

provide additional flexibility to accommodate low power operations during and after the transition to DTV and thus mitigate the impact of DTV implementation on LPTV. For example, we decided to allow low power stations that are displaced by new DTV stations to apply for a suitable replacement channel in the same area, on a first-come, first-served basis, without being subject to competing applications.⁴⁴⁴ We also provided for additional operational flexibility for low power stations by removing or relaxing various restrictions imposed by the LPTV technical rules. That is, we deleted the restrictions on use of a channel either seven channels below or fourteen channels above the channel of another station in the low power TV service. In addition, we determined that LPTV and TV translator stations should be allowed to make use of terrain shielding, Longley-Rice terrain dependent propagation prediction methods, and appropriate interference abatement techniques to show that the station will not cause interference to other full or low power stations. We also decided to allow LPTV and TV translator station operators and applicants to agree to accept interference from other LPTV and TV translator stations.

184. In the *DTV Sixth Report and Order*, we also noted that, as secondary operations, LPTV and TV translator stations would be able to continue to operate until a displacing DTV station or a new primary service provider is operational. Thus, low power operations may continue on all existing TV channels, including channels 60-69, provided they do not cause harmful interference to any primary operations. Licensees of those LPTV and TV translator stations that are displaced may request operation on these channels on a non-interfering basis.⁴⁴⁵ We concluded that these various rule changes would preserve many existing low power operations, open many new channels for those low power operations subject to possible displacement by DTV, and allow hundreds of LPTV and TV translators to continue service to their viewers. We further recognized that most low power stations would be able to continue to operate throughout the DTV transition.⁴⁴⁶

185. In addition to the above considerations discussed in the *DTV Sixth Report and Order*, we note that DTV may offer new opportunities for small businesses. For example, small businesses may have opportunities to apply for licenses to use much of the recovered spectrum. Also, new opportunities might arise for small businesses to participate in the manufacturing or sale of equipment for DTV, LPTV, and related services, or for wireless services that might possibly be provided over recovered spectrum from the transition by broadcasters to DTV.

⁴⁴⁴ *Id.* at ¶ 144.

⁴⁴⁵ *Id.* at ¶ 142.

⁴⁴⁶ *Id.* at ¶ 143.

2. *Wireless Cable*⁴⁴⁷

186. Integration Communications International et al. maintain that the biggest barrier to wireless cable's competition with wireline cable and DBS services and to the goal of a level playing field is insufficient channel capacity.⁴⁴⁸ They state that wireless cable operators must digitize and compress the signal to increase capacity but the high costs of hardware to digitize and compress is prohibitive for small businesses.⁴⁴⁹ Wireless cable interests also contend that the Commission should allow wireless cable operators to receive digitalized, compressed signals from one source such as DBS service, in order to avoid the enormous capital investment that otherwise would be necessary for digital compression equipment at each system headend.⁴⁵⁰

187. The Commission is sensitive to the commenters' complaint that existing technology for digital modulation in Multipoint Distribution Service station operation is too expensive for small businesses, and that the Commission should approve more cost effective methods of digitized signal reception by wireless cable operators. We already have taken some steps to address this issue. Specifically, we authorized the use of digital modulation techniques in MDS and ITFS on an interim basis until final rules could be promulgated.⁴⁵¹ That ruling was adopted to "provide a quick and easy framework for wireless cable operators and MDS or ITFS licensees to increase their channel capacity and service offerings through

⁴⁴⁷ "Wireless cable" is a service permitting delivery of video programming to subscribers utilizing spectrum allocated to the Multipoint Distribution Service and the Multichannel Multipoint Distribution Service (collectively referred to as MDS), as well as leased channels from the Instructional Television Fixed Service (ITFS). Wireless cable resembles cable television, but instead of coaxial or fiber optic cable, wireless cable uses over-the-air microwave radio channels to deliver programming to subscribers. Our use of the term "wireless cable" does not imply that it constitutes cable television for statutory or regulatory purposes.

⁴⁴⁸ Integration Communications International et al. Comments at 1-2.

⁴⁴⁹ *Id.*

⁴⁵⁰ Wireless Cable Association International Comments at 1. *See also* Integration Communications International et al. Comments at 1.

⁴⁵¹ *Request for Declaratory Ruling on the Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations*, Declaratory Ruling and Order, 11 FCC Rcd 18839 (1996).

the use of digital compression techniques . . . [and to] enable the industry to gain experience with a broad array of digital technology and to perform further testing in order to fine tune performance measures for use of this technology in wireless cable systems." ⁴⁵² In addition, on March 14, 1997, a group of entities in the wireless cable industry filed a petition for rulemaking proposing to engage in fixed two-way digital transmissions, and we issued a public notice seeking comment on the petition.⁴⁵³ The Commission will continue to take suitable steps to enhance the wireless cable operators' ability to provide competition in the video marketplace, including, as appropriate, authorization of new technological advancements for use by such operators.

188. Broadcast Data et al. maintain that the Commission should repeal or modify Sections 21.44 and 21.912, which, in their view, unfairly impose a so-called "death penalty" on MDS licensees.⁴⁵⁴ They apparently believe that, in order to operate, small MDS businesses must enter into channel leasing agreements whereby larger wireless cable entities provide programming or equipment in exchange for channel capacity as part of a channel aggregation strategy.⁴⁵⁵ Because the smaller entities are at a significant bargaining disadvantage the lease terms may permit the lessee to cease providing programming or remove previously provided equipment from the licensee. Consequently, the licensee may become subject to Rule 21.303(d), which requires a licensee that has not provided service for a consecutive period of 12 months to submit its license for cancellation within 30 days, and Section 21.44 (a)(3), which compels forfeiture of a station license upon "the voluntary removal or alteration of the facilities, so as to render the station not operational for a period of 30 days or more." According to the commenters, small incumbent MDS operators are thus at the mercy of larger operators with whom the incumbent has a channel lease agreement. Moreover, they believe auction winners may be motivated to discontinue service

⁴⁵² *Id.* at ¶ 2.

⁴⁵³ FCC Public Notice, *Pleading Cycle Established for Comments on Petition for Rulemaking to Amend Parts 21 and 74 of the Commission's Rules to Enhance the Ability of Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, DA 97-637 (released Mar. 31, 1997).

⁴⁵⁴ Broadcast Data et al. Comments at 7-10.

⁴⁵⁵ *Id.* The commenters refer to § 21.912(d) of the Commission's Rules for the proposition that licenses may be forfeited the day following the cessation of programming. That rule section, however, only pertains to channels held or leased by cable television companies for the purpose of providing otherwise unavailable locally produced programming, and represents an exception to the rule's Cable/MDS cross-ownership prohibition.

by the terms of Section 21.932⁴⁵⁶ because the vacated frequency spectrum occasioned by a cancellation or forfeiture automatically becomes part of the protected service area of the entity that received the license as a result of the MDS auction. Thus, the commentators urge that the Commission eliminate the "death penalty" provisions of the rules or guarantee the licensee access to the larger operator's site, equipment, and, if necessary, channel capacity.

189. The wireless cable industry continues to make strides towards enhancing competition in the video marketplace. Because wireless cable's ability to compete effectively with other providers on a more equal footing is tied, with other factors, to MDS operators' ability to attract investment capital, we continue to believe that channel accumulation is an essential element in the accomplishment of that goal.⁴⁵⁷ Section 21.932 of our rules was specifically adopted to enhance the auction winner's opportunity for success.⁴⁵⁸ Thus, we held that the "available MDS spectrum within a BTA authorization will increase if the unconstructed facilities or unused channels held by an MDS incumbent with transmitter locations within a particular BTA are forfeited or if previously proposed conditional licenses or modifications are not granted."⁴⁵⁹ Moreover, we believe our rules provide sufficient safeguards to protect existing licensees in a manner consistent with the public interest. Where appropriate we will grant reinstatement pursuant to Section 21.44(b) and waivers pursuant to Section 21.303 of our rules. We caution all small business licensees, however, to scrutinize carefully any channel lease agreement before entering into such an arrangement. We believe it is the responsibility of the respective parties to negotiate the terms most suited to their needs.

3. *Broadcast Ownership Consolidation*

190. Some commenters maintain that ownership consolidation in the broadcast industry under relaxed ownership restrictions constitute market entry barriers. For example, the United Church of Christ and Minority Media and Telecommunications Council assert that minority-owned businesses are effectively being squeezed out of local markets by better

⁴⁵⁶ See 47 C.F.R. § 21.932 (forfeiture of incumbent MDS station licenses).

⁴⁵⁷ See *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 and Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, Notice of Proposed Rulemaking, 9 FCC Rcd 7666, 7667 (1994).

⁴⁵⁸ See *MDS Report and Order*, 10 FCC Rcd at 9612.

⁴⁵⁹ *Id.*

financed group owners and that the Commission's definition of "local market," in combination with Section 202(b) of the 1996 Act, permits undue concentrations of ownership in local communities.⁴⁶⁰ It recommends that the Commission establish a minimum number of separately-owned stations that must remain in existence in a community after a sale or transfer, that 50 percent of a community's radio and television ownership should be separately owned, and that the Commission should adopt a Grade A contour as the boundary for television station markets.⁴⁶¹ Integrated Communications Group contends that such FCC policies on consolidations, mergers, and acquisitions constitute market entry barriers for minorities because the resources of small businesses are limited and group owners greatly influence major advertisers and media budgets and buys.⁴⁶²

191. Similarly, National Association of Black Owned Broadcasters maintains that the Commission, the courts, and Congress have fostered policies that have resulted in consolidation of ownership in the broadcast industry and a retreat from promotion of minority ownership and that these actions include: (1) repeal of the "seven station rule"; (2) adoption of rules permitting radio duopolies; (3) Congress' repeal of the tax certificate for sales to minorities and women; (4) the U.S. Supreme Court's *Adarand* decision; and (5) the

⁴⁶⁰ United Church of Christ and Minority and Telecommunications Council Comments at 3.

⁴⁶¹ *Id.* at 3-4. See also Romar Comments at 5 (Commission should change rule that uses overlapping city-grade contours of a potential co-owned duopoly to establish market size and a duopoly's compliance). On March 25, 1997, the Minority Media and Telecommunications Council filed a supplemental reply comment in MM Docket No. 96-197 (newspaper/radio cross ownership), MM Docket Nos. 91-221 and 87-8 (TV multiple ownership), MM Docket Nos. 94-150, 92-51 and 87-154 (attribution). Letter from David Honig, Executive Director, Minority Media and Telecommunications Council to William Caton, Secretary, FCC (dated March 25, 1997) (MMTC Supplemental Request). Minority Media and Telecommunications Council suggests several incentives that could be provided in exchange for, or in recognition of, a company's efforts to promote minority ownership through incubation, financing, and sale initiatives. It requests the Commission issue a Further Notice of Proposed Rulemaking expressing its tentative views on the proposed incentives. MMTC Supplemental Request at 1-3.

⁴⁶² Integrated Communications Group Comments at 4. See also Community Broadcasters Association Comments at 10-11 (consolidation in radio and television industries is driving small businesses out at a record pace).

Telecommunications Act of 1996.⁴⁶³ It, as well as the United Church of Christ and Minority Media and Telecommunications Council, maintain that the Commission should recommend to Congress reinstatement of the minority tax certificate policy.⁴⁶⁴

192. Commenters are correct in pointing out that there has been greater consolidation of radio ownership since the relaxation of the Commission's broadcast radio ownership rules. This, however, is consistent with congressional policy as reflected in the 1996 Act, which explicitly directed the FCC to eliminate the national radio ownership rule and to replace the local radio ownership rule with specific, significantly relaxed limits on local radio ownership depending on the size of the local market.⁴⁶⁵ The Commission issued an order on March 8, 1996, revising the radio ownership rules accordingly.⁴⁶⁶ In addition, we will consider the issues raised by the commenters regarding our former minority tax certificate program in our subsequent evaluation of unique obstacles for small businesses owned by women and minorities.⁴⁶⁷

193. As to the commenters' proposals to redefine the local television market for purposes of enforcing the television duopoly rule, the Commission has recently released a Second Further Notice of Proposed Rule Making in its local television ownership proceeding.⁴⁶⁸ This proceeding seeks comment on revising the television duopoly rule, including whether to modify the current Grade B signal contour test for measuring the local geographic market, as well as revising the radio-television cross-ownership rule. The Commission expressly sought "comment on what aggregate effect these proposed rules may

⁴⁶³ National Association of Black Owned Broadcasters Reply Comments at 11.

⁴⁶⁴ National Association of Black Owned Broadcasters Reply Comments at 2; United Church of Christ and Minority Media and Telecommunications Council Comments at 4. *See also* Integrated Communications Group Comments at 4 (Commission should offer incentives to sellers of media properties in major markets when sold to a consortium of minorities, women, and small businesses).

⁴⁶⁵ Sec. 202(a) & (b) of the 1996 Act, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁴⁶⁶ *See Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996*, Order, 11 FCC Rcd 12368 (1996).

⁴⁶⁷ *See infra* Part IV.

⁴⁶⁸ *Review of the Commission's Regulations Governing Television Broadcasting*, Second Further Notice of Proposed Rule Making, FCC 96-438 (released Nov. 7, 1996).

have on small stations, or stations owned by minorities and women."⁴⁶⁹ In addition, there is a pending rulemaking proceeding examining the Commission's broadcast attribution rules, the rules by which we define what constitutes a "cognizable interest" in applying the multiple ownership rules.⁴⁷⁰ In this proceeding, the Commission sought comment on the potential impact on our attribution rules resulting from the relaxation of our multiple ownership rules as required by the 1996 Act. The Commission stated that "the attribution rules must function effectively and accurately to identify all interests that are relevant to the underlying purposes of the multiple ownership rules and that should therefore be counted in applying those rules."⁴⁷¹

194. Finally, the 1996 Act directs the Commission to conduct a biennial review of all its ownership rules.⁴⁷² The first such review will be conducted in 1998. In this review, we expect to examine issues related to the changes and consolidation that have resulted in the market since the passage of the 1996 Act, including the impact on small businesses and small businesses owned by minorities or women, resulting from the industry and regulatory changes during the past several years. In addition, there is a pending proceeding in which the Commission proposed initiatives to increase minority and female ownership of mass media facilities.⁴⁷³

⁴⁶⁹ *Id.* at ¶ 9.

⁴⁷⁰ *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable /MDS Interests, Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, Reexamination of the Commission's Cross-Interest Policy*, Further Notice of Proposed Rule Making, MM Docket Nos. 94-150, 92-51 & 87-154, FCC 96-436 (released Nov. 7, 1996).

⁴⁷¹ *Id.* at ¶ 7.

⁴⁷² Sec. 202(h) of the 1996 Act.

⁴⁷³ *See Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, Notice of Proposed Rulemaking, 10 FCC Rcd 2788 (1995) (*Minority and Female Ownership NPRM*). We also note that the Minority and Media Telecommunications Council filed a supplemental reply comment on March 25, 1997 in several pending ownership and attribution proceedings. *See supra* n.461.

4. *FCC Policing of Abuse and Enforcement of Rules*

195. Brown-Blackwell states the Commission should be more active in investigating possible fraud and in monitoring licensees for abuse and enforcing its rules where ownership interests of minorities and women are affected because apathy in such areas can prevent entry into the marketplace. She recommends that the Commission be more sensitive to potential abuse by passive investors and strictly enforce its rules where a "passive investor" attempts to wrest power or ownership from the majority equity shareholder.⁴⁷⁴ In a similar vein, Romar contends that the Commission should police against abuse of preferences, i.e., where after a construction permit is awarded, the interest of the minority or female is transferred to others. It believes the Commission should impose a minimum ownership period, perhaps three to five years, for any person who claims a female or minority preference during comparative review.⁴⁷⁵

196. As discussed in Part IV of this *Report*, the Commission is continuing to explore issues relating to minorities and women in telecommunications services and expects to issue a more comprehensive report on those issues in the future. As part of that effort, we shall fully consider issues relating to the potential abuses described by these commenters and take appropriate action where warranted.

E. Other Services

1. International Bureau

197. With respect to international services, several commenters express concern about Commission actions that they believe may hinder small businesses' ability to enter the telecommunications market, such as the Commission's actions with respect to TelQuest's application to operate a fixed transmit/receive earth station to uplink and receive U.S. and Canadian DBS programming.⁴⁷⁶ On July 15, 1996, the International Bureau concluded that, because Canada had not yet authorized the satellites with which TelQuest proposed to communicate, TelQuest's earth station applications should be dismissed, without prejudice, as

⁴⁷⁴ Brown-Blackwell Comments at 6, 10-11.

⁴⁷⁵ Romar Comments at 9.

⁴⁷⁶ Integration Communications International et al. Comments at 2; TelQuest Comments at 16; Abalos et al. Comments at 1; National Association of Women Business Owners Comments at 2; National Association of Women Business Owners -- Greater Detroit Chapter Comments at 2.

premature. In taking this action, the International Bureau reiterated that its policy is to dismiss earth station applications where the space station with which the earth station will communicate has not yet been authorized.⁴⁷⁷

198. The specific matter of TelQuest's application is pending separately in connection with TelQuest's application for review of two International Bureau Orders. We will address that matter in that proceeding. However, based on the comments received in this proceeding, we find nothing in the International Bureau policy reflected in that case that imposes burdens uniquely or predominantly on small businesses.⁴⁷⁸

199. Several commenting parties object to the Commission's financial qualifications requirements for satellite applicants, on the ground that the Commission's standards are an entry barrier for small businesses. For example, Mobile Communications Holdings contends that Commission Rule 25.143(b)(3) imposes an overly stringent financial standard upon satellite applicants in the 1.6/2.4 GHz Mobile Satellite Service (Big LEO service). It argues that the rule fails to take into consideration the financial realities faced by entrepreneurs and that it adversely affects small businesses because it fails to take into account the unique ways that small businesses obtain capital.⁴⁷⁹ It claims that due to the Commission's rule, small

⁴⁷⁷ See *Applications of TelQuest Ventures, L.L.C. and Western Tele-Communications, Inc.*, 11 FCC Rcd 8151 (1996). The Commission noted that this policy prevents premature consideration of systems that may never operate and deters applicants from filing competing premature applications in the hope of obtaining earth station authorizations for the purpose of influencing space station licensing decisions. *Id.* at 8154. On October 29, 1996, the International Bureau denied TelQuest's petition for reconsideration finding that TelQuest's earth station application was properly dismissed, without prejudice. See *Applications of TelQuest Ventures, L.L.C and Western Tele-Communications, Inc.*, Report and Order, 11 FCC Rcd 13943 (1996), *applications for review pending*.

⁴⁷⁸ TelQuest has also sought reconsideration of our decision in *Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures*, Report and Order, FCC 96-425 (released Dec. 16, 1996), on a number of related grounds. The arguments raised in that proceeding will be addressed in that proceeding.

⁴⁷⁹ Mobile Communications Holdings Comments at 3. *But see* L/Q Licensee Reply Comments at 1-3 (financial standard for MSS above 1 GHz applicants is not a barrier to entry into satellite services market even for small, entrepreneurial companies; strict financial standard is based on sound public policy and represents appropriate requirement to demonstrate that sufficient funds are available to proceed). The FCC's financial standard requires applicants to provide evidence of current assets, operating revenues, or irrevocably

companies must meet a far more rigorous evidentiary showing of "irrevocably committed" funds, in contrast to larger competitors who may qualify merely on the basis of a sizable balance sheet even though they intend to rely only upon external sources of financing.⁴⁸⁰ Other commenters assert that our decision⁴⁸¹ to impose a uniform financial standard on geostationary fixed-satellite service applicants is inequitable and a significant impediment to entry for international satellite systems.⁴⁸² As a means of addressing these concerns, parties generally recommend that the Commission apply the financial standards more flexibly. However, one party disagrees with this proposal and asserts that a less rigorous standard is not in the public interest.⁴⁸³

200. The specific requests for action concerning financial standards as applied to satellite services generally relate to other ongoing proceedings pending before the Commission and the courts, and are more appropriately addressed in connection with those specific proceedings. In this regard, we note that Mobile Communications Holdings has pending an appeal of our decision adopting rules, including a rigorous financial standard, for

committed debt or equity financing sufficient to meet the estimated costs of constructing and launching all planned satellites, and operating costs of the system for the first year. This showing can be made in two ways. First, applicants relying on internal financing must submit a balance sheet demonstrating current assets and operating revenues in excess of system costs. These applicants also must submit evidence of a management commitment to expend the necessary funds for the project. Second, applicants relying on outside financing must submit evidence of these arrangements, including a demonstration that the financing has been approved and does not rest on contingencies that require action by either party to the transaction.

⁴⁸⁰ Mobile Communications Holdings Comments at i, 3-4, 6 and 8.

⁴⁸¹ *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems and DBSC Petition for Declaratory Rulemaking Regarding the Use of Transponders to Provide International DBS Service*, Report and Order, 11 FCC Rcd 2429 (1996) (*DISCO I Order*).

⁴⁸² Columbia Communications Corporation Comments at i; Orion Comments at 2.

⁴⁸³ See, e.g., Motorola Satellite Reply Comments at 5 (more flexible standard or waiver not in public interest; small businesses may participate in Big LEO MSS services); *id.* at 3 (proceeding not proper forum for FCC to grant waiver or revise rules).

the Big LEO service,⁴⁸⁴ as well as an appeal of our decision finding it not financially qualified,⁴⁸⁵ and an amendment to its application in which it submits additional information concerning its financial qualifications. We also have pending petitions for reconsideration of our decision in the *DISCO I Order* to adopt a uniform financial standard for domestic and international fixed satellite service satellites. Furthermore, we have raised issues concerning the proper financial standard to be applied in the non-voice non-geostationary mobile satellite service (Little LEOs) in an outstanding Notice of Proposed Rulemaking.⁴⁸⁶ We believe these matters are most appropriately addressed in connection with the records developed in those proceedings.

2. Office of Engineering and Technology

201. In December 1996, the Commission adopted a Notice of Proposed Rulemaking to eliminate unnecessary and burdensome Experimental Radio Service (ERS) regulations for ERS applicants and licensees, many of which are small entities.⁴⁸⁷ In the *Experimental Radio Notice*, the FCC proposes to reorganize the ERS regulatory structure so as to promote greater technical innovation and new services and to encourage experiments, without compromising the Commission's processes or the public safety. If adopted, the proposals would provide an increased opportunity for manufacturers, inventors, entrepreneurs, and students to experiment with new radio technologies, equipment designs, characteristics of radio wave propagation, and new service concepts using the radio spectrum.⁴⁸⁸ Because the proposals would streamline the ERS regulations and would remove excessive regulatory

⁴⁸⁴ *Amendment of Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.6/2483.5-2500 MHz Frequency Band*, Report and Order, 9 FCC Rcd 5936 (1994) (*Big LEO*).

⁴⁸⁵ *Application of Mobile Communications Holdings, Inc.*, Order, 10 FCC Rcd 2274 (1995), *recon.*, 11 FCC Rcd 7824 (1996).

⁴⁸⁶ *See Amendment of Part 25 of the Commission's Rules to Establish Rules and Policies Pertaining to the Second Processing Round of the Non-Voice, Non-Geostationary Mobile Satellite Service*, Notice of Proposed Rulemaking, IB Docket No. 96-220, FCC 96-426 (released Oct. 29, 1996).

⁴⁸⁷ *Amendment of Part 5 of the Commission's Rules to Revise the Experimental Radio Service Regulations*, Notice of Proposed Rulemaking, ET Docket No. 96-256, FCC 96-475 (released Dec. 20, 1996) (*Experimental Radio Notice*).

⁴⁸⁸ *Id.* at ¶¶ 1, 2, 5-12, 19-20 & Appendix B.

burdens, they would be beneficial to small businesses.

202. In another recent proceeding, the Commission has provided licensees an alternative means of demonstrating compliance with the Commission's antenna performance standards.⁴⁸⁹ This measure removes an obstacle that had previously existed for manufacturers and licensees, a number of which are small businesses.⁴⁹⁰ Instead of satisfying these standards by complying with existing minimum antenna gain requirements, licensees will now be able to make a showing that directional antennas they use under Parts 74, 78, and 101 comply with maximum beamwidth requirements. The practical effect of the *Flexible Antenna Report and Order* is to permit licensees to use technologically innovative directional microwave antennas (such as planar-array antennas), which our rules had unintentionally prohibited.

203. On January 9, 1997, the Commission adopted the *U-NII Report and Order*, making available 300 megahertz of spectrum at 5.15-5.35 GHz and 5.725-5.825 GHz for a new category of Unlicensed National Information Infrastructure (U-NII) devices.⁴⁹¹ These devices will provide short-range, high speed wireless digital communications on an unlicensed basis. We anticipate that U-NII devices will support the creation of new wireless local area networks and will facilitate access to the National Information Infrastructure (NII). In order to permit significant flexibility in the design and operation of U-NII devices, we adopted the minimum technical rules necessary to prevent harmful interference to other services and to ensure that the spectrum is used efficiently.⁴⁹²

204. By fostering development of a broad range of new devices and service offerings, the *U-NII Report and Order* should stimulate economic development and the growth of new industries and, at the same time, further our Section 257 objectives. Specifically, allowing unlicensed devices access to the 5.15-5.35 GHz and 5.725-5.825 GHz bands will enable educational institutions to form inexpensive broadband wireless computer

⁴⁸⁹ *Amendment of Parts 74, 78, and 101 of the Commission's Rules to Adopt More Flexible Standards for Directional Microwave Antennas*, Report and Order, 12 FCC Rcd 1016 (1997) (*Flexible Antenna Report and Order*).

⁴⁹⁰ *Id.* at 1016, 1017-20, 1023-25.

⁴⁹¹ *Amendment of the Commission's Rules to Provide for Operation of Unlicensed NII Devices in the 5 GHz Frequency Range*, Report and Order, 12 FCC Rcd 1576 (1997) (*U-NII Report and Order*).

⁴⁹² *Id.* at 1577, 1592.

networks between classrooms, thereby providing cost-effective access to an array of multimedia services on the Internet. Use of the new spectrum by unlicensed wireless networks also could help improve the quality and reduce the cost of services provided by small business users (including medical providers) of the networks.⁴⁹³

205. On March 13, 1997, the Commission adopted its *Simplify and Streamline the Equipment Authorization Process Notice*.⁴⁹⁴ By this action, the Commission proposes to eliminate two of its five equipment authorization procedures, namely, the type acceptance procedure and the notification procedure. As a result, there will be only one procedure for equipment that must be authorized by the Commission: certification. The Commission would not change the two existing manufacturer self-authorization programs: verification and declaration of conformity (DoC). These proposals would lead to a simpler and far less cumbersome set of equipment authorization requirements. Errors in applications that can lead to delays in obtaining equipment authorization should decline. Clearer, less burdensome regulations will promote compliance. In addition, the Commission proposes to relax the equipment authorization requirements for a broad array of equipment, including unintentional radiators, consumer ISM equipment and a variety of radio transmitters. Thus, adoption of these proposals would further advance our Section 257 objectives to enhance market opportunities for small businesses, such as manufacturers who supply parts and services to telecommunications service providers, to speed delivery of their products to the public, and would save manufacturers some \$100 million by reducing the number of applications necessary for equipment authorization.

3. *Compliance and Information Bureau*

206. The FCC's Compliance and Information Bureau is furthering the Commission's Section 257 mandate through information dissemination initiatives that are particularly valuable to small businesses, which, as discussed above, often lack resources and information. First, as part of its ongoing commitment to make information available to the public expeditiously and inexpensively, in 1996, CIB established a new FCC National Call Center. The National Call Center provides consumers with free, one-stop shopping for

⁴⁹³ *Id.* at 1585.

⁴⁹⁴ *Amendment of Parts 2, 15, 18 and Other Parts of the Commission's Rules to Simplify and Streamline the Equipment Authorization Process for Radio Frequency Equipment*, Notice of Proposed Rule Making, ET Docket No. 97-84, FCC 97-84 (released Mar. 27, 1997) (*Simplify and Streamline the Equipment Authorization Process Notice*).

Commission information.⁴⁹⁵ The National Call Center responds to inquiries on telecommunications issues including, but not limited to, broadcasting, cable, wireless services, new technologies, telephone rates or charges, and long-distance carriers. The National Call Center also provides information on how to obtain a license or FCC form and how to file a complaint. When the Call Center receives a call that should be directed to an agency expert, the Call Center electronically transfers the call to the Commission's Washington Office at no additional cost to the caller. Full-time bilingual (English/Spanish) Call Center Specialists are also available to assist the public. The Call Center also provides TTY access.⁴⁹⁶ The toll-free Call Center services, now available in 26 states, are being phased-in geographically as budget constraints permit.

207. As part of its outreach efforts, CIB Public Affairs Specialists and Compliance Specialists in field offices throughout the country have identified and compiled lists of various small telecommunications businesses, including women and minority businesses, and provided those businesses with information regarding meetings and events on telecommunication issues and issues before the Commission and has sent them notices of services available to them through the National Call Center. In addition, CIB faxes a "Welcome Letter" to new telecommunications companies listed in local newspaper legal notices, advising that the FCC can assist and answer communications questions. CIB participated in the U.S. General Store for Small Business in Houston, Texas. An initiative by the National Performance Review and spearheaded by the Small Business Administration, with assistance by numerous other federal agencies, the U.S. General Store is a business center that provides at one location all the information necessary to operate a small business. The U.S. General Store also conducted workshops for small business minority entrepreneurs, and CIB provided telecommunications information at those events.

208. CIB has also undertaken many initiatives to disseminate regulatory information and encourage participation in specific sectors of the telecommunications industry. For example, in the broadcasting area, CIB has specifically required state broadcast associations to include non-member licensees, many of which are small businesses, in their Alternative

⁴⁹⁵ The National Call Center can be accessed by dialing 1-888-CALL FCC (1-888-225-5322). See FCC News Release, *FCC's Toll-Free Information Service Expanded* (September 30, 1996). The Call Center has received nearly 160,000 calls. Additional information about CIB resources and the National Call Center is available on the World Wide Web (<http://www.fcc.gov/cib>) (CIB homepage) and (<http://www.fcc.gov/cib/ncc>).

⁴⁹⁶ Full Call Center services for the hearing impaired can be accessed through the Telecommunications Device of the Deaf (TTY) by dialing 1-888-TELL-FCC (835-5322).

Broadcast Inspection Program (ABIP).⁴⁹⁷ These programs provide comprehensive information on broadcast compliance and no-risk inspection option to facilitate compliance with the Commission's rules. On an continuing basis, CIB notifies radio stations about information regarding various communications-related matters, e.g., spectrum auctions, new pay phone regulations, and cable complaint procedures, etc., for inclusion in stations' public service information programs (PSAs). CIB also made outreach efforts to manufacturers as well as participants to implement the new Emergency Alert System (EAS). AM, FM and TV broadcast stations, Low Power TV stations and cable systems, and other entities and industries will participate in the EAS, which replaced the Emergency Broadcast System (EBS) to provide emergency information to the public at the national, state, and local levels. The EAS requires participants to replace old EBS equipment with new, digital EAS equipment. CIB's outreach efforts resulted in several small businesses receiving certification to manufacture the new EAS equipment. Moreover, in the pending rulemaking concerning EAS participation by cable operators, CIB staff has worked with members of the Small Cable Association, National Cable Television Association, Cable Telecommunications Association and others in the cable industry to ensure that emergency messages will reach as many members of the public as possible without adverse financial impact on small cable operators.

209. Further, CIB has working relationships with various business-oriented entities throughout the country. For example, CIB works closely with local chambers of commerce, and that effort has been particularly effective in reaching small businesses. CIB also has registered with various other entities,⁴⁹⁸ made presentations at several workshops, and continuously provides information about new services to the public through various fora targeted to small business ventures.⁴⁹⁹ All of these steps serve to promote opportunities for

⁴⁹⁷ CIB also has made presentations to various broadcast associations on current Commission rulemakings and Telecommunications Act implementation.

⁴⁹⁸ On an ongoing basis, CIB also maintains a fax-alert list to advise chambers of commerce and telecommunications companies of upcoming spectrum auctions and results. CIB has registered as a contact with the Small Business Administration and various state representatives, as well as with the "Partners in Business" speakers bureau with local schools to present communications business opportunities to graduating students. CIB also maintains regular contact with media outlets to provide information about communications.

⁴⁹⁹ For example, on March 19, 1996, the Assistant Bureau Chief for Information was the keynote speaker at the Minority Telecommunications Business Round Table Information Forum at Howard University. The CIB representative addressed PCS auctions, including how to participate in the auction process, how the process applies to small businesses, and what to expect from CIB after starting a business. Approximately 170 people attended the

small businesses by ensuring that, despite limited resources, small business have access to the most current information available about new telecommunication policies and services.

IV. UNIQUE OBSTACLES FOR SMALL BUSINESSES OWNED BY WOMEN OR MINORITIES

A. Background

210. In the *Market Entry Barriers Notice of Inquiry*, we inquired whether small businesses owned by women or minorities⁵⁰⁰ encounter unique obstacles in the telecommunications market.⁵⁰¹ We asked parties to submit personal accounts of individual

event. On July 12, 1996, the Assistant Bureau Chief for Information served as a panel member at "Operation Open Road," a small business information forum at George Washington University sponsored by the Capital Commitment Group Women's Business Development sector. On September 22, 1996, the Assistant Bureau Chief for Information served as a panelist on "Get On Line," a discussion on how to start a small business in the telecommunications industry sponsored by the Department of Commerce, Minority Business Development Agency. On November 7, 1996, the Assistant Bureau Chief for Information served as keynote speaker for the Small Business in Telecommunication Association's Annual convention in Dallas, Texas and discussed how the FCC and CIB can assist small businesses. On February 10, 1997, the Assistant Bureau Chief for Information participated in the Small Business Spectrum Alliance Conference, which was co-sponsored by the U.S. Chamber of Commerce and the Department of Commerce, National Telecommunications and Information Administration. The Assistant Bureau Chief for Information also spoke at a March 1, 1997 conference hosted by the National Small Business Development Council and a March 10, 1997 conference sponsored by the National Paging Association.

⁵⁰⁰ We defined minority groups to include African Americans, Hispanics, American Indians, Alaskan Natives, Asians, and Pacific Islanders. *Market Entry Barriers Notice of Inquiry*, 11 FCC Rcd at 6299 n.88.

⁵⁰¹ As explained in the *Market Entry Barriers Notice of Inquiry*, we explored this area for several reasons: the legislative history of Section 257 suggests Congress was concerned about the underrepresentation of minority and women-owned small businesses in the telecommunications market and sought to increase competition by diversifying ownership, *see* 142 Cong. Rec. H1141 at H1176-77 (daily ed. Feb. 1, 1996) (statement of Rep. Collins); Section 309(j) requires the Commission to further opportunities for businesses owned by women and minorities in the provision of spectrum-based services; and FCC licensing and other statistical data show that a portion of small communications businesses are owned by

experiences, studies, reports, statistical data, or any other information. We recognized that a prospective barrier is discrimination -- in business, employment, or with respect to communications-related licenses, contracts or other governmental benefits -- and requested evidence of any past or current discrimination or unfavorable treatment.⁵⁰² Because governmental action that takes race or gender into account is subject to heightened judicial scrutiny, we sought comment on whether as a legal matter, the obstacles that women and minorities encounter are significant enough to justify special incentives for those groups.⁵⁰³ We specifically asked whether there is sufficient evidence of discrimination in the communications industry against any particular minority group to support race-based incentives under the strict scrutiny standard.⁵⁰⁴ We noted that since *Adarand*, the Supreme Court had not yet ruled on the standard of review for federal gender-based programs, but that a case was pending before the court. Thus, we asked whether there is sufficient evidence to warrant incentives for women under either strict scrutiny (in the event that the Supreme Court raised the gender standard to strict scrutiny) or intermediate scrutiny (in the event that the Court maintained the existing intermediate scrutiny standard).⁵⁰⁵

211. In addition, we sought comment on any nonremedial objectives that would

women and minorities and there is evidence that these entities encounter unique market barriers. *Market Entry Barriers Notice of Inquiry*, 11 FCC Rcd at 6301-6305.

⁵⁰² *Id.* at 6305-6307. We suggested that evidence of discrimination could include academic research studies, adjudications, legislative findings, statistical data, and personal accounts. We noted that judicial findings of discrimination are not required, but that the government must have evidence demonstrating the need for remedial action. *Market Entry Barriers Notice of Inquiry*, 11 FCC Rcd at 6306 n.112 (citing *City of Richmond v. J.A. Croson*, 488 U.S. 469, 500 (1989)).

⁵⁰³ *Market Entry Barriers Notice of Inquiry*, 11 FCC Rcd at 6308, 6315-6317. In *Adarand*, the Supreme Court held that government classifications based on race must satisfy strict scrutiny. 115 S.Ct. at 2113. For a full discussion of the constitutional standards, see *Market Entry Barriers Notice of Inquiry*, 11 FCC Rcd at 6309-6315.

⁵⁰⁴ *Id.* at 6308, 6315.

⁵⁰⁵ *Market Entry Barriers Notice of Inquiry*, 11 FCC Rcd at 6313-6317.

justify the use of race and gender-based incentives while furthering the Section 257 mandate.⁵⁰⁶ Finally, we asked parties to propose specific licensing incentives to redress any discrimination or to further any nonremedial objectives.⁵⁰⁷ We encouraged parties to support their proposals with data and to identify specific provisions of the Act that would authorize us to implement any such proposals.⁵⁰⁸

212. At the *Market Entry Barriers Forum*, which included a panel on "Unique Barriers for Minority or Women-Owned Businesses," several women and minority entrepreneurs described their personal experiences in trying to enter and participate in the telecommunications market,⁵⁰⁹ members of the financial industry described lending and advertising practices,⁵¹⁰ and a representative from the Department of Justice addressed the

⁵⁰⁶ *Id.* As stated in the *Market Entry Barriers Notice of Inquiry*, a government may adopt race or gender based programs for reasons other than to remedy discrimination. Such objectives are nonremedial. See *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978) (*plurality*). We explained for example that nonremedial objectives that could justify taking gender or race into account in Commission programs and also help eliminate market entry barriers might include favoring diversity of media voices as required by Section 257(b), promoting economic opportunity and competition as encouraged in the legislative history of Section 257 and Section 257(b) and as required by Section 309(j), or promoting the public interest. *Market Entry Barriers Notice of Inquiry*, 11 FCC Rcd at 6315-6316 and n.161 (quoting legislative history of Section 257: "[M]inority and women-owned small businesses continue to be extremely under represented in the telecommunications field. . . . Underlying [Section 257] is the obvious fact that diversity of ownership remains a key to the competitiveness of the U.S. communications marketplace." 142 Cong. Rec. H1141 at H1176-77 (daily ed. Feb. 1, 1996) (statement of Rep. Collins)).

⁵⁰⁷ *Id.* Parties were invited to explain what objective any proposed women or minority-oriented licensing incentive would be intended to achieve and explain how it would be either narrowly tailored (to meet strict scrutiny) or substantially related (to meet intermediate scrutiny) to achieve that objective.

⁵⁰⁸ *Market Entry Barriers Notice of Inquiry*, 11 FCC Rcd at 6316-6317.

⁵⁰⁹ Borland Testimony, Erbe Testimony, Ofori Testimony, Perez Testimony, and Winston Testimony. See also Arellano Testimony and Haycock Testimony.

⁵¹⁰ Cullers Testimony, Johnson Testimony, Gorman Testimony, Barker Testimony, and Williams Testimony.

constitutional standards for race and gender programs.⁵¹¹

213. As explained above, the principal purpose of this *Report* is to set forth the Commission's general policies with respect to implementing Section 257 of the Telecommunications Act, describe our progress to date and outline the steps we plan to take in the immediate future.⁵¹² In that regard, most of the issues addressed in this *Report* focus on impediments facing small businesses. Prior to taking any action specifically oriented to women or minorities, we must fully evaluate the Section 257 record according to the constitutional requirements that govern race or gender-based action by the federal government. As part of our effort to fully evaluate unique obstacles for women and minority-owned businesses, as well as our commitment to fulfill our Section 309(j) requirement to issue spectrum licenses to an array of applicants,⁵¹³ we are fully engaged in that process and expect to issue a more extensive report on women and minority issues later this year.

214. Although we will address in more detail the comments regarding women and minorities in our subsequent report, we provide below a summary of the principal barriers and proposals raised in the record to date.

B. Principal Obstacles and Proposals Identified in the Record

215. Parties to the Section 257 proceeding identify several obstacles that women or minority-owned businesses face based on race or gender. As was the case for small businesses, the predominant impediment to entry identified is access to and cost of capital.⁵¹⁴

⁵¹¹ Small Testimony.

⁵¹² See *supra* ¶ 1.

⁵¹³ In adopting the *Competitive Bidding Sixth Report and Order*, we stated that we "emphasize that our action today does not indicate that race- and gender-based provisions at issue here could not be sustained without further development of the record. Nor do we believe that such measures generally are inappropriate for future auction of spectrum-based services. We are considering the means we should take to develop a supplemental record that will support use of such provisions in other spectrum auctions held post-*Adarand*." *Competitive Bidding Sixth Report and Order*, 11 FCC Rcd at 137.

⁵¹⁴ See, e.g., Small Business Administration Comments at 5; National Women's Law Center Comments at 1; American Women in Radio and Television and Women of Wireless Comments at 14-21; National Paging and Personal Communications Association Comments

Many parties cite difficulty in obtaining credit and time-delayed payment options, as well as negative attitudes toward women or minority-owned businesses.⁵¹⁵ Ofori, United Church of Christ and Minority Media and Telecommunications Council assert that minority entrepreneurs often must rely on financiers and venture capitalists that impose unfavorable terms, for example, requiring unreasonable performance goals for returns on investment or advertising revenue.⁵¹⁶ Williams states that traditional sources of capital for minority businesses, such as small business investment companies (SBICs), are inadequate to cover entry costs into telecommunications.⁵¹⁷ Borland, Erbe, Haycock, and Arellano describe accounts of their own difficulty in accessing capital;⁵¹⁸ while Williams and American Women in Radio and Television and Women of Wireless relate accounts of difficulty experienced by others.⁵¹⁹ In addition, some parties contend that historical treatment of minorities and women

at 2; National Association of Black Owned Broadcasters ReplyComments at 4-5; B.K. McIntyre Comments at 1-2; Zesiger Testimony at 3; Borland Testimony, Erbe Testimony, Williams Testimony at 4.

⁵¹⁵ National Paging and Personal Communications Comments at 2; Kansas Star Comments at 3; Small Businesses in Telecommunications Comments at 65; American Women in Radio and Television and Women of Wireless Comments at 1-2, 17-21; National Association of Black Owned Broadcasters Reply Comments at 4-5.

⁵¹⁶ Ofori Testimony at 4-5; United Church of Christ and Minority Media and Telecommunications Council Comments at 9-12. The parties cite several examples, including venture capital firms imposing "warrant" provisions and "success fees." *Id.* Cullers and National Association of Black Owned Businesses maintain that advertisers do not provide the same opportunities to minority-owned businesses as they do to majority-owned businesses. Cullers Testimony at 1; National Association of Black Owned Businesses Comments at 6. Cullers also states that programs produced by women and minorities have a more difficult time getting advertisers' approval, "even when the programming meet the high quality standards demanded by broadcast outlets and advertisers." Cullers Testimony at 1.

⁵¹⁷ Williams Testimony at 4.

⁵¹⁸ Borland Testimony; Erbe Testimony; Haycock Testimony at 1, 4-5; and Arellano Testimony.

⁵¹⁹ Williams Testimony at 4 (stating that in trying to expand, one minority-owned broadcasting company bid the highest price for the purchase of a major market radio station, but the seller accepted a lower bid from a nonminority company because of that entity's apparent ability to access capital more quickly; and in another case, a minority-owned

has contributed to the difficulty those entities experience in financing small telecommunications ventures.⁵²⁰ The Center for Training and Careers and Hispanic Chamber claim that women and minorities, especially Latinos, are "out of the picture" because they own very few FCC licenses, especially PCS licenses.⁵²¹

216. Some parties point to other possible barriers. For example, some commenters identify barriers in licensing of specific telecommunications services,⁵²² numerous parties

broadcast company tried unsuccessfully to purchase another station in its market when the station for sale refused to accept the direct offer of the minority company, and thereafter, when the minority station retained its nonminority law firm to make a blind offer for the station, that offer was accepted); American Women in Radio and Television and Women of Wireless at 8 (stating that a woman entrepreneur who had obtained an FM radio construction permit was "laughed out" of a banker's office because he did not believe that as a woman she was capable of winning a radio license).

⁵²⁰ National Association of Black Owned Broadcasters Reply Comments at 4-5 (contending that because African Americans have suffered historical discrimination, African American entrepreneurs have less capital, fewer family and friends with access to capital than non-minority counterparts and, thus, have a greater need for financing and that lenders have discriminated against African-Americans); American Women in Radio and Television and Women of Wireless Comments at 20-24 (asserting that as a result of discrimination against women in employment, particularly in promotion to senior positions, as well as discrimination in technical fields of education, women have limited technical and managerial experience, which is an obstacle in securing bank financing); B.K. McIntyre Comments at 4-5 (claiming that "lack of historical presence" of women- or minority- controlled businesses is a market entry barrier).

⁵²¹ Center for Training and Careers Comments at 1; Hispanic Chamber Comments at 1-2.

⁵²² See, e.g., Williams Testimony at 2 (stating that most cellular licenses were granted to nonminorities, consequently, the only means for minorities to obtain a cellular license is to purchase one from an existing licensee); American Women in Radio and Television and Women of Wireless Comments at 20 (claiming that women owners seeking financing to purchase spectrum licenses reported that the inability to use an FCC license as collateral was a funding obstacle); James Testimony (stating that minority ownership of commercial broadcast entities declined substantially after enactment of new broadcast ownership provisions of Telecommunications Act). *But see* American Mobile Telecommunications Association Comments at 3-4 (stating that although it "recognizes that women and minorities

assert that employment and management experience is valuable for ownership in telecommunications and that lack of employment opportunity or employment discrimination is a barrier;⁵²³ several commenters advocate stronger enforcement of the Commission's EEO

are underrepresented in terms of the specialized wireless communications community, and in telecommunications services generally, it believes the cause to be broadly societal, rather than specifically discriminatory in this marketplace" and contending that regulatory measures crafted to enhance small business participation in the telecommunications industry can also promote increased ownership by women and minorities).

⁵²³ See, e.g., Small Business in Telecommunications Comments at 3 n.3 (stating that it "agrees with the Commission's conclusion that the existing lack of minority participation in the industry arises out of a lack of equal employment of women and minorities in positions of responsibility throughout the telecommunications industry. . . . and that much effort will be necessary to attain status which demonstrates parity with men. . . . [and that the] problem of equality of opportunity is even more pronounced for minorities"); American Women in Radio and Television and Women of Wireless Comments at 24-26, 37-38 and Exhibits 1-5 (claiming that women have been discriminated against in employment, such discrimination effects ownership opportunities in telecommunications, and that FCC policies to promote women ownership of communications companies are appropriate to redress discrimination against women in employment and quoting study cited by the Department of Justice that employment discrimination "still reduces the pay and prospects of workers who are not white or male"); National Association of Black Owned Broadcasters Reply Comments at 5 (asserting that African Americans have been discriminated against in all aspects of the telecommunications industry, are rarely employed in senior management positions, and have few opportunities to obtain senior management experience which financial institutions seek when making investment and lending decisions); B.K. McIntyre Comments at 4 (claiming that lack of employment opportunities has impacted small business participation in the communications market because women and minorities have had less opportunity for training and networking). See also Gorman Testimony (stating that lenders consider management experience in assessing loan risks); American Women in Radio and Television and Women of Wireless Comments at 6 & n.6 (contending that women are excluded from important business networks and citing Congressional hearings and Department of Justice finding of discrimination by business networks as one form of discrimination that has impeded minority participation in federal contracting, United States Department of Justice, *Proposed Reforms to Affirmative Action in Federal Procurement*, 61 Fed. Reg. 26042, 26062 (May 23, 1996) (*Department of Justice Federal Procurement Proposal*)).

rules⁵²⁴ or preference policies;⁵²⁵ some parties contend that women and minorities are excluded from government procurement, which impedes participation in the

⁵²⁴ See, e.g., United Church of Christ and Minority Media and Telecommunications Council Comments at 3-7 (arguing that with respect to common carrier EEO rules, the Commission has failed "to deliver on its promise to maintain an up-to-date computerized database," and to undertake an aggressive EEO program, and that thus, the Commission has become "a partner in the establishment of barriers to ownership by minorities and women;" that streamlining broadcast EEO regulation will create another barrier to market entry because jobs in larger markets are routinely made available to applicants that have developed skills at smaller market stations; and recommending, *inter alia*, revising job categories on Form 395; developing a computerized database for information contained on Form 395; and promoting and monitoring executive level training for minorities and women); American Women in Radio and Television and Women of Wireless Comments at 26 and 41 (claiming that the FCC's EEO policies have increased female participation in the communications industry and asserting that the FCC should stringently enforce its EEO rules (even if streamlined) to ensure women are permitted nondiscriminatory access to senior management positions). See also Brown-Blackwell Comments at 8 (claiming that the FCC has "taken measures in the opposite direction" of Section 257 in part by "revamping" its EEO rules).

The comments regarding the Commission's EEO rules for broadcasters relate to a pending proceeding and will be addressed in that proceeding. See *Streamlining Broadcast EEO Rules and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include Forfeiture Guidelines*, Order and Notice of Proposed Rulemaking, 11 FCC Rcd 5154 (1996).

⁵²⁵ See, e.g., Brown-Blackwell Comments at 1-6, 10-11 (contending that the Commission should investigate possible "shams" that take advantage of the Commission's broadcast preference policies for minorities or women); Romar Comments at 9 (claiming that the Commission should police against abuse of preferences, i.e., where, the interest of a minority or female is transferred after issuance of a construction permit, and recommends that the Commission impose a minimum ownership period for any entity that claims a female or minority preference during comparative review). We note that the Commission investigates whether our rules are being followed. For example, the Compliance and Information Bureau audited the narrowband PCS winners that claimed minority and women preferences to determine compliance with our auction rules for those groups.

telecommunications market,⁵²⁶ and one party cites political changes as barring entry.⁵²⁷ American Women in Radio and Television and Women of Wireless also claim that market entry barriers for women are not limited to small businesses.⁵²⁸ In contrast, B.K. McIntyre contends that the Commission should distinguish between small start-up firms that face barriers and established small firms (regardless of race or gender ownership) that may not need assistance.⁵²⁹ Finally, the Small Business Administration maintains that beyond all the general barriers that small businesses encounter, "women and minorities also face an entirely different set of market entry barriers that result in a disproportionately low rate of ownership and participation in virtually every telecommunications field."⁵³⁰

217. To address these possible barriers, numerous parties advocate adoption of licensing incentives for women and minorities.⁵³¹ The Small Business Administration "strongly encourages the Commission to take concrete steps" to improve opportunities for

⁵²⁶ See, e.g., American Women in Radio and Television and Women of Wireless Comments at 5 and 27-31; Integrated Communications Group Comments at 2-3 (contending that a General Services Administration contract for wireless telecommunications devices for federal agencies and state governments contains no incentives for small businesses); National Women's Law Center Comments at 1. *But see* Pacific Bell Reply Comments at 4-5 (rebutting other commenters' claims of low representation of women in procurement in California and asserting that its record of 8% procurement from women-owned firms exceeds state figures).

⁵²⁷ Brown-Blackwell Comments at 8 (citing *Adarand*, party asserts that the "changing political mood of our legislative, executive and judicial branches is a "much more formidable barrier" than "Commission apathy" or lack of access to capital).

⁵²⁸ American Women in Radio and Television and Women of Wireless Comments at 19-20.

⁵²⁹ B.K. McIntyre Comments at 5-6.

⁵³⁰ Small Business Administration Comments at 4-5. *Accord* Zesiger Testimony at 3.

⁵³¹ See, e.g., American Women in Radio and Television and Women of Wireless Comments at 32-41; PCS Alliance Comments at 1-2; Thompson PCS Systems Comments at 2; Williams Testimony at 3-4; Kansas Star Comments at 3; Center for Training and Careers Comments at 1; B.K. McIntyre Comments at 5-6.

women and minorities.⁵³² Williams states that without specific measures designed to level the playing field, small and minority businesses are at a significant disadvantage.⁵³³ American Women in Radio and Television and Women of Wireless recommend that the Commission adopt gender-based policies for both remedial and nonremedial purposes -- to redress prior and ongoing discrimination against women; to foster diversity in media voices under Section 257(b); and to widely disseminate spectrum licenses under Section 309(j).⁵³⁴ The National Women's Law Center and others assert that the appropriate constitutional standard for gender-based incentives is intermediate scrutiny,⁵³⁵ claiming that after *United States v. Virginia*, "it is clear that federal programs that are carefully crafted to remedy past or present discrimination against women are constitutional. In light of the extensive evidence that women in business generally, and in communications specifically, have suffered and continue to suffer discrimination based on their sex," it urges the FCC to retain -- and indeed to strengthen where necessary -- its efforts to eliminate such discrimination."⁵³⁶

218. National Black Caucus of State Legislators argues that the *Adarand* decision, coupled with Congressional repeal of the tax certificate program, and the FCC's response to *Adarand* demonstrates that the federal government fails to address the "growing erosion of economic opportunity on the part of African-Americans."⁵³⁷ Brown-Blackwell contends that

⁵³² Small Business Administration Comments at 5.

⁵³³ Williams Testimony at 4.

⁵³⁴ American Women in Radio and Television and Women of Wireless Comments at 1-2 and 32-41. *See also* Small Business Administration Comments at 4-5 and Zesiger Testimony at 3 (based on Congress' mandate, it is "essential" that the FCC address diversity of media voices).

⁵³⁵ National Women's Law Center Comments at 2; American Women in Radio and Television and Women of Wireless Comments at 32-33. American Women in Radio and Television and Women of Wireless also assert that gender-oriented programs would be supported under the higher strict scrutiny standard. *Id.* at 34-35 (citing finding in *Department of Justice Federal Procurement Proposal* that there is a compelling governmental interest in remedying discrimination against minorities in federal procurement).

⁵³⁶ National Women's Law Center Comments at 2.

⁵³⁷ National Black Caucus of State Legislators Comments at 3-4. *See also* MMTC Supplemental Request at 1-3 ("Commission action to stimulate minority ownership can wait no longer").