

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

In the Matter of )  
 )  
1998 Biennial Regulatory Review -- )  
Testing New Technology ) CC Docket No. 98-94  
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**POLICY STATEMENT**

**Adopted:** March 19, 1999

**Released:** April 2, 1999

By the Commission: Commissioner Furchtgott-Roth issuing a statement.

**I. INTRODUCTION**

1. Over the past months, the Commission has launched a number of proceedings to promote the development of new technologies and the introduction of advanced telecommunications services to benefit American consumers.<sup>1</sup> Our inquiry in this proceeding is targeted to promoting the testing and development of new technologies that make such new and innovative services -- including advanced telecommunications services -- possible. Our goal is to reduce, wherever we can, regulatory barriers associated with technology experiments because we think that a regulatory climate that encourages technology experiments will make the initial investment into research more attractive.<sup>2</sup>

2. Moreover, we believe that greater flexibility in offering technology trials could have an immense and beneficial impact upon the pace of innovation and improvements in telecommunications services. Over the past 20 years, a host of new telecommunications services have been brought to market, making the public switched telephone network immeasurably more valuable to businesses and individual consumers alike. Continued

<sup>1</sup> See, e.g., *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Report, FCC 99-5, CC Docket No. 98-146 (rel. Feb. 2, 1999) (*Advanced Telecommunications Report*); *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 98-188, CC Docket No. 98-11 (rel. Aug. 7, 1998).

<sup>2</sup> In general, we use the generic terms, "technology experiment" or "experiment" or "technology testing," to refer inclusively to both of the more specific categories, "technical trials" and "market trials." See ¶¶ 23-24, *infra*.

advances in technology bring not only new services, but also lower the cost and improve the quality of existing services.

3. In fact, and as we have enthusiastically recognized, one of this Commission's primary responsibilities under the Telecommunications Act of 1996 is to encourage the rapid deployment of new telecommunications services and technologies to benefit all Americans.<sup>3</sup> Accordingly, in a Notice of Inquiry, released last June, we asked commenters to tell us whether our Title II rules promote or impede the testing of new technology by regulated carriers and others.<sup>4</sup> We hoped to attract comment from a broad-based community of carriers and large and small manufacturers interested in testing issues. Such broad-based comment did not materialize, perhaps reflecting the fact that existing regulation does not unduly hamper the testing of new technologies. Accordingly, we do not propose specific rule changes at this time. Rather, building on the foundation laid in our Notice, we have decided that we can best act to promote new technology and services testing by adopting guidelines to use when evaluating discrete testing-related applications and waiver petitions. We do so in this Policy Statement.

4. The Commission has already acted to substantially reduce regulatory burdens on carriers, manufacturers and others, including regulatory barriers that affect their ability to carry out technology testing. Although we have concluded that it is unnecessary -- at this time -- to amend our rules further, we think it is incumbent on us to do everything we can to make sure that our rules are implemented in ways that encourage technology testing in the context of short-term, small-scale projects. Accordingly, in this Policy Statement we issue the following policy directives:

- 1) The Commission will consider applications and waiver requests associated with experiments on an expedited basis;
- 2) The Commission will take into account the benefits of experiments in our evaluation of the public interest when reviewing applications for experiments that are small-scale and limited duration; and

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<sup>3</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act), *codified at* 47 U.S.C. §§ 151 *et seq.* The preamble to the 1996 Act states that the purpose of the Act is "to promote competition and reduce regulation to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." 1996 Act, § 1.

<sup>4</sup> 1998 Biennial Regulatory Review -- *Testing New Technology*, Notice of Inquiry, FCC 98-152, CC Docket No. 98-119 (rel. July 12, 1998) (*Testing New Technology Notice*). Since the *Testing New Technology Notice* focused specifically on the effects of our existing Title II regulations on experiments, the policies adopted herein apply to our implementation of Title II. See 47 U.S.C. §§ 201 *et seq.* Accordingly, we do not alter our existing policies with respect to experimental radio licenses, as currently provided for in Part 5 of our rules. See 47 C.F.R. §§ 5.01 *et seq.*

- 3) The Commission will promote coordination among Bureaus and Offices to expedite approval of experimental applications that involve convergent technologies.

5. We think that the common sense approach adopted in this Policy Statement is consistent with our overall efforts to reduce regulation wherever conditions warrant. It is also consistent with our statutory obligation under new section 11 of the Communications Act. Section 11 requires the Commission to review its regulations applicable to providers of telecommunications service and to determine whether any rule is "no longer in the public interest as the result of meaningful economic competition between providers of telecommunications service."<sup>5</sup> In this case, we conclude that Commission actions to date have significantly reduced those unnecessary regulatory barriers that are the subject of our statutory biennial review obligations, but that we can act to streamline our internal policies to reflect our commitment to encouraging experiments of new and advanced services.

## II. BACKGROUND

6. Section 7 of the Communications Act of 1934, as amended (the Communications Act or the Act), states that it is "the policy of the United States to encourage the provision of new technologies and services to the public."<sup>6</sup> More recently, Congress reinforced section 7 by adding section 706 of the 1996 Act.<sup>7</sup> Section 706(a) encourages the deployment of advanced telecommunications services.<sup>8</sup> In the *Testing New Technology Notice*, the Commission solicited public comment about the effects of existing Title II regulations on experiments, including experiments involving advanced telecommunications technology, conducted by firms subject to these regulations. The Commission stated its intention to ensure that its regulation does not discourage applicants from conducting experiments involving new technology and new applications of existing technology. In addition, the Commission sought comment on steps it could take to encourage and facilitate such tests.

7. The Notice was undertaken in conjunction with the Commission's 1998

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<sup>5</sup> 47 U.S.C. § 161(a).

<sup>6</sup> 47 U.S.C. § 157.

<sup>7</sup> For the most part, the 1996 Act amended the Communications Act of 1934. We will refer to the Communications Act of 1934, as amended, as "the Communications Act" or "the Act." Section 706 of the 1996 Act, however, was not codified in the Communications Act. 1996 Act, § 706 Advanced Telecommunications Incentives.

<sup>8</sup> 1996 Act, § 706(a) (noting, with particularity, the need to deploy advanced capabilities to schools).

biennial regulatory review.<sup>9</sup> In the Notice, the Commission asked whether and how the Commission could apply its section 11 deregulatory and streamlining mandate to remove or restructure existing regulations in order to promote technology testing.<sup>10</sup> To this end, the Commission asked commenters to address comprehensively those requirements, including all relevant Commission rules and requirements, currently imposed on those firms seeking to conduct experiments.<sup>11</sup> The Notice explored alternative approaches to encourage and facilitate technology experiments, including using section 11(b) to create streamlined authorization procedures (based on current Part 5 procedures<sup>12</sup> governing wireless test applications) for qualified tests.<sup>13</sup>

8. The Commission asked, alternatively, whether it should and could use its new forbearance authority to accomplish the same goal.<sup>14</sup> New section 10 of the Communications Act requires the Commission to forbear from applying sections of the Act and its regulations to carriers and services upon satisfying a stated three-part test.<sup>15</sup> The Notice sought comment on whether the Commission should undertake specific efforts to encourage or promote forbearance applications relating to technology testing or, alternatively, should define a class of experimental services that would qualify for forbearance treatment.<sup>16</sup>

9. The *Testing New Technology Notice* is part of a continued effort of the Commission to promote experiments. In 1996, the Commission issued a Notice of Inquiry in a different proceeding that, *inter alia*, asked whether expedited approval processes for experiments involving non-radio technology subject to regulation under Titles II and VI of the

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<sup>9</sup> 47 U.S.C. § 161; *see also* 1998 Biennial Review of FCC Regulations Begun Early, FCC News Release (rel. Nov. 18, 1997).

<sup>10</sup> *Testing New Technology Notice*, ¶¶ 16-24.

<sup>11</sup> *Testing New Technology Notice*, ¶ 10.

<sup>12</sup> 47 C.F.R. § 5.01 *et seq.* *See also* 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, 11 FCC Rcd 20130, ¶¶ 23-24 (rel. Dec. 20, 1996) (1996 Proposed Amendments to Part 5) (proposing revisions to the organization of Part 5).

<sup>13</sup> *Testing New Technology Notice*, ¶¶ 16-24.

<sup>14</sup> *Testing New Technology Notice*, ¶¶ 25-33.

<sup>15</sup> 47 U.S.C. § 160.

<sup>16</sup> *Testing New Technology Notice*, ¶¶ 25-33.

Act are desirable.<sup>17</sup>

10. In response to the Notice, the Commission received comments from twelve parties.<sup>18</sup> Parties generally concur that technology testing is a critical step in the innovation process.<sup>19</sup> Most commenters support the Commission's efforts to reduce regulatory barriers to testing, but commenters offered divergent views about what barriers exist to testing and about how to remedy any existing barrier.<sup>20</sup> A number of parties argued that it would be more effective to consider barriers to testing in the context of a broader investigation into the incentives for introduction of new services.<sup>21</sup>

### III. DISCUSSION

#### A. Overview

11. As already stated, we believe that experiments, including technical and market trials, are a critical part of the process of introducing new services.<sup>22</sup> Consequently, we think that it is vitally important to evaluate the state of our regulation so as to ensure that our regulations do not create unnecessary hurdles for firms that are engaged in developing new technologies and the derivative services made possible by these new technologies.

12. In the Notice, we observed that the telecommunications industry has undergone

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<sup>17</sup> *Improving Commission Processes*, Notice of Inquiry, PP Docket No. 96-17, FCC 96-50, 11 FCC Rcd 14006, ¶ 66 (rel. Feb. 14, 1996). Only two commenters addressed this issue. *See, e.g.*, NYNEX Comments at 2; Comments of Dr. Irwin Dorros at 1.

<sup>18</sup> Comments were filed by: Airtouch Communications, Inc. (Airtouch); Ameritech; Bell Atlantic; BellSouth; GTE; Intermedia Communications, Inc. (Intermedia); Lucent Technologies (Lucent); MCI; SBC Communications, Inc. (SBC); United States Telephone Association (USTA); and, U S West. Reply Comments were filed by: Bell Atlantic; BellSouth; GTE; Intermedia; Internet Service Providers' Consortium; and, MCI.

<sup>19</sup> *See, e.g.*, Lucent Comments at 1 ("Delays increase research and development costs, create uncertainties in the marketplace, and shorten product lives already compressed by advances in technology."); SBC Comments at 1; USTA Comments at 5; GTE Reply Comments at 2.

<sup>20</sup> *See, e.g.*, Bell Atlantic Comments at 2 ("Even streamlined or expedited approval requirements will inhibit investment and experimentation and is unnecessary to protect the public or competition."); GTE Comments at 3 (proposing two track approach for review of experiments); Intermedia Comments at 5 ("Competing carriers must be given an opportunity to participate in the trial."); MCI Comments at 1-4 (stating that incumbent LECs already have flexibility to perform market and technology tests); U S West Comments at 1-4 (stating that most trials are subject only to state, not federal, regulation).

<sup>21</sup> *See, e.g.*, Ameritech Comments at 2; BellSouth Comments at 1-3 (encouraging the Commission to conduct this proceeding in deliberate conjunction with the required notice of inquiry proceeding pursuant to section 706); USTA Comments at 1-4.

<sup>22</sup> *See* ¶ 1, *supra*.

radical changes over the past decades, driven in large part by competition and advances in technology.<sup>23</sup> Congress in the 1996 Act has advanced this trend by aggressively promoting a new, competition-driven marketplace.<sup>24</sup> We believe that a regulatory climate that encourages testing and experimentation will promote competition by making the initial investment into research more attractive. Of course, this goal is closely tied to a broader goal: encouraging the development of new technologies and new service offerings that benefit American consumers. In an industry increasingly dependent upon research and development,<sup>25</sup> we believe that offering carriers greater flexibility in conducting experiments in new technology should have a derivative, beneficial impact upon the pace of innovation and, therefore, on improvements in telecommunications services.

## B. Commission Efforts to Reduce Regulatory Burdens and Spur Innovation

13. The Commission has made substantial efforts to reduce regulatory burdens on communications common carriers in recent years. These efforts should produce significant benefits for those seeking to conduct experiments in communications technology. For example, the Commission has sought to eliminate tariff filing requirements for non-dominant carriers.<sup>26</sup> Similarly, the Commission has sought to reduce or eliminate section 214 requirements. For example, the Commission's rules automatically confer section 214 authority on non-dominant carriers.<sup>27</sup> In addition, the Commission has proposed to exempt price cap local exchange carriers (LECs), average schedule LECs, and all local or long-distance non-dominant carriers from the section 214 requirements for new domestic lines and, further, to grant blanket authority for dominant, rate-of-return carriers to undertake small

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<sup>23</sup> *Testing New Technology Notice*, ¶¶ 5-6.

<sup>24</sup> *See, e.g.*, 47 U.S.C. §§ 251, 252, 253, 271.

<sup>25</sup> One study states that, from 1981 to 1991, research and development (R&D) investment in communications technologies increased from 13.2% to 15.3% of all R&D. U.S. Congress, Office of Technology Assessment, *Multinationals and the U.S. Technology Base*, OTA-ITE-612, 53-54 n.10 (Sept. 1994).

<sup>26</sup> In the *LXC Detariffing Order*, the Commission has ruled that non-dominant interexchange carriers will no longer file tariffs for their interstate domestic long distance services. The Commission's deregulatory efforts in the *LXC Detariffing Order* have been stayed by the United States Court of Appeals for the D.C. Circuit. *See Policy and Rules Concerning the Interstate Interexchange Marketplace*, Second Report and Order, FCC 96-424, CC Docket No. 96-61, 11 FCC Rcd 20730, ¶¶ 3, 53 (rel. Oct. 31, 1996) (*LXC Detariffing Order*), *stayed pending review sub nom, MCI Telecommunications Corp. v. FCC*, No. 96-1459 (D.C. Cir. Feb 19, 1997), *Order on Reconsideration*, FCC 97-293 (rel. Aug. 20, 1997). *See also Hyperion Telecommunications, Inc. Petition Requesting Forbearance, Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 97-219, CCB/CPD No. 96-3, CC Docket No. 97-146 (rel. June 19, 1997) (granting permissive detariffing for provision of interstate exchange access services to providers other than incumbent local exchange carriers).

<sup>27</sup> 47 C.F.R. § 63.07.

projects.<sup>28</sup> Thus, the Commission has repeatedly sought to lower barriers on those carriers who seek to bring new services to the market and to invest in new facilities.

14. In this Policy Statement, we pledge to conduct future Commission review not merely with an eye towards the regulation of permanent services but also with consideration for the need to reduce unnecessary regulatory burdens on carriers seeking to conduct experiments. We identified, in the Notice, a number of areas where the Commission has recognized that there are distinctions between short-term, small-scale experiments and permanent service offerings.<sup>29</sup> For example, the Commission has adopted a streamlined approach under our *Computer III* rules for the review of BOC-proposed market and technical trials of enhanced services.<sup>30</sup> Through the *Computer III* decisions, the Commission has permitted BOCs to integrate their enhanced service and basic service offerings provided that they comply with certain non-structural safeguards, including CEI and ONA requirements.<sup>31</sup> In the *BOC Enhanced Services Market Trial Order*, the Commission articulated streamlined

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<sup>28</sup> See *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, FCC 97-6, CC Docket No. 97-11, 12 FCC Rcd 1111, ¶ 3 (rel. Jan. 13, 1997) (*Section 214 Notice*). The proposed blanket authority for "small projects" would apply to a carrier's projects that would either 1) have an aggregate cost of less than \$12,000,000 per year or annual rental of less than \$3,000,000; or 2) increase the cost of the carrier's lines by not more than 10%. *Id.* at ¶ 62. Under the proposed revisions to our section 214 regulation, the only domestic carriers required to obtain section 214 certification for new lines would be dominant, rate-of-return carriers that proposed projects in excess of a stated threshold for small projects. Even in those limited situations, the carriers would be able to file streamlined applications subject to automatic approval after thirty-one days. *Id.* at ¶¶ 52-58.

<sup>29</sup> See *Testing New Technology Notice*, ¶¶ 17-18.

<sup>30</sup> See *BOC Notices of Compliance with CEI Waiver Requirements for Market Trials of Enhanced Services*, 4 FCC Rcd 1266, ¶ 21 (1988) (*BOC Enhanced Services Market Trial Order*) ("Such waivers are especially appropriate for new and largely untested services . . . because the optimal technical configurations and general market acceptance are not well established."). See also *Bell Operating Companies' Joint Petition for Waiver of Computer II Rules*, Order, 10 FCC Rcd 13758, ¶ 3 (rel. Oct. 31, 1995) (*Joint Petition for Waiver of Computer II Rules*) (requiring BOCs to comply with the rules governing market trials in effect before the lifting of structural separation).

<sup>31</sup> See, e.g., *Joint Petition for Waiver of Computer II Rules*, 10 FCC Rcd 13758, ¶¶ 3-11. Under the Commission's rules, the term "enhanced services" refers to "services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information." See 47 C.F.R. § 64.702(a). We note that the Commission has issued a Further Notice in the *Computer III Further Remand Proceedings* docket to examine the appropriate regulatory framework for Bell Operating Company (BOC) provision of information services, such as voice messaging, in light of the 1996 Act. See *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, Further Notice of Proposed Rulemaking, FCC 98-8, CC Docket Nos. 95-20 and 98-10, 13 FCC Rcd 6040 (rel. Jan. 30, 1998) (*Computer III Further Notice*).

procedures for market trials of enhanced services provided that the experiments meet defined conditions that govern, *inter alia*, duration, cost allocation, equal access, treatment of end users, and notification of competing enhanced service providers.<sup>32</sup> Explaining the benefits of these special provisions, the Commission noted that increased "regulatory flexibility should provide an incentive for BOCs to conduct trials that may well result in the development of important enhanced services for the public."<sup>33</sup>

15. In the Notice, we asked commenters to identify and discuss the panoply of regulations that might bear on firms seeking to conduct experiments.<sup>34</sup> Commenters offered contrasting views of the rules and policies that might apply to experiments. In general, most larger incumbent local exchange carriers (LECs) argue that there are many Commission rules that stifle technology testing and the deployment of new services. Among the requirements identified as barriers to testing by these incumbents are: tariffs; obligations under sections 251 and 271 of the Act; prohibitions on bundling customer premises equipment (CPE), basic, and enhanced services; network disclosure rules; and Comparably Efficient Interconnection rules.<sup>35</sup> In contrast, one incumbent LEC commenter argues that testing is -- and should remain -- outside of the scope of Commission regulation.<sup>36</sup> Among competitive LECs and interexchange carriers, we received few details of *per se* barriers to their ability to conduct experiments, though these parties offered suggestions about how to further promote experiments. A number of competitive LECs however sought greater access to incumbent LEC facilities as a means of promoting technology testing and sought the ability to "piggy-back" onto incumbent LEC experiments.<sup>37</sup>

16. In the Notice, we made clear that we intend to focus in this proceeding on how we can best promote the testing and development of new technologies and that this proceeding would not become a forum for relitigating the Commission's regulation of permanent services. Furthermore, we note that we are addressing many of the specific concerns raised by commenters in other proceedings.<sup>38</sup> We note that since the issuance of the

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<sup>32</sup> *BOC Enhanced Services Market Trial Order*, 4 FCC Rcd 1266, ¶¶ 46-47.

<sup>33</sup> *BOC Enhanced Services Market Trial Order*, 4 FCC Rcd 1266, ¶ 46.

<sup>34</sup> *Testing New Technology Notice*, ¶¶ 10-12.

<sup>35</sup> Ameritech Comments at 3; Bell Atlantic Comments at 2-3; USTA Comments at 4-6.

<sup>36</sup> U S West Comments at 1-4.

<sup>37</sup> Intermedia Comments at 5; MCI Comments at 9.

<sup>38</sup> *See, e.g., Computer III Further Notice*, 13 FCC Rcd 6040; *1998 Biennial Regulatory Review -- Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, Further Notice of Proposed Rulemaking, FCC 98-258, CC Docket No. 98-183 (rel. Oct. 9, 1998) (*CPE-Enhanced Services Unbundling Notice*).

Notice in this proceeding the Commission has taken action to promote the deployment of advanced telecommunications capabilities. Specifically, the Commission proposed an optional alternative pathway for incumbent LECs that would allow separate affiliates to provide advanced services free from incumbent LEC regulation, including the obligations under section 251(c).<sup>39</sup> We expect that this proposal should address many of the concerns articulated in this proceeding about the introduction of new services, generally, and of advanced services, in particular.

17. We believe that commenters' disparate views about the effect of our regulations on testing indicates that commenters are not completely clear about whether our rules are applicable to experiments. As an initial matter, we note that the Commission has not imposed a particular application process, *per se*, for firms seeking to engage in technology testing. We expect that, based on our understanding of the marketplace, a significant amount of technology testing takes place off of the public switched network and outside the scope of our Title II regulation. To the extent that experiments come within the ambit of our Title II regulation, *e.g.*, where experiments offer new services to subscribers, carriers and others seek approval for specific authorizations as required under the Communications Act and the Commission's rules, *e.g.*, registration of terminal equipment pursuant to Part 68 of the Commission's rules.<sup>40</sup> Because any given experiment might require different authorizations under the Commission's rules, parties and the Commission must make a fact-based analysis of particular experiments to determine whether and what Commission review is necessary. As a result, it would appear to be difficult, and even counter-productive, to make generalizations about the regulatory treatment of "experiments" because of the vastly different undertakings that may fall within the broad parameters of an experiment. We described in the Notice a number of specific proceedings in which the Commission has sought to provide for particularized consideration of experiments, particularly those which do not seek permanent authorization. As discussed further in Part C of this Discussion, we adopt certain internal guidelines that will guide Commission consideration of experiments -- when applicable -- and speed Commission procedures to reflect the high priority that we believe these enterprises hold in the innovation process.

### C. Further Commitment to Promote Experiments

18. Although we believe that we have already achieved significant results in our efforts to promote technology testing, we nevertheless conclude that we can do more to facilitate necessary and desirable technology testing. In the Notice, we observed that advances in technology often precede related changes in the applicable regulatory framework.<sup>41</sup> We

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<sup>39</sup> See *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 98-188, CC Docket No. 98-11 (rel. Aug. 7, 1998).

<sup>40</sup> See 47 C.F.R. § 68.1 *et seq.*

<sup>41</sup> *Testing New Technology Notice*, ¶¶ 6-7.

believe that adopting a Commission policy that recognizes inherent distinctions between short-term, small-scale experiments and permanent services will enable the Commission to better address such breakthroughs in technology. Thus, as policies of the Commission, we adopt the following principles: 1) the Commission will consider applications and waiver requests associated with experiments<sup>42</sup> on an expedited basis; 2) the Commission will take into account the benefits of experiments in our evaluation of the public interest when reviewing applications for experiments that are small-scale and limited duration; and 3) we will take affirmative steps to promote cooperation among Bureaus and Offices to expedite approval of experimental applications that involve convergent technologies.<sup>43</sup>

19. As discussed above, the Commission has not imposed a single application process under which all experiments must be approved. Indeed, some experiments may need no authorization from the Commission, while others may be required to obtain multiple authorizations under our rules. Where firms must come to the Commission to file applications or requests for waivers associated with experiments, we believe that the Commission can and should act to decide petitions or waiver requests on an expedited basis.<sup>44</sup> In many cases, the Common Carrier Bureau already has the authority to act on waiver requests or other petitions.<sup>45</sup> In those circumstances, we direct the Bureau to consider such petitions and waiver requests with all due speed consistent with our determination to assign priority to testing applications. Where the Bureau does not have delegated authority to act on such requests, we direct the Bureau to issue its recommendations to the Commission on the same expedited basis. Such expedited treatment is completely consistent with the directive of section 7 of the Act that the Commission should encourage new technologies.<sup>46</sup>

20. To help Commission staff act on this directive, we encourage carriers and others subject to our Title II regulation to identify their waiver requests and applications for approval of temporary experiments. Indeed, applicants might speed the review processes in connection with new technology trials by filing copies of a consolidated application for all necessary approvals or waivers of the Commission's rules. Once carriers identify their applications associated with experiments as such, we think it is possible to move rapidly to either grant the request or notify the applicant of the need for further documentation. By

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<sup>42</sup> See ¶¶ 23-24, *infra*, for discussion of the scope and parameters of experiments subject to expedited review.

<sup>43</sup> By the term "convergent technologies," we refer to technologies that transcend those articulated boundaries between our different regulatory models.

<sup>44</sup> For example, at this time, a firm seeking to conduct an experiment might seek waivers from a variety of Commission rules, depending on the nature of the experiment. See, e.g., 47 C.F.R. §§ 61.1(c) (concerning tariffs for interstate or foreign service), 64.702 (concerning enhanced services and customer premises equipment).

<sup>45</sup> See 47 C.F.R. §§ 0.91, 0.291 (concerning authority delegated to the Bureau).

<sup>46</sup> 47 U.S.C. § 157.

granting review of applications and waiver requests on an expedited basis, we hope to reduce delays, uncertainty, and associated costs which might frustrate attempts to conduct experiments.

21. Further, we will take into account the benefits of experiments in our evaluation of the public interest when reviewing applications for experiments that are small-scale and limited duration. As detailed above,<sup>47</sup> we believe that experiments play a critical role in the innovation process and that by facilitating experiments we can spur investment in research and encourage the development and deployment of new and higher quality services. While in all cases, our standard of review is set by statute and precedent, the Commission regularly makes determinations about the public interest and we conclude that the benefits derived from experiments should be afforded substantial weight in our public interest analysis. Indeed, we encourage parties to seek approval for proposed temporary experiments using new technology. We would be particularly inclined to give weight to this factor in those cases where the Bureau or Commission action (*e.g.*, concerning approval) would not prejudice any eventual Commission decision to authorize permanent services.

22. We also affirm our current efforts to promote coordination between Bureaus and Offices when reviewing experiments that involve convergent technology.<sup>48</sup> At present, we use -- and Congress has tacitly endorsed -- different regulatory models for different industries.<sup>49</sup> Increasingly, however, technology is challenging our distinctions between these markets. In on-going proceedings, such as the section 706 proceeding, the Commission is investigating how the Commission should treat such convergent technology.<sup>50</sup> In the context of short-term, small-scale experiments, however, we believe that, even where these experiments involve different industry segments, we should not allow uncertainty over a choice of models for authorization of permanent service offerings to unnecessarily delay innovative experiments. Thus, we believe that adopting policies that favor experiments and promote inter-Bureau coordination should help prevent delays in the testing that will drive the innovative technologies of tomorrow.

23. This Policy Statement will apply to both technical trials (aimed at developing the functional characteristics of advanced telecommunications equipment and services) and

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<sup>47</sup> See ¶¶ 11-12, *supra*.

<sup>48</sup> See, *e.g.*, *FCC Requests Nominations for Membership on the Technological Advisory Council*, Public Notice (rel. Dec. 1, 1998) (announcing the Commission's intention to form a Technological Advisory Council to advise the Commission on innovation in the communications industry).

<sup>49</sup> See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Notice of Inquiry, FCC 98-187, CC Docket No. 98-146, ¶ 77 (rel. Aug. 7, 1998) (*Section 706 NOI*).

<sup>50</sup> See *Section 706 NOI*, ¶¶ 77-80.

market trials (focused on the market characteristics of a potential service).<sup>51</sup> We use the term "market trials" to describe those trials in which customers pay to obtain the service being tested. We believe that market trials -- conducted pursuant to appropriate consumer safeguards -- can yield valuable information both to service providers and to the Commission.<sup>52</sup> We believe that the Commission should facilitate market trials by all market participants where not used to circumvent the Commission's rules for anticompetitive purposes.

24. As noted above, we will expedite Commission review only for technology testing and market trials that are limited in scope and duration. We will not, however, impose *per se* limitations on such experiments, at this time. We believe that developers of new technology should have flexibility to design appropriate experiments based on the unique circumstances posed by their various and different cases. At the same time, we note the distinction that we drew in the Notice between temporary experiments and permanent service offerings, and our determination that we would not allow experiments to be used as a vehicle by applicants to implement permanent service offerings without review, as such, by this Commission.<sup>53</sup> We expect that most experiments can be readily distinguished from permanent deployment of services or technologies based on criteria such as duration and size (considering number of customers, lines, or dollar investment). Pursuant to our review, we will determine, on a case-by-case basis, which experiments are subject to expedited treatment and which undertakings would be more appropriately reviewed under regular Commission procedures.

25. We decline, at this time, to propose rule changes that would create an alternative regulatory regime -- modeled after our Part 5 rules or the market trial provisions of *Computer III* -- to promote the testing of non-radio telecommunications technologies. We conclude that it is not necessary or desirable at this time to mandate, by rule, a class of experiments that would be subject to alternative regulatory treatment. Overall, commenters have not persuaded us that our rules -- or our consideration of the unique issues raised by experiments -- create significant burdens on experiments, *per se*.

26. In this case, we think that the benefits of such an alternative regime would be marginal, at best. Commenters have identified few, if any, regulatory obstacles that we believe would be appropriate for such a proposal. Our mandate under the biennial review is

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<sup>51</sup> See, e.g., *BOC Enhanced Services Market Trial Order*, 4 FCC Rcd 1266 n.10 ("technical trials [of enhanced services] focus on functional characteristics, such as how enhanced equipment works, or how it interfaces with the network").

<sup>52</sup> For example, the Commission amended its Part 5 rules to allow experimental radio service providers to charge end users in market trials. *Experimental Radio Service Report and Order*, 48 Fed. Reg. 527331, ¶¶ 17-22.

<sup>53</sup> See *Testing New Technologies Notice*, ¶¶ 9, 21.

to "repeal or modify" any regulation determined to be no longer in the public interest.<sup>54</sup> Rather than imposing new regulation where the benefits would be speculative or insubstantial, we believe that we can articulate and adopt policies that will further the same goals of flexibility and rationality while not undesirably limiting their application to experiments of pre-determined parameters or adding another layer of regulation to the approval process.<sup>55</sup> This approach will give those who seek to deploy new technologies or new configurations of existing technology in communications networks wide latitude to test whatever they think might enable them to deliver more and better services to consumers.

27. Moreover, we do not think such experiments, including market trials, should be restricted to those employing "new" technologies in any narrow sense of the term because we believe that it may be difficult to distinguish between new technologies and those that utilize existing technologies in unique applications, given the evolving nature of technological processes. It is, we think, particularly difficult for regulatory agencies to attempt such distinctions and possibly counter-productive as policy, *i.e.*, if our goal is to grant sufficient flexibility to carriers and other service providers to develop and apply new technologies which may not easily "fit" into existing regulatory paradigms. In general, we believe that those seeking to conduct experiments are in the best position to decide which technological configurations are most promising, since they will bear the risks connected with development. Given these considerations, we are not convinced that a single application process would advance Commission review of the myriad kinds of experiments that could fall under Title II regulation. Indeed, we do not wish to impose a generalized, "one size fits all," solution to address the discrete considerations raised in experiments.

28. We think that the approach we adopt here is particularly desirable because we anticipate that reduced regulatory barriers to experimentation, and correspondingly reduced costs, should enable smaller carriers to engage in such trials, thereby promoting competition among developers of advanced telecommunications capabilities. Such an approach should further section 257 of the Communications Act, which requires the Commission to eliminate market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications and information services.<sup>56</sup> We have seen in other industries that new entrants -- without substantial investments in accepted technologies -- have been responsible for a substantial share of revolutionary new products and processes.<sup>57</sup> Indeed, in communications, the threat of market entry through innovation has, in turn, stimulated established firms, for example, to develop microwave radio relay systems, cordless

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<sup>54</sup> 47 U.S.C. § 161.

<sup>55</sup> See U S West Comments at 1-4 (urging the Commission not to adopt rules specific to wireline experiments).

<sup>56</sup> 47 U.S.C. § 257.

<sup>57</sup> F.M. Scherer and D. Ross, *Industrial Market Structure and Economic Performance* 653-654 (1990).

telephones, and electronic office switchboards.<sup>58</sup> We hope that by endorsing these policies we will foster competition by lowering regulatory barriers for all companies, including small entrants, who bring innovative services to the public.

#### IV. CONCLUSION

29. We believe that the policies adopted here will promote experiments involving new technology and thereby benefit all consumers of telecommunications services. Congress has directly addressed our public interest considerations in section 7 of the Communications Act, which establishes the policy of the United States "to encourage the provision of new technologies to the public."<sup>59</sup> We expect that, by reducing the regulatory delays involved with experiments, we would facilitate the deployment of innovative telecommunications services to all consumers and would promote those public interest goals articulated by Congress. As the marketplace and our rules continue to evolve, we encourage commenters to bring to our attention particular regulatory barriers to experiments and welcome proposals for further steps that we should take to promote testing, particularly in the context of advanced telecommunications capabilities.

#### V. ORDERING CLAUSES

30. ACCORDINGLY, IT IS ORDERED, pursuant to sections 1, 4(i), 7, 10, 11, 218 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 157, 160, 161, 218, 403, that the POLICY STATEMENT described above is ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas  
Secretary

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<sup>58</sup> *Id.*

<sup>59</sup> 47 U.S.C. § 157.

**Statement of Commissioner Harold W. Furchtgott-Roth**

Re: 1998 Biennial Regulatory Review -- Testing New Technologies,  
*Policy Statement*, CC Docket No. 98-94

I had hoped that we could have used either our authority under Section 11 to repeal or modify certain rules to enhance the testing of new technologies or our authority under section 10 to forbear from applying certain rules relating to the testing of new technologies. Nevertheless, this policy statement is a step in the right direction, and I support its adoption. This proceeding was initiated as part of the Commission's 1998 Biennial Review, which was conducted pursuant to Section 11(a) of the Act, *Id.* at Sect. 161(a). However, as thoroughly described in my *Report on Implementation of Section 11 by the Federal Communications Commission* (Dec. 21, 1998), which can be found on the FCC WWW site at <http://www.fcc.gov/commissioners/furchtgott-roth/reports/sect11.html>, I believe that the 1998 Section 11(a) review was not as thorough as it should have been. I look forward to working with the chairman and other commissioners on the 2000 Biennial Review, planning for which should begin in mid-1999.

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