Small Business in Telecommunications argues that larger systems lead to greater operational costs due to the competition that results from the presence of more carriers in the larger geographic area. Small Business in Telecommunications claims these larger systems may reduce price per unit, but increase the need to engage in expensive advertising and promotion. Thus, Small Business in Telecommunications contends that these costs are often too expensive for a small business and, thus, create a substantial market entry barrier for small businesses.²⁴¹

²⁴⁰ See 47 U.S.C. § 253(b)-(c).

²⁴¹ Small Business in Telecommunications Comments at 24.

111. American Mobile Telecommunications Association generally agrees with the contentions of Small Business in Telecommunications. It argues that entry barriers for small businesses are even higher in circumstances in which the Commission has decided to convert from site-specific to geographic area licensing for services in which a substantial number of small, incumbent licensees are already operating.²⁴² In these circumstances, smaller incumbents often find their license areas encompassed within the larger geographic service area. Despite our provisions allowing these incumbents to participate in the auction for a license covering a larger, geographic area, the commenters argue that small business incumbents are often left with limited expansion opportunities because they lack the resources to bid on more frequencies or territory.²⁴³ As an example, American Mobile Telecommunications Association states that many small businesses dropped out of the 900 MHz SMR auction due to the high costs of acquiring a MTA license. American Mobile Telecommunications Association explains, "[w]hen the entry costs exceed what the prospective participant can justify economically, the entity must forego participating."²⁴⁴ Small Business in Telecommunications also raises concerns that the Commission's allocation

²⁴² American Mobile Telecommunications Association Comments at 10. The Commission has adopted or is considering wide-area geographic licensing in encumbered services in the following proceedings: *Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220-222 MHz Band by the Private Land Mobile Services*, Third Report and Order and Fifth Notice of Proposed Rulemaking, PR Docket No. 89-552, FCC 97-57 (released Mar. 12, 1997) (*220 MHz Third Report and Order*); *Amendment of the Commission's Rules Regarding Multiple Address Systems*, Notice of Proposed Rulemaking, WT Docket No. 97-81, FCC 97-58 (released Feb. 27, 1997) (*MAS NPRM*); *Paging Second Report and Order*, 12 FCC Rcd 2732; *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, First Report and Order, Eighth Report and Order and Second Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1996) (*800 MHz SMR Order and NPRM*); *Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool*, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639 (1996) (*900 MHz SMR Order*); *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service*, Report and Order, 10 FCC Rcd 9589 (1995) (*MDS Report and Order*).

²⁴³ Small Business in Telecommunications Comments at 26-27; American Mobile Telecommunications Association Comments at 10-11.

²⁴⁴ American Mobile Telecommunications Association Comments at 11.

of spectrum in larger blocks in some services reflects a bias in favor of larger commercial carriers, while ignoring the needs of small businesses operating site specific systems.²⁴⁵

112. As we have discussed in the service-specific rulemakings for those services where we have decided to or proposed to adopt geographic area licensing, we believe that using predefined geographic areas better serves the public interest than other types of licensing schemes, such as site-specific licensing.²⁴⁶ Under a geographic licensing approach, licensees can build and modify their systems in response to market demands without having to come to the Commission for additional authorizations. Thus, such an approach speeds the licensing process and reduces the need for multiple filings to serve a single geographic area (which are required under a site-specific licensing approach). In addition, geographic licensing is administratively more efficient and less burdensome because licensees are required to file fewer license applications and, thus, the Commission has fewer applications to process.

113. With respect to the impact on incumbent licensees of geographic area licensing, we note that in the context of the service-specific rulemakings, the Commission has either proposed or adopted provisions designed to protect incumbent operations from harmful interference as a result of future operations under the new licensing approach.²⁴⁷ We believe that this approach represents a balancing of competing interests, including those of incumbents, new entrants, small businesses, and large businesses.²⁴⁸

114. While we are mindful of the challenges that small businesses may face in their efforts to acquire geographic area licenses, we have taken steps to alleviate the perceived difficulties. First, our decisions defining the service areas and spectrum blocks by which licenses for wireless services are to be assigned have taken into account the needs of small businesses. For example, in some services, we have adopted band plans that included licenses for small geographic areas and spectrum blocks; thus, promoting economic opportunity for a wide variety of applicants, including small businesses, rural telephone

²⁴⁵ Small Business in Telecommunications Comments at 12.

²⁴⁶ *800 MHz SMR Order and NPRM*, 11 FCC Rcd at 1503-1515; *900 MHz SMR Order*, 11 FCC Rcd at 2653-56.

²⁴⁷ *800 MHz SMR*, 11 FCC Rcd at 1515-1517; *900 MHz SMR Order*, 11 FCC Rcd at 2653-56.

²⁴⁸ See, e.g., *800 MHz SMR Order and NPRM*, 11 FCC Rcd at 1503-1515.

companies and businesses owned by minorities or women.²⁴⁹ Moreover, in many of our auctionable services, we have adopted special provisions, such as bidding credits and installment payment plans, to assist small businesses, minority and women-owned businesses and rural telephone companies in acquiring spectrum assigned in geographic service areas and spectrum blocks.²⁵⁰

115. Finally, we believe, and many commenters in this proceeding agree,²⁵¹ that rules and policies that permit geographic partitioning²⁵² and spectrum disaggregation²⁵³ may also address the concerns raised regarding geographic area licensing. We recently adopted rules permitting all licensees in the broadband PCS service to partition their license areas or disaggregate their spectrum blocks to entities that meet certain minimum eligibility requirements.²⁵⁴ We note that this is a relatively new policy, and will be subject to review and refinement in specific proceedings if in practice it does not result in the intended benefits. We hope that such provisions will help to: (1) remove potential impediments to

²⁴⁹ For example, in broadband PCS, the Commission adopted a band plan consisting of two 30 MHz spectrum blocks licensed by Major Trading Areas (MTAs) and four smaller blocks each consisting of 10 MHz of spectrum licensed by Basic Trading Areas (BTAs), a smaller geographic service area. 47 C.F.R. § 24.229. *800 MHz SMR*, 11 FCC Rcd at 1479-1480. We also note that the Commission has increasingly used EAs, which are smaller than MTAs. See, e.g., *800 MHz SMR Order and NPRM*, 11 FCC Rcd at 1484-1485.

²⁵⁰ See, e.g., *220 MHz Third Report and Order*, FCC 97-57, at ¶¶ 296, 301.

²⁵¹ See, e.g., American Mobile Telecommunications Association Comments at 11; Small Business in Telecommunications Comments at 22; Center for Training and Careers Comments, at 2; United States Hispanic Chamber of Commerce Comments at 1-2; National Wireless Resellers Association Comments at iii, 13; Rural Telecommunications Group Comments at 5, 10, 20-22.

²⁵² Geographic partitioning is the assignment of geographic portions of a license along geopolitical or other boundaries (e.g., county lines).

²⁵³ Spectrum disaggregation is the assignment of discrete portions or "blocks" of a spectrum license from the existing licensee to a geographic licensee or qualifying entity.

²⁵⁴ *Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 96-148 and GN Docket No. 93-113, FCC 96-474 (released Dec. 20, 1996) (*CMRS Partitioning and Disaggregation Order and FNPRM*).

entry thereby increasing competition in the PCS marketplace; (2) encourage parties to use spectrum more efficiently; and (3) speed service to unserved and underserved areas. Parties that are unsuccessful bidders or that did not participate in the PCS auctions will be able to use partitioning and disaggregation as a method to acquire PCS licenses after the auctions.²⁵⁵ Smaller or newly-formed entities, for example, may enter the PCS market for the first time through partitioning and disaggregation.²⁵⁶

116. In addition, we currently permit or are considering similar partitioning and disaggregation rules in services other than broadband PCS, including the Multipoint Distribution Service (MDS),²⁵⁷ 800 MHz SMR,²⁵⁸ paging,²⁵⁹ 220 MHz,²⁶⁰ 38 GHz fixed point-to-point microwave,²⁶¹ Wireless Communications Service (WCS),²⁶² Local Multipoint

²⁵⁵ See *id.* at ¶ 48.

²⁵⁶ *Id.* at ¶ 13.

²⁵⁷ *MDS Report and Order*, 10 FCC Rcd at 9614-15 (allowing partitioning for all BTA licenses).

²⁵⁸ *800 MHz SMR Order and NPRM*, 11 FCC Rcd at 1576, 1578-1580 (permitting partitioning for rural telephone companies and requesting comment on partitioning and disaggregation for EA licensees in the upper 10 MHz block).

²⁵⁹ *Paging Second Report and Order*, 12 FCC Rcd at 2821-2826 (permitting geographic partitioning for paging licensees and seeking comment on disaggregation for all licensees).

²⁶⁰ *220 MHz Third Report and Order*, FCC 97-57 (permitting partitioning for all Phase II 220 MHz licensees and seeking comment on partitioning for Phase I licensees and disaggregation for all licensees).

²⁶¹ *Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, Notice of Proposed Rulemaking and Order, 11 FCC Rcd 4930, 4972-73, ¶¶ 89-90 (1995) (*38 GHz NPRM*) (proposing partitioning for rural telephone companies and seeking comment on whether partitioning and disaggregation should be available to all licensees).

²⁶² *WCS Report and Order*, FCC 97-50 (permitting partitioning and disaggregation for all WCS licensees).

Distribution Service (LMDS),²⁶³ cellular,²⁶⁴ and General Wireless Communications Services (GWCS).²⁶⁵ We also are exploring whether to allow partitioning and disaggregation for other Commercial Mobile Radio Services.²⁶⁶ We believe these efforts may enhance the ability of small businesses to compete in the wireless telecommunications industry.

2. *Spectrum Warehousing and Construction Requirements*

117. Small Business in Telecommunications also argues that our policies relating to construction requirements encourage spectrum warehousing.²⁶⁷ As a consequence, it believes those policies create a barrier to market entry for small businesses due to the unavailability of sufficient amounts of spectrum for their use.

118. In particular, Small Business in Telecommunications points to our policy of granting extended implementation authority in the Specialized Mobile Radio (SMR) service to large companies which, it believes, encourages spectrum warehousing.²⁶⁸ Moreover, Small Business in Telecommunications claims that the Commission has engaged in disparate treatment in enforcing construction requirements for large companies and small companies. Specifically, it claims that the Commission apparently has not cancelled any extended implementation authorizations for failure to construct and has not conducted an inventory to determine whether licensed facilities subject to extended implementation authority have been constructed. It believes small businesses that may be subject to much shorter construction

²⁶³ *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band to Establish Rules and Policies for Local Multipoint Distribution Service and Fixed Satellite Services*, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking, CC Docket No. 92-297, FCC 97-82 (released Mar. 13, 1997) (*LMDS Order and NPRM*) (permitting geographic partitioning and spectrum disaggregation for LMDS licensees).

²⁶⁴ *CMRS Partitioning and Disaggregation Order and FNPRM*, FCC 96-474, at ¶ 95.

²⁶⁵ *Id.* at ¶¶ 96-97.

²⁶⁶ *See id.* at ¶ 94.

²⁶⁷ Small Business in Telecommunications Comments at 28-34.

²⁶⁸ *Id.* at 28.

period requirements are subjected to relatively frequent inquiries regarding their efforts to construct their systems within the applicable construction period along with being the target of finder's preference requests.²⁶⁹ Small Business in Telecommunications further asserts that the Commission's licensing policies for companies subject to extended implementation authority have led to mass filings of applications that were not contemplated in the originally granted application. Small Business in Telecommunications argues that this practice has allowed large companies to block competing entities from obtaining additional spectrum.

119. Pursuant to either a waiver of our construction and loading rules²⁷⁰ or Section 90.629 of the Commission's rules, some existing SMR licensees have been granted extended implementation periods of up to five years to construct their systems.²⁷¹ Extended implementation authority for SMRs was initially established to facilitate construction of wide-area systems by all licensees, both large and small.²⁷² We have previously stated that extended implementation authority may raise concerns about spectrum warehousing. As a result and partially in response to complaints from several small businesses that this type of extended construction period impeded their ability to acquire much needed spectrum, in 1995, we decided not to grant new extended implementation authority for SMRs in the 800

²⁶⁹ *Id.* at 31.

²⁷⁰ See, e.g., *Fleet Call, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 1533, *recon. dismissed*, 6 FCC Rcd 6989 (1991); Letter from Ralph A. Haller, Chief, Private Radio Bureau to David Weisman, DA 92-1734, 8 FCC Rcd 143 (1993). Loading requirements govern the number of mobile stations that must be placed on each channel of a trunked system. 47 C.F.R. § 90.631(a). Under Section 90.631(c) of our rules, an SMR system seeking additional channels is required to demonstrate that it has achieved a loading level of 70 mobiles per channel on its existing system.

²⁷¹ 47 C.F.R. § 90.629. Section 90.629 of the Commission's rules provides that any such authority "is conditioned upon the licensee constructing and placing its system in operation within the authorized implementation period and in accordance with an approved implementation plan of up to five years." SMR licensees with extended implementation authority are required to submit annual certifications of compliance with their yearly station construction commitments. Moreover, if the Commission concludes, at any time, that the licensee has failed to meet such construction commitments, it may terminate extended implementation authority and give the licensee six months from the termination date to complete construction of the system.

²⁷² See *800 MHz SMR Order and NPRM*, 11 FCC Rcd at 1524.

MHz band.²⁷³ In eliminating extended implementation authority in the 800 MHz SMR service, we noted that the geographic area licensing plan we adopted for the majority of the spectrum allocated to the service rendered extended implementation authority no longer necessary.²⁷⁴ In addition, 800 MHz SMR licensees that were operating under extended implementation authority were required to demonstrate that continuing to allow them extended time to construct their facilities furthered the public interest.²⁷⁵ These re-justifications are currently pending before the Wireless Telecommunications Bureau.

120. In addition, we note that in recent years, we have adopted longer construction periods which benefit all licensees, both large and small.²⁷⁶ We also have adopted and made proposals to adopt flexible construction requirements in other wireless services.²⁷⁷ With regard to the concerns raised regarding spectrum warehousing, we intend to initiate a proceeding relating to construction requirements generally. We anticipate that this proceeding will examine the relationship between longer and more flexible construction requirements and spectrum warehousing.

121. As noted above, Small Business in Telecommunications also suggests that the Commission's enforcement of its construction requirements has resulted in disparate treatment between large and small companies. It argues that while the Commission often grants extensions of time to large companies to construct their larger systems, the

²⁷³ *Id.* Although extended implementation authority was eliminated in the 800 MHz SMR commercial context, it remains an option for private land mobile radio services.

²⁷⁴ *Id.*

²⁷⁵ *Id.* at 1525.

²⁷⁶ See, e.g., *Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services*, Third Report and Order, 9 FCC Rcd 7988, 8074-8077 (1994); *800 MHz SMR*, 11 FCC Rcd at 1520-1521. Recently we adopted construction requirements for EA and Regional 220 MHz licensees implementing land mobile or paging systems to construct based stations to provide coverage to at least one-third of the population of their EA or Region within five years of initial authorization and at least two-third of the population of their EA or Region within 10 years of initial authorization. Alternatively, these licensees may meet a "substantial service" construction requirement. *220 MHz Third Report and Order*, FCC 97-57, at ¶ 163.

²⁷⁷ See, e.g., *MAS NPRM*, FCC 95-58, at ¶¶ 36-39; *WCS Report and Order*, FCC 97-50, at ¶¶ 111-115; *LMDS Order and NPRM*, FCC 97-82, at ¶¶ 266-267.

Commission rarely grants extension requests to small companies and uses its finder's preference program to recover unconstructed spectrum.²⁷⁸ It is unclear whether this argument is an extension of Small Business in Telecommunications' criticism of the extended implementation authority rules or whether Small Business in Telecommunications' claim is that the Commission has treated similarly situated companies differently in terms of considering requests for extensions of time to construct. Notably, Small Business in Telecommunications does not provide an example in which the Commission has granted an extension of time to construct to a large company while denying a similar request from a similarly situated small company. Moreover, it is not clear if Small Business in Telecommunications is suggesting that our finder's preference program somehow contributes to the problem of spectrum warehousing or itself creates a market entry barrier.²⁷⁹ Nonetheless, we note that in a separate proceeding, we have sought comment on whether our finder's preference program should be eliminated.²⁸⁰

3. *Application Processing and Filing*

122. Small Business in Telecommunications also argues that some methods used by the Commission to process applications result in entry barriers for small businesses. For example, Small Business in Telecommunications claims that the Commission has failed to adequately oversee its frequency coordination process. It alleges that such failure has resulted in biased processing of applications as a result of the "extreme influence" large companies exert on frequency coordinators.²⁸¹ Small Business in Telecommunications also claims that the failure of these coordinating entities to adequately process all applications equally has resulted in large numbers of applications being filed with the Commission through application mills. It states that this problem will be exacerbated if the Commission decides to privatize further the coordination process. Small Business in Telecommunications

²⁷⁸ Small Business in Telecommunications Comments at 32.

²⁷⁹ We already have eliminated finder's preference in certain services. See, e.g., *800 MHz SMR Order and NPRM*, 11 FCC Rcd at 1501; *900 MHz SMR Order*, 11 FCC Rcd at 2658-59.

²⁸⁰ See *Amendment of Part 90 Concerning the Commission's Finder's Preference Rules*, Notice of Proposed Rulemaking, 11 FCC Rcd 13016 (1996).

²⁸¹ Small Business in Telecommunications Comments at 49-50.

argues that such privatization will increase costs associated with filing applications for frequencies requiring frequency coordination.²⁸²

123. We believe our recent *Refarming* decision²⁸³ addresses some of the concerns raised by Small Business in Telecommunications. Specifically, we recently adopted rules that will inject competition in the frequency coordination process.²⁸⁴ Previously, frequency coordinators had sole control over the frequencies within their pool. We expect that such competition will reduce prices, improve coordination services, and provide more flexibility to private land mobile radio licensees.²⁸⁵

124. Small Business in Telecommunications also argues that the Commission "needs to be more considerate of the needs of small business in its plans and provisions for electronic filing of applications and access to information."²⁸⁶ For example, it argues that the types of software programs used by the Wireless Telecommunications Bureau for electronic filing or reviewing applications on-line do not adequately take into account the needs of small businesses because the expense of equipment needed to perform such tasks is often unaffordable by small businesses. To better meet the needs of small businesses, Small Business in Telecommunications suggests that the Commission design its programs so that they can be used on less sophisticated machines, and, in particular, can be used to prepare applications on machines which are not interconnected.²⁸⁷

125. We agree that our processes for electronic filing and viewing should be readily accessible by small businesses. We are taking steps to alleviate difficulties experienced by small businesses and others in accessing application and other licensing information on-line. For example, the Wireless Telecommunications Bureau is currently evaluating software that would make it easier for licensees to review and download only that information they need

²⁸² *Id.* at 51-53.

²⁸³ *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them*, Second Report and Order, PR Docket No. 92-235, FCC 97-61 (released Mar. 12, 1997) (*Refarming Second Report and Order*).

²⁸⁴ *Id.* at ¶ 40.

²⁸⁵ *Id.*

²⁸⁶ Small Business in Telecommunications Comments at 54.

²⁸⁷ *Id.* at 54-56.

from public notices listing commercial services applications and licensing information. This would reduce the amount of time and costs spent by small businesses to research the status of commercial applications.

4. *Enforcement Policies*

126. Small Business in Telecommunications also argues that the Commission does not allocate sufficient resources to the enforcement of its rules. It claims that complaints filed by its members remain pending for long periods, that alleged violations of construction requirements by large companies go unaddressed and that the Commission staff has, at times, urged settlement of complaints despite apparent rule violations. Moreover, it asserts that many enforcement decisions rendered by the Commission do not comport with law. All of this, Small Business in Telecommunications argues, creates regulatory uncertainty which in turn results in unnecessary and unreasonable risk for small business operators.²⁸⁸

127. We agree that speedy enforcement of the Communications Act and our rules is imperative if small businesses are to participate effectively in the telecommunications industry. Indeed, we have recently taken a number of steps to improve our enforcement program. For example, we recently issued a Notice of Proposed Rulemaking proposing changes to our formal complaint procedures for common carriers in an effort to improve the speed and effectiveness of our formal complaint process.²⁸⁹ The rules ultimately adopted would apply to commercial mobile radio service licensees and other wireless providers that are regulated as common carriers.

128. In addition, the Wireless Telecommunications Bureau's Enforcement Division has streamlined its informal complaint processes. While the time it takes to resolve such a complaint varies depending on the complexity of the issues involved, on average, the Bureau resolves such complaints within ninety days of its receipt of a complaint. Moreover, the streamlined procedures have resulted in faster resolution of written informal complaints. For example, the Enforcement Division's informal complaint resolution rate for the six month period from June 1996 to November 1996 was 87 informal complaints per month. This is an increase from its record of 45 informal complaints per month during fiscal year 1995. This represents a 93% resolution rate increase.

²⁸⁸ Small Business in Telecommunications Comments at 39-53; Small Business in Telecommunications Reply Comments at 6-10.

²⁸⁹ See *supra* ¶ 88 & n.198 (discussion of *Formal Complaint NPRM*).

129. In an effort to reduce the filing of unfounded complaints against carriers, the Enforcement Division has taken steps to assist consumers in dealing with wireless carriers. For example, the Division has published a consumer information bulletin describing how to file a complaint with the FCC. Because the bulletin urges the consumer to try to resolve the complaint with the company before filing with the Commission, the benefit to the carriers involved is a reduction in the number of frivolous complaints filed. Such efforts are beneficial to carriers, both large and small, in that our experience has shown that informal complaints often are filed by consumers who are unfamiliar with industry practices and applicable FCC rules. In addition, the Division has developed fact sheets addressing a range of topics that provide the consumer with needed information about industry practices and applicable FCC rules.

130. The Enforcement Division also has engaged in a number of programs to assist small businesses and consumers. For example, the Division has published a consumer alert to potential investors, such as small business operators and consumers about how to avoid wireless telecommunications investment scams. These scams often involve situations where promoters attempt to entice unwitting small businesses and consumers into making large investments in emerging technology licenses. Because such scams misrepresent the risk or obligations associated with FCC licenses, such fraudulent activities often result in the loss of entire investments by the consumer or small business. In an effort to provide information on this subject and to decrease its occurrence, representatives of the Enforcement Division have met with various consumer groups concerning licensing fraud issues. Moreover, the Division continues to provide information about consumer complaints to the National Fraud Information Center, a private organization maintaining a database of fraud information for use by federal and state enforcement agencies. In addition, the Division provides information on licensing fraud issues to consumer groups such as the American Association of Retired Persons and the Consumer Federation of America for distribution to their membership. The Enforcement Division also has provided technical support for the Federal Trade Commission and the Securities and Exchange Commission regarding wireless investment scams and has worked to support several investigations conducted by them on this front. Representatives of the FCC staff have prepared declarations and appeared as witnesses in fraud cases brought by the FTC and SEC.

5. *Outreach Efforts*

131. Some commenters raise the issue of outreach efforts to small businesses. For example, Voice-Tel suggests that the Commission establish a central office to address issues

of concern to small businesses.²⁹⁰ As discussed above, the Office of Communications Business Opportunities was established to address issues relating to small communications businesses. Moreover, the Wireless Telecommunications Bureau has designated a small business contact²⁹¹ person to coordinate issues of particular concern to small businesses in the wireless telecommunications industry. In addition, the Wireless Telecommunications Bureau (WTB) has sponsored a number of fora to discuss upcoming auctions and wireless telecommunications services. For example, WTB held an industry forum on February 28, 1997 on the Wireless Communications Service.²⁹² Attendance at these fora was free of charge. In addition, prior to the start of service-specific FCC auctions, WTB routinely holds seminars for bidders to provide additional information about auction procedures. After each auction, WTB also conducts a customer survey of auction participants regarding their experiences in the auction and the auction process generally.

132. Members of our staff also spoke at the "Auctions '97 Conference" which was held on February 19, 1997. This conference, co-sponsored by the Wireless Telecommunications Bureau and OCBO, addressed small business opportunities in the wireless industry and included discussions on auctions planned for 1997, opportunities in contracting, resale and unlicensed devices, and financing issues. The free conference was attended by approximately 400 people. OCBO is preparing a summary of the conference highlights which will be posted on the Commission's Web site and mailed to over 2,200 small businesses listed on OCBO's mailing list. Finally, members of the Commission and its staff have spoken at numerous industry, trade association, and public interest organization conferences on opportunities in wireless services licensed by the Commission, and will continue to do so.²⁹³

6. *Interconnection and Resale*

133. In the *Market Entry Barriers Notice of Inquiry*, we expressly asked for comment on the obstacles small businesses face in their abilities to resell, interconnect, or

²⁹⁰ See Voice-Tel Comments at 17-18.

²⁹¹ D'wana Speight, Chief Counsel to the Chief of the Wireless Telecommunications Bureau, serves as the Bureau's designated contact person on small business concerns.

²⁹² See FCC Public Notice, *FCC Sponsors Forum on Wireless Communications Service Event To Be Held February 28, 1997 at FCC Auction Site*, DA 97-309 (released Feb. 7, 1997).

²⁹³ See *infra* Appendix B (list of FCC outreach and conferences).

benefit from economies of scale.²⁹⁴ In response to these questions, National Wireless Resellers Association²⁹⁵ raised a number of concerns regarding market entry barriers for small businesses. First, it argues that some Commission policies erect significant market barriers to small wireless resellers.²⁹⁶ For example, it questions the Commission's decision to sunset its longstanding rule prohibiting carriers from restricting resale of their services.²⁹⁷ National Wireless Resellers Association also argues that the Commission's decision erects a market entry barrier because as facilities-based carriers will use the Commission's sunset provision as a basis for refusing to negotiate resale agreements, while financial institutions, sensing the carriers' reluctance to negotiate, will refuse to provide capital to resellers.

134. National Wireless Resellers Association further argues that the Commission's inaction in resolving disputes about Commercial Mobile Radio Service (CMRS) interconnection issues and the pending reseller complaints on the same subject have created a regulatory environment in which carriers, despite the requirements of Sections 201 and 202 of the Communications Act, feel no pressing obligation to negotiate in good faith with resellers regarding either resale or switch-based resale agreements.²⁹⁸ National Wireless Resellers Association contends that this has resulted in significant barriers to entry and expansion by delaying additional competition and the deployment of innovative services and by creating uncertainty in the industry impacting resellers' access to capital.

135. In addition, National Wireless Resellers Association argues that the Commission must endeavor to balance the unequal bargaining positions between facilities-based carriers and resellers. To accomplish this, it suggests that the Commission: (1) adopt a policy promoting unencumbered resale and interconnection; (2) actively enforce the requirements of Sections 201 and 202 of the Act and require carriers to interconnect with reseller switches; (3) adopt rules promoting geographic partitioning and spectrum

²⁹⁴ *Market Entry Barriers Notice of Inquiry*, 11 FCC Rcd at 6299-6300.

²⁹⁵ National Wireless Resellers Association is a trade association representing the interests of the wireless resale industry.

²⁹⁶ National Wireless Resellers Association Comments at 6.

²⁹⁷ *Id.* at 7. See *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, First Report and Order, 11 FCC Rcd 18455 (1996) (*CMRS Resale Order*), petitions for recon. pending.

²⁹⁸ National Wireless Resellers Association Comments at 10-11.

disaggregation of channels; and (4) immediately classify facilities-based carriers as incumbent local exchange carriers (LECs).²⁹⁹

136. In our *CMRS Resale* decision, we extended the resale rule applying to cellular carriers to broadband PCS and covered SMR providers. We also provided that this rule will sunset five years after we award the last group of initial licenses for currently allocated broadband PCS spectrum.³⁰⁰ A petition for reconsideration is now pending regarding this issue and, therefore, we will address National Wireless Resellers Association's concerns about the resale sunset in the context of that proceeding. We note that we intend to actively enforce the requirements of Sections 201 and 202 of the Telecommunications Act, as well as other provisions of the Act and our rules. To date, the Wireless Telecommunications Bureau has received ten formal complaints regarding resale obligations. Of these ten complaints, six have been resolved and four are pending. The Wireless Telecommunications Bureau also has received four complaints regarding interconnection obligations (including reseller/switch interconnection issues), which are pending. We further note that we already have taken steps to implement National Wireless Resellers Association's suggestion that we "promote geographical partitioning of licenses and disaggregation of channels"³⁰¹ as a way to provide existing licensees and new entrants, including resellers, with a fair opportunity to compete and develop their businesses. Finally, with respect to National Wireless Resellers Association's suggestion that we recognize that facilities-based wireless carriers offering local exchange service should be treated as incumbent local exchange carriers, we note that we rejected a similar argument in our *First Local Competition Order*.³⁰² In the *First Local Competition Order*, we concluded that CMRS providers are not *de facto* LECs simply because they provide telephone exchange and exchange access services.³⁰³ In addition, we

²⁹⁹ *Id.* at 12-18.

³⁰⁰ *See CMRS Resale Order*, 11 FCC Rcd 18455.

³⁰¹ National Wireless Resellers Association Comments at 13.

³⁰² *See First Local Competition Order*, 11 FCC Rcd at 15995-15996 (the Commission declined to treat CMRS providers as local exchange carriers for purposes of Section 251(c) of the Communications Act). The National Wireless Resellers Association states that it disagrees with the Commission's conclusion in that proceeding.

³⁰³ *Id.* at 15996.

noted that Congress also concluded that CMRS providers' offering of such services, by itself, did not require them to be classified as LECs.³⁰⁴

7. *Definition of "Covered SMR"*

137. In the *CMRS* proceeding, the Commission determined that an SMR licensee offering interconnected service falls within the statutory definition of an CMRS provider.³⁰⁵ American Mobile Telecommunications Association argues that this is an "over-inclusive" definition which creates a market entry barrier.³⁰⁶ It explains that, contrary to the Commission's intention, its definition of a "covered SMR" will include many licensees offering primarily local, dispatch service to specialized customers in a non-cellular system configuration.³⁰⁷ American Mobile Telecommunications Association also argues that these entities, many of which are small businesses and which cannot compete against other CMRS providers, will be subject to a panoply of CMRS-related regulations which will result in increased costs.³⁰⁸ We note that the "covered SMR" definition issue is currently pending before the Commission in a number of proceedings.³⁰⁹ We will fully address American Mobile Telecommunications Association's concerns in the context of those proceedings.

8. *Competitive Bidding Incentives*

138. As we stated in the *Market Entry Barriers Notice of Inquiry*, Section 309(j) of the Act, like Section 257, embodies Congress' intent to facilitate opportunities for small

³⁰⁴ *Id.*

³⁰⁵ *Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411 (1994) (*CMRS Second Report and Order*).

³⁰⁶ American Mobile Telecommunications Association Comments at 2.

³⁰⁷ *Id.* at 13.

³⁰⁸ *Id.* at 14.

³⁰⁹ *See, e.g., CMRS Resale Order*, 11 FCC Rcd 18455; *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996,) First Memorandum Opinion and Order on Reconsideration, FCC 97-74 (released Mar. 11, 1997); American Mobile Telecommunications Association Petition for Declaratory Ruling (filed Dec. 16, 1996).