

competition increases and the number of non-dominant carriers grows, this rule is no longer necessary. The fiduciary responsibilities of corporate officers and board members and other statutory provisions, such as the Foreign Corrupt Practices Act and the Clayton Act, provide sufficient protections. Exceptions already granted by the Commission include certain cellular radio licensees, non-dominant carriers and holding or parent companies. This part of the rules should be deleted.

PART 63 - EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS.

USTA recommends a comprehensive streamlining of the Part 63 rules by deleting Sections 63.01 through 63.08, 63.52, 63.60 through 63.66, 63.71, 63.90, 63.100, 63.500 through 63.505 and 63.601. Deleting these rules is consistent with Section 402(b)(2)(A) of the Act which gives the Commission the authority to exempt any carrier from the requirements of Section 214. In fact, these changes are long overdue as these rules no longer serve a valid regulatory purpose. The 214 application process adds unnecessary delays in the provision of services to customers, increases administrative costs and creates uncertainty. The competitive marketplace eliminates the need for this process. Companies should be permitted to enter and exit markets without regulatory intervention. Further, the rules cited regarding discontinuance of lines, reduction of lines, outage and impairment are also covered by state regulations. There is no need to duplicate these types of requirements.

The Commission itself is considering forbearance of the Section 214 application process for certain carriers and streamlining for certain other carriers due to the significant regulatory

burden imposed by Section 214.⁴⁹ In fact, the Commission stated that additional regulation under Section 214 is not required to protect ratepayers adequately against potentially higher rates resulting from investment in unnecessary facilities.⁵⁰ As USTA pointed out in its comments in CC Docket No. 97-11, the competitive market prevents unnecessary overbuilding. There is no evidence in the record to suggest that incumbent LECs would engage in imprudent construction of facilities, particularly if recovery of those costs was not assured.⁵¹ The accounting rules will continue to provide sufficient opportunity for oversight. Eliminating these rules will eliminate administrative costs and will facilitate entry into telecommunications markets.

PART 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS.

The Part 64 rules contain many Subparts which USTA believes should be deleted as they are no longer necessary. As the attached matrix shows, USTA recommends deleting Subpart A, Traffic Damage Claims, Subpart C Furnishing of Facilities to Foreign Governments for International Communications, Subpart E, the Use of Recording Devices by Telephone Companies, Subpart G, Furnishing of Enhanced Services and Customer Premises Equipment by Communications Common Carriers; Telephone Operator Services, Subpart H, Candidates for Federal Office and Subpart T, Separate Affiliate Requirements for Incumbent Independent Local Exchange Carriers That Provide In-Region, Interstate Domestic Interexchange Services or In-Region International Interexchange Services. In a separate matrix, USTA provides

⁴⁹Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, *Notice of Proposed Rulemaking*, CC Docket No. 97-11, January 13, 1997.

⁵⁰*Id.* at ¶ 41.

⁵¹Comments of USTA, CC Docket No. 97-11, February 24, 1997.

recommendations and new rules which streamline the requirements contained in Subpart I, Allocation of Costs.

The Subparts listed above are no longer necessary. Incumbent LECs maintain records of traffic damage claims as required by the IRS and SEC. There is no reason for the Commission to duplicate these requirements or to specify that the claims must be in writing. Furnishing facilities to foreign governments or to candidates for federal office and the use of recording devices can be handled through the contract process consistent with treaties and other applicable state and federal laws.

Certainly the Commission's prohibition on the bundling of enhanced service and CPE has long outlived its purpose. In a competitive environment, wherein every provider of telecommunications service except the incumbent LEC is permitted to bundle equipment with service, this prohibition is anti-competitive. There is no reason to prevent the incumbent LEC from providing the "one-stop shopping" which customers desire and other providers offer. In the rapidly evolving digital world, differentiating between CPE and service is increasingly difficult. This Subpart should be eliminated.

As USTA has consistently pointed out, there is no justification for the Commission's decision to extend the separate subsidiary requirements on independent incumbent LECs offering long distance service.⁵² For many years, independent incumbent LECs have been free to offer long distance services within their service territories and have been doing so in substantial and

⁵²USTA Petition for Reconsideration, Implementation of the Non-Accounting Safeguards of Sections 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, CC Docket No. 96-149, filed August 4, 1997.

growing numbers. In fact, almost 300 of USTA's member companies are involved in some aspect of the long distance market and more companies are entering that market every day. The participation of incumbent LECs in the provision of long distance service has been beneficial for consumers. There has been no evidence of any anticompetitive conduct.

There is no need to subject independent LECs to these requirements. The Commission has decided that regulation is not required to ensure that interexchange prices are just, reasonable and non-discriminatory. Interexchange carriers are not subject to regulation and even AT&T has been classified as a non-dominant carrier.⁵³ AT&T and the other major interexchange carriers which control the overwhelming share of the interexchange market are able to enter the local markets of the independent incumbent LECs without establishing a separate subsidiary. It is ludicrous to assume that the independent incumbent LECs can impede the efforts of these globally-based carriers in the interexchange market. The service regions of these LECs are small and generally do not traverse LATA boundaries. The amount of traffic carried by these LECs is but a small fraction of the traffic carried by the major interexchange carriers.

Certainly Congress never intended to impose a separate subsidiary requirement on independent incumbent LECs or it would have done so in the 1996 Act. Subpart T should be eliminated.

The current Part 64 rules also contain CAM filing and audit requirements. These requirements are extremely costly to perform and the administrative burdens are enormous. Further, whenever an incumbent LEC wants to modify its CAM, it must file a request with the

⁵³Motion of AT&T Corp. To be Reclassified as a Nondominant Carrier, 11 FCC Rcd 3271 (1995).

Commission which is subject to public comment.

Ultimately, the Commission should eliminate the requirement to allocate costs between regulated and nonregulated activities. In a pro-competitive environment, such an allocation is unnecessary. Sections 64.901 through 64.904 allocate the costs in the incumbent LECs' books of account. Since price cap regulation breaks the link between price and cost, the amount of allocated cost is of no regulatory consequence. These costs are not used to price competitive services. These rules do not assist the Commission in preventing cross subsidization. Therefore, USTA believes that these rules should be eliminated.

USTA provides specific rules changes designed to streamline the burdensome cost allocation rules in Subpart I. These rules changes will reduce the detail and complexity which provides no public interest benefits, ensure consistency with statutory requirements, eliminate duplicative and unnecessary requirements and reduce the costs of compliance with these rules. USTA's proposals will maintain the purpose of the cost allocation process. The changes are as follows:

- eliminate the three year usage forecasts for Central Office and Outside Plant accounts;
- eliminate the requirement to quantify CAM changes to time reporting procedures, affiliate transactions and cost apportionment table;
- eliminate the fifteen day pre-approval requirement;
- eliminate the product matrix in Section II of the CAM;
- eliminate the annual, external audit which can cost up to \$1 million (not including the costs of the Common Carrier Bureau's review of the work papers); and,
- utilize Class B level accounts consistent with Part 36 and fixed factors to simplify the current process.

PART 65 - INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES.

USTA proposes to streamline the Part 65 rules to reduce the regulatory burden on both rate of return and price cap incumbent LECs. These changes and the resulting rules are attached. Reporting requirements are eliminated for rate of return LECs and for price cap LECs except when a lower formula adjustment is filed. The maximum allowable rate of return calculation in Section 65.700 is modified to calculate the maximum allowable rate of return on all access elements in the aggregate instead of for each access category. Finally, Section 65.702 is revised to measure earnings on an overall interstate basis instead of separately for each access category. These rules changes are designed to reduce unnecessary administrative burdens.

PART 68 - CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK.

USTA recommends no changes to the Part 68 rules at this time.

PART 69 - ACCESS CHARGES.

As noted above, USTA proposes to revise Part 69 to apply only to rate of return incumbent LECs. A description of the rules changes and the resulting rules is attached. As described above, the access tariff rules currently in Part 69 would be moved to Part 61. USTA's proposal streamlines the other Part 69 rules to be consistent with the pro-competitive, deregulatory telecommunications policy.

USTA has consistently argued that the current Part 69 rules are overly burdensome. In 1993, USTA petitioned the Commission to streamline the access structure and to remove the

rules which impede the introduction of new services.⁵⁴ The current process, which requires that an incumbent LEC seek a waiver of the rules in order to introduce a service which does not fit in the list of codified access charge elements and subelements, is completely contrary to the purpose of the 1996 Act to encourage innovation and accelerate the delivery of new services to all customers. The waiver process has the effect of forcing the incumbent LEC to bear the burden of proving that a new service is in the public interest. This directly contradicts Section 7 of the Act. That Section states that it is "the policy of the United States to encourage the provision of new technologies and services to the public. Any person or party (other than the Commission) who opposes a new technology or service proposed to be permitted under this Act shall have the burden to demonstrate that such proposal is inconsistent with the public interest." That section also requires that the Commission act on a petition or application for a new technology or service within one year.

The Commission has never applied Section 7 to the consideration of waivers filed by incumbent LECs. As a result, competitors of incumbent LECs use the waiver process to further their own advantage. These competitors do not have to ask permission to introduce a new service. In many cases, the Commission has allowed such waiver requests to linger for longer than a year. This only serves to add unnecessary costs and delay to the introduction of new services. It places a severe disadvantage on incumbent LECs because they cannot be certain that the Commission will act, much less approve, such requests.

There is no need to regulate new service offerings. By the Commission's own definition, new services must add to a customer's options. Incumbent LECs have no incentive to price a

⁵⁴USTA Petition for Rulemaking, RM 8654, September 17, 1993.

new service at a non-economic level. Because there is no established market for a new service, customers will not purchase such a service if it is priced above expectations. The provisions of Section 251 of the 1996 Act have opened all telecommunications markets to competition. The regulation of new services is not necessary to ensure just, reasonable and non-discriminatory rates. The public interest showing for new service tariff filings should be eliminated.

USTA's rules changes also streamline the access structure into four elements: Transport (includes special access), Switching, Common Line and Other. The Transport, Switching and Other access elements do not contain codified subelements. The Common Line access element contains four subelements: SLCs, PICCs, CCL and Special Access Surcharge. The structure for the EUCL and PICC are Residence, with no distinction between primary and non-primary residence,⁵⁵ Single Line Business and Multi-Line Business. EUCL and PICC rates are based on nationwide average prices charged by price cap LECs.⁵⁶ CCL charges recover the common line revenue requirement not recovered through the EUCL, PICC and Special Access Surcharge. Special construction charges, individual case basis charges and contract-based service charges are excluded from revenue requirement calculations.

USTA's new Part 69 rules provide an opportunity for pricing flexibility by establishing a zone pricing plan for charges associated with the Transport, Switching and Common Line elements. The new Subpart F establishes competitive triggers and allows for additional pricing flexibility for rate of return LECs. For example, if a rate of return LEC voluntarily opens its

⁵⁵Such a distinction, particularly for rate of return LECs raises concerns regarding universal service and administration.

⁵⁶This will provide a guideline to ensure that rates are reasonable in both urban and rural areas of the nation.

network by publishing a list of unbundled network elements pursuant to Part 51 of the rules and provides number portability. that LEC may offer interstate services on an individual case basis and file contract-based tariffs. Further, if a rate of return LEC signs a state-approved interconnection agreement, that LEC should be classified as a non-dominant carrier. These competitive triggers will permit rate of return LECs to respond to competition as it develops. Such pricing flexibility is critical for these LECs whose access revenues typically account for sixty percent of their total revenues. These carriers often only have one or two large volume customers. The loss of one to a competitor could be devastating.

Other changes recommended by USTA include:

--a new Subpart C to address the apportionment of net investment between interexchange, billing and collection and the new access elements.

--a new Subpart D to address the apportionment of expenses between interexchange, billing and collection and the new access elements.

--the elimination of the common line segregation rules; and,

--moving the universal service funding rules to Part 54.

PART XX - PRICE CAP REGULATION (NEW).

As noted earlier, USTA proposes to consolidate and streamline the rules for incumbent price cap LECs from Parts 61 and 69 of the current rules into a new Part XX. The rules changes are attached. This is necessary to eliminate the vestiges of rate of return regulation which are no longer required for those incumbent LECs under price cap regulation. Thus, the codified access structure and the public interest showing for new service tariff filings are eliminated. USTA's recommended rules also provide for increased pricing flexibility to permit these LECs to respond to competition.

The first changes in regulation are intended to eliminate unnecessary constraints which do not reward efficiency and prevent the least-cost supplier from providing the service. This change should occur when the market is *first* opened to competitors so that entrants and incumbents will make efficient entry and exit decisions...At this stage regulation should be immediately adjusted so that it provides neither the entrant nor the incumbent any net advantage on a forward-looking basis. In order for competitors to be given accurate and efficient price signals, they must compete with firms on as a symmetric basis as possible.⁵⁷

USTA's recommended rules changes include the following:

--eliminate the study area averaging rule:

--permit zone pricing for all service categories, including common line, and permit different zone plans to be established for individual services; e.g., switched transport and special transport (zones may be initialized at the same price level when the zone pricing plan is based upon traffic density or zones may be initialized at different price levels for EUCLs when the zone pricing plan is based upon a cost demonstration);

--establish a simplified price cap basket structure consisting of a single Network Services basket with service categories for Tandem Switching and Transport, Local Switching, Common Line and Marketing, and Database Services thereby eliminating many of the existing service categories and subcategories such as High Capacity, DS1 and DS3;

--modify the SLC and PICC rate calculations so that the maximum SLC is calculated based on common line revenue per line and the PICC is the difference between the maximum SLC and any SLC cap that is imposed; PICC caps are eliminated;

--eliminate the CCL;

--convert the residual interconnection charge to a flat rate charge recovered on a trunk port basis; and,

--create new rules to permit price cap LECs pricing flexibility based upon a demonstration that appropriate criteria have been satisfied. Such pricing flexibility includes the ability to offer volume and term discounts, including customer specific contracts, promotional offerings, optional service packages and arrangements, remove service from price cap regulation and obtain forbearance from regulation for specific services or in specific areas.

⁵⁷USTA Comments, CC Docket No. 96-262, Schmalensee and Taylor Statement, Attachment 1, January 29, 1997 at 25.

These changes are critical for the price cap ILECs. There is a tremendous volume of information regarding the presence and phenomenal growth of access competition. The Commission adopted its market based approach to access pricing over a year ago. However, the rules necessary to implement that approach have not been adopted. Price cap ILECs have provided many models to establish competitive triggers for pricing flexibility.

Triggers are a means for regulators to ease regulatory constraints in particular markets — in certain market areas or for certain services and customers — as the ILECs' residual market power is reduced to levels found in unregulated markets. In this sense, triggers work to ensure that once market conditions change, appropriate regulatory constraints immediately follow. Their use ensures that there is a timely process in place that responds to the rapidly-changing market conditions in carrier access and increases the likelihood that efficient regulatory decisions are implemented...A process that automatically grants ILECs certain regulatory relief when a specific trigger is reached greatly reduces contention, which allows the Commission to administratively expedite ILEC filings. It also prevents the proliferation of ILEC waiver requests, forbearance petitions etc. which could tie up Commission resources...Market dynamics are changing the technology and structure of telecommunications at an extremely rapid pace. Having in place quantifiable triggers that correspond to predetermined flexibility reduces uncertainty of the participants and increases the likelihood that competition will not be distorted by unneeded asymmetric burdens.⁵⁸

The time is long overdue that such triggers be established and incumbent price cap ILECs have the same opportunities to compete in the marketplace. The current and evolving market forces for many interstate access services combined with the competitive provisions of the Act define a competitive environment in which pricing flexibility is necessary to encourage efficient responses to competition. Competition does not come to all services and all geographic areas in the same way or at the same time. The Commission should rely on market forces to determine efficient outcomes and provide greater flexibility as competition increases. Since demand is not

⁵⁸Schmalensee and Taylor at 32-33.

evenly distributed among customers, the Commission must act quickly for the loss of a few large customers can have a severely detrimental impact. "While competition inevitably leads to customers switching suppliers, it would be economically inefficient if customers switched to competitors, not because they were more efficient, but because regulation encouraged inefficient entry and/or prevented the incumbent from reducing prices to respond to competition."⁵⁹

The pricing flexibility included in USTA's proposal will encourage efficient competition. Volume and term discounts and customer-specific contracts are useful strategies in competitive markets that provide substantial benefits to customers and prevent inefficient investment in the network. Since competitors of incumbent LECs already have this opportunity, incumbent LECs should also be permitted to offer such pricing plans. The Commission should adopt USTA's proposals.

PART 73 - RADIO BROADCAST SERVICES.

USTA recommends no changes to these rules.

PART 74 - EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES.

USTA recommends no changes to these rules.

PART 76 - CABLE TELEVISION SERVICE.

USTA recommends no changes to these rules.

PART 78 - CABLE TELEVISION RELAY SERVICE.

USTA recommends no changes to these rules.

⁵⁹Schmalensee and Taylor at iv.

PART 79 - CLOSED CAPTIONING OF VIDEO PROGRAMMING.

USTA recommends no changes to these rules.

PART 80 - STATIONS IN THE MARITIME SERVICES.

USTA recommends no changes to these rules.

PART 87 - AVIATION SERVICES.

USTA recommends no changes to these rules.

PART 90 - PRIVATE LAND MOBILE RADIO SERVICES.

USTA recommends no changes to these rules.

PART 95 - PERSONAL RADIO SERVICES.

USTA recommends no changes to these rules.

PART 97 AMATEUR RADIO SERVICE.

USTA recommends no changes to these rules.

PART 100 - DIRECT BROADCAST SATELLITE SERVICE.

USTA recommends no changes to these rules.

PART 101 - FIXED MICROWAVE SERVICES.

USTA recommends no changes to these rules.

VI. CONCLUSION.

USTA urges the Commission to initiate a rulemaking proceeding incorporating USTA's proposed rules changes as the basis for a comprehensive review of its rules as required under Section 11 of the 1996 Act. As USTA has proposed, all regulation which does not further the pro-competitive, de-regulatory policy established by Congress and which imposes unnecessary costs must be eliminate or streamlined as suggested above. The unwarranted micro-management

of incumbent LEC business operations must not continue. Removing such regulatory burdens will permit these carriers to serve their customers in the most efficient and effective manner, will provide the appropriate incentives to encourage investment in the telecommunications infrastructure necessary for the provision of advanced services to all consumers, promote consumer welfare, reduce administrative burdens and will enhance the development of economically efficient and fair competition.

Respectfully submitted,

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September 30, 1998

PART 1

**USTA
BIENNIAL REVIEW PETITION
SEPTEMBER 30, 1998**

Rule No.	Action	Justification
1.3	Require FCC action within one year	Adds certainty to regulatory process, eliminates regulatory delay
1.106	Require FCC action within one year	Adds certainty to regulatory process, eliminates regulatory delay
1.115	Require FCC action within one year	Adds certainty to regulatory process, eliminates regulatory delay

§1.3 Suspension, amendment, or waiver of rules.

The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown. Any filing to suspend, revoke, amend or waive the rules shall be deemed to be granted if the Commission does not deny the filing within one year after the Commission receives it

§1.106 Petitions for reconsideration.

(a)(1) Petitions requesting reconsideration of a final Commission action shall be acted on by the Commission within one year after the Commission receives them. Petitions requesting reconsideration of other final actions taken pursuant to delegated authority will be acted on by the designated authority or referred by such authority to the Commission. A petition for reconsideration of an order designating a case for hearing will be entertained if, and insofar as, the petition relates to an adverse ruling with respect to petitioner's participation in the proceeding. Petitions for reconsideration of other interlocutory actions will not be entertained. (For provisions governing reconsideration of Commission action in notice and comment rule making proceedings, see §1.429. This §1.106 does not govern reconsideration of such actions.)

§1.115 Application for review of action taken pursuant to delegated authority.

(d) Except as provided in paragraph (e) of this section, the application for review and any supplemental thereto shall be filed within 30 days of public notice of such action, as that date is defined in section 1.4(b). Opposition to the application shall be filed within 15 days after the application for review is filed. Except as provided in paragraph (e)(3) of this section, replies to oppositions shall be filed within 10 days after the opposition is filed and shall be limited to matters raised in the opposition. Applications for review shall be deemed granted if the Commission does not deny the application within one year after the Commission receives them.

PART 17

**USTA
BIENNIAL REVIEW PETITION
SEPTEMBER 30, 1998**

Rule	Action	Justification
17.7	Delete	FCC rules contained in §17.7 are a duplication of FAA rules, specifically rule 77.17. The FAA rule is contained in the FCC Form 854.
17.14	Delete	FCC rules contained in §17.14 are a duplication of FAA rules, specifically rule 77.15. The FAA rule is contained in the FCC Form 854.
17.17	Modify	Remove reference to §17.23. Reference eliminated per information provided below.
17.21 - 17.23	Delete	The provisions set forth in 17.21-17.23 originate from and are contained in FAA Part 77 rules. In addition, FAA Advisory Circulars AC 70/7460-1H and AC 150/5345-43D provide provisions relative to painting and lighting.
17.24 - 17.43	Delete	This was "reserved" space.
17.45 - 17.51	Delete	The provisions set forth in 17.45-17.51 originate from and are contained in FAA Part 77 rules. In addition, FAA Advisory Circulars AC 70/7460-1H and AC 150/5345-43D provide provisions relative to painting and lighting.
17.52	Delete	This was "reserved" space.
17.53 - 17.56	Delete	FAA rules and Advisory Circulars address the issues covered in these sections.

PART 17 - CONSTRUCTION, MARKING AND LIGHTING OF ANTENNA STRUCTURES

Subpart A - General Information

§17.1 Basis and purpose.

(a) The rules in this part are issued pursuant to the authority contained in Title III of the Communications Act of 1934, as amended, which vest authority in the Federal Communications Commission to issue licenses to radio stations when it is found that the public interest, convenience, and necessity would be served thereby, and to require the painting, and/or illumination of antenna structures if and when in its judgment such structures constitute, or there is reasonable possibility that they may constitute, a menace to air navigation.

(b) The purpose of this part is to prescribe certain procedures for antenna structure registration and standards with respect to the Commission's consideration of proposed antenna structures which will serve as a guide to antenna structure owners. The standards are referenced from two Federal Aviation Administration (FAA) Advisory Circulars.

§17.2 Definitions.

(a) **Antenna structure.** The term antenna structure includes the radiating and/or receive system, its supporting structures and any appurtenances mounted thereon.

(b) An **antenna farm area** is defined as a geographical location, with established boundaries, designated by the Federal Communications Commission, in which antenna towers with a common impact on aviation may be grouped.

(c) **Antenna structure owner.** For the purposes of this part, an antenna structure owner is the individual or entity vested with ownership, equitable ownership, dominion, or title to the antenna structure. Notwithstanding any agreements made between the owner and any entity designated by the owner to maintain the antenna structure, the owner is ultimately responsible for compliance with the requirements of this part.

(d) **Antenna structure registration number.** A unique number, issued by the Commission during the registration process, which identifies an antenna structure. Once obtained, this number must be used in all filings related to this structure.

§17.4 Antenna structure registration.

(a) Effective July 1, 1996, the owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration must register the structure with the Commission. This includes those structures used as part of stations licensed by the Commission for the transmission of radio energy, or to be used as part of a cable television head end system. If a Federal Government antenna structure is to be used by a Commission licensee, the structure must be registered with the Commission.

(1) For a proposed antenna structure or alteration of an existing antenna structure,

the owner must register the structure prior to construction or alteration.

(2) For an existing antenna structure that had been assigned painting or lighting requirements prior to July 1, 1996, the owner must register the structure prior to July 1, 1998.

(3) For a structure that did not originally fall under the definition of "antenna structure," the owner must register the structure prior to hosting a Commission licensee.

(b) Except as provided in paragraph (e) of this section, each owner must file FCC Form 854 with the Commission. Additionally, each owner of a proposed structure referred to in paragraphs (a)(1) or (a)(3) of this section must submit a valid FAA determination of "no hazard." In order to be considered valid by the Commission, the FAA determination of "no hazard" must not have expired prior to the date on which FCC Form 854 is received by the Commission. The height of the structure will include the highest point of the structure including any obstruction lighting or lighting arrester.

(c) If an Environmental Assessment is required under §1.1307 of this chapter, the Bureau will address the environmental concerns prior to processing the registration.

(d) If a final FAA determination of "no hazard" is not submitted along with FCC Form 854, processing of the registration may be delayed or disapproved.

(e) If the owner of the antenna structure cannot file FCC Form 854 because it is subject to a denial of federal benefits under the Anti-Drug Abuse Act of 1988, 21 USC 862, the first tenant licensee authorized to locate on the structure (excluding tenants that no longer occupy the structure) must register the structure using FCC Form 854, and provide a copy of the Antenna Structure Registration (FCC Form 854R) to the owner. The owner remains responsible for providing a copy of FCC Form 854R to all tenant licensees on the structure and for posting the registration number as required by paragraph (g) of this section.

(f) The Commission shall issue, to the registrant, FCC Form 854R, Antenna Structure Registration, which assigns a unique Antenna Structure Registration Number. The structure owner shall immediately provide a copy of Form 854R to each tenant licensee and permittee.

(g) Except as described in paragraph (h) of this section, the Antenna Structure Registration Number must be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. Materials used to display the Antenna Structure Registration Number must be weather-resistant and of sufficient size to be easily seen at the base of the antenna structure.

(h) The owner is not required to post the Antenna Structure Registration Number in cases where a federal, state, or local government entity provides written notice to the owner that such a posting would detract from the appearance of a historic landmark. In this case, the owner must make the Antenna Structure Registration Number available to representatives of the Commission, the FAA, and the general public upon reasonable demand.

§17.5 Commission consideration of applications for station authorization.

(a) Applications for station authorization, excluding services authorized on a geographic

basis, are reviewed to determine whether there is a requirement that the antenna structure in question must be registered with the Commission.

(b) If registration is required, the registrant must supply the structure's registration number upon request by the Commission.

(c) If registration is not required, the application for authorization will be processed without further regard to this chapter.

§17.6 Responsibility of Commission licensees and permittees.

(a) The antenna structure owner is responsible for maintaining the painting and lighting in accordance with this part. However, if a licensee or permittee authorized on an antenna structure is aware that the structure is not being maintained in accordance with the specifications set forth on the Antenna Structure Registration (FCC Form 854R) or the requirements of this part, or otherwise has reason to question whether the antenna structure owner is carrying out its responsibility under this part, the licensee or permittee must take immediate steps to ensure that the antenna structure is brought into compliance and remains in compliance. The licensee must:

- (1) Immediately notify the structure owner;
- (2) Immediately notify the site management company (if applicable);
- (3) Immediately notify the Commission; and
- (4) Make a diligent effort to immediately bring the structure into compliance.

(b) In the event of non-compliance by the antenna structure owner, the Commission may require each licensee and permittee authorized on an antenna structure to maintain the structure, for an indefinite period, in accordance with the Antenna Structure Registration (FCC Form 854R) and the requirements of this part.

(c) If the owner of the antenna structure cannot file FCC Form 854 because it is subject to a denial of federal benefits under the Anti-Drug Abuse Act of 1988, 21 USC 862, the first licensee authorized to locate on the structure must register the structure using FCC Form 854, and provide a copy of the Antenna Structure Registration (FCC Form 854R) to the owner. The owner remains responsible for providing a copy of FCC Form 854R to all tenant licensees on the structure and for posting the registration number as required by §17.4(g).

Subpart B - Federal Aviation Administration Notification Criteria

§17.8 Establishment of antenna farm areas.

(a) Each antenna farm area will be established by an appropriate rule making proceeding, which may be commenced by the Commission on its own motion after consultation with the FAA, upon request of the FAA, or as a result of a petition filed by any interested person. After receipt of a petition from an interested person disclosing sufficient reasons to justify institution of a rule making proceeding, the Commission will request the advice of the FAA with respect to

the considerations of menace to air navigation in terms of air safety which may be presented by the proposal. The written communication received from the FAA in response to the Commission's request shall be placed in the Commission's public rule making file containing the petition, and interested persons shall be allowed a period of 30 days within which to file statements with respect thereto. Such statements shall also be filed with the Administrator of the FAA with proof of such filing to be established in accordance with §1.47 of this chapter. The Administrator of the FAA shall have a period of 15 days within which to file responses to such statements. If the Commission, upon consideration of the matters presented to it in accordance with the above procedure, is satisfied that establishment of the proposed antenna farm would constitute a menace to air navigation for reasons of air safety, rule making proceedings will not be instituted. If rule making proceedings are instituted, any person filing comments therein which concern the question of whether the proposed antenna farm will constitute a menace to air navigation shall file a copy of the comments with the Administrator of the FAA. Proof of such filing shall be established in accordance with §1.47 of this chapter.

(b) Nothing in this subpart shall be construed to mean that only one antenna farm area will be designated for a community. The Commission will consider on a case-by-case basis whether or not more than one antenna farm area shall be designated for a particular community.

§17.9 Designated antenna farm areas. - The areas described in the following paragraphs of this section are established as antenna farm areas: [appropriate paragraphs will be added as necessary].

§17.10 Antenna structures over 304.80 meters (1000 feet) in height. - Where one or more antenna farm areas have been designated for a community or communities (see §17.9), the Commission will not accept for filing an application to construct a new station or to increase height or change antenna location of an existing station proposing the erection of an antenna structure over 304.80 meters (1000 feet) above ground unless:

- (a) It is proposed to locate the antenna structure in a designated antenna farm area, or
- (b) It is accompanied by a statement from the Federal Aviation Administration that the proposed structure will not constitute a menace to air navigation, or
- (c) It is accompanied by a request for waiver setting forth reasons sufficient, if true, to justify such a waiver.

§17.17 Existing structures.

(a) The requirements relating to painting and lighting of antenna structures shall not apply to those structures authorized prior to July 1, 1996. Previously authorized structures may retain their present painting and lighting specifications, so long as the overall structure height or site coordinates do not change. The Antenna Structure Registration requirements found in §17.5, however, shall apply to all antenna structures that have been assigned painting or lighting requirements by the Commission, regardless of prior authorization.

(b) No change in any of these criteria or relocation of airports shall at any time impose a

new restriction upon any then existing or authorized antenna structure or structures.

Subpart C - Specifications for Obstruction Marking and Lighting of Antenna Structures

§17.57 Report of radio transmitting antenna construction, alteration, and/or removal. -

The owner of an antenna structure for which an Antenna Structure Registration Number has been obtained must notify the Commission within 24 hours of completion of construction (FCC Form 854-R) and/or dismantlement (FCC Form 854). The owner must also immediately notify the Commission using FCC Form 854 upon any change in structure height or change in ownership information.

§17.58 Facilities to be located on land under the jurisdiction of the U.S. Forest Service or the Bureau of Land Management. - Any application proposing new or modified transmitting facilities to be located on land under the jurisdiction of the U.S. Forest Service or the Bureau of Land Management shall include a statement that the facilities will be so located, and the applicant shall comply with the requirements of §1.70 of this chapter.

PART 32

**USTA
BIENNIAL REVIEW PETITION
SEPTEMBER 30, 1998**