

CC 00-175



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 TWELFTH STREET, S.W.
WASHINGTON, D.C. 20554

News media information 202/418-0500 Fax-On-Demand 202/418-2830 Internet: <http://www.fcc.gov> [ftp.fcc.gov](ftp://ftp.fcc.gov)

FCC 00-346

Released: September 19, 2000

BIENNIAL REVIEW 2000 STAFF REPORT RELEASED

The Commission has released a staff report summarizing an extensive staff review of the Commission's rules undertaken as part of the 2000 Biennial Review. The biennial review is conducted pursuant to Section 11 of the Communications Act of 1934, as amended, and Section 202(h) of the Telecommunications Act of 1996. These sections, collectively, require the Commission (1) to review biennially its regulations pertaining to telecommunications service providers and broadcast ownership; and (2) to determine whether economic competition has made those regulations no longer necessary in the public interest. The Commission is directed to modify or repeal any such regulations that it finds are no longer in the public interest.

In preparing the report, Commission staff from each Bureau and Office endeavored to review all rules pertinent to its operations to determine whether to recommend that the Commission modify or eliminate any rules. The staff considered (1) the purpose of the rule; (2) the advantages of the rule; (3) the disadvantages of the rule; (4) what impact competitive developments have had on the rule; and (5) whether to recommend modification or revocation of the rule. Additionally, Appendices to the staff report analyze the purpose, benefits and disadvantages of each relevant rule part, the status of competition for telecommunications services providers affected by the rule part, and any staff recommendation for modifying or repealing rules within the part.

The staff did not limit its review to the rules implicated by section 11 and section 202(h). The staff determined that a broad review of Commission rules even beyond the scope of the statutory requirements could provide significant benefits, and that the biennial review process provided another opportunity to ensure that the Commission's rules are up-to-date.

The report reflects staff recommendations rather than formal Commission opinions. After receiving public comment on these documents, the Commission will issue a report, determining which if any regulations are no longer necessary in the public interest, as required by the statute. The Commission expects that it will concurrently or subsequently initiate notice and comment rulemaking proceedings, pursuant to the Administrative Procedures Act,¹ to modify or eliminate selected rules identified in the Commission report.

Pursuant to Section 1.430 of the Commission's rules, we seek comment on the staff report and rule analysis being released today. In particular, we request comment on (1) the analysis of the statutory requirements for this biennial review; (2) whether staff's analysis is an appropriate way to determine whether a rule is necessary in the public interest; (3) the process used for conducting the review; and (4) the specific recommendations contained in the staff report and the rule analysis. The Commission also encourages parties to comment on or recommend changes to rules that are not specifically identified in the staff report, and to submit suggestions regarding substantive or administrative provisions that might enable the Commission to operate more efficiently and effectively. We also seek comment on the staff's suggestion that the Commission conduct an initial biennial review analysis when it conducts

¹ 5 U.S.C. § 553.

rulemaking proceedings.

Filing Procedures

In order to facilitate review of all comments, reply comments, and other documents, the cover page should denote that it pertains to the Biennial Review 2000, and should include an appropriate caption, such as "Biennial Review 2000 Comments" or "Biennial Review 2000 Reply Comments." **All filings should include headings that correspond directly to the headings in the staff report or rule analysis, and each heading should begin on a new page.** If a portion of a party's filing does not fall under a particular heading in the staff report or rule analysis, it should be included in a clearly-labeled section at the beginning of the filing.

Interested parties may file comments by **October 10, 2000** and reply comments by **October 20, 2000**. Pursuant to section 1.51(c) of the Commission's rules, parties should file an original and four copies of all comments, reply comments, and other documents. Comments, reply comments and other documents should be sent to the Office of the Secretary, Federal Communications Commission, 445 12th St., S.W., Washington, D.C. 20554. Parties should also file three copies of any comments, reply comments or other documents with Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, 445 12th St. S.W., Washington, D.C. 20554. Parties may also submit comments, reply comments, and other documents electronically, as provided in section 1.51 of the Commission's rules. Parties are also asked to submit comments and reply comments on diskette. Diskettes are in addition to, and not in lieu of, paper copies. Diskettes should be submitted to Sheryl Todd.

The Biennial Review 2000 Staff Report and appendices are available on the Commission's Internet site at <http://www.fcc.gov>. Copies are also available from the Commission's copy contractor, the International Transcription Service, at (202) 857-3800, TTY (202) 484-8831.

By the Commission on September 14, 2000. With Chairman Kennard; Commissioners Ness, Powell, Tristani and Commissioner Harold Furchgott-Roth issuing a separate statement.

News Media contact: David Fiske (202) 418-0513

Commission contact: Sheryl Todd, (202) 418-7400, TTY (202) 418-0484

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SEPARATE STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH

Re Public Notice, Commission Seeks Comment on Biennial Review 2000, Staff Report and Rule Appendix (rel. September 19, 2000).

I wish to applaud the Chairman and the staff for their extensive efforts to generate a 2000 Biennial Review that vastly improves on the 1998 version. Today's report is far more comprehensive and rigorous than our effort two years ago.¹ It also comes much closer to achieving the goals of Section 11. However, it is still less than perfect.

Going forward, it is important that the Commission continue to improve its efforts to fulfill the substantial task imposed by the biennial review statute. The Act provides that the Commission "shall review all regulations . . . that apply to . . . any provider of telecommunications service; and shall determine whether any such regulation is no longer necessary in the public interest as a result of meaningful economic competition" Although the staff report encompasses every relevant rule Part, today's report does not detail that review on a rule-by-rule basis. It is my hope and expectation that future biennial reviews will provide the public with a rule-by-rule rationale for the continued utility of each individual regulation. Although this year's report is far more detailed than 1998's review, the public is still not able to identify and assess the rationale for each individual rule. Nor can the public determine the particular reasoning that the Commission used to determine whether any rule: (1) was once in the public interest; (2) remains in the public interest today; or (3) will remain in the public interest in the future. Nonetheless, today's report is an important step forward in achieving that ultimate goal.²

Public participation in the biennial review process is a critical element in its success. The public is in the best position to assess whether individual rules have outlived their usefulness or should be modified. This is an important opportunity for the public to comment on how the FCC can better do its job. These comments will form an important foundation for the proceedings that will grow out of the staff report.

As the public examines today's staff report, I would like to call particular attention to a few key elements. First, the public notice seeks comment on a proposal to incorporate a biennial review analysis in each new rulemaking proceeding. Such an initial analysis would set forth the original purpose of the rule, the means by which the rule was intended to advance that purpose, and the state of competition in the relevant market at the time the rule was promulgated. This analysis would be included in each proceeding that created a new rule. Then subsequent biennial reviews, rather than recreating the rationale for a given rule from archives, will be able simply to assess

¹ Separate Statement of Commissioner Harold Furchtgott-Roth, 1998 Biennial Review, Notice of Inquiry, 13 FCC Rcd. 11276 (1998).

² In particular, I wish to applaud the efforts of the International Bureau (IB). IB's detailed and ambitious regulatory streamlining proposals are precisely the type of innovative and deregulatory initiatives that biennial review is designed to foster.

whether the original basis is still valid. Such an open and transparent process will also facilitate the rule-by-rule examination that I hope will be a part of future biennial reviews.

The Office of the Managing Director has also set forth a proposal that warrants special attention. The Managing Director proposes to create an intelligent, integrated, information management system known as the “Intelligent Gateway.”³ As part of this proposal, the staff report recommends that the Commission consider development of a public tracking system that will allow the public to monitor the procedural status of items as they move through the Commission. I have long voiced concern over our policy process that seems to require parties to retain “inside the beltway” lobbyists to pierce the veil of Commission proceedings. The creation of a public tracking system would be an important step towards elimination of some of the unnecessary opaqueness that has been a part of our decision-making.

The report also touches on one other issue that I have become particularly concerned about: the rigorousness of our Regulatory Flexibility Act analysis.⁴ In these rapidly evolving economic times, it is particularly important that the Commission carefully examine the impact of its rules on small businesses. The biennial review process provides another opportunity for the small business community to suggest changes to our regulatory policies that may lessen the regulatory burden without undermining our obligations under the Act. In the future, the Commission should closely examine its policy development process to ensure that small business considerations are part of the policy development process, not an administrative afterthought.⁵

On balance, I wish to applaud the Commission’s staff for today’s report. The final product has only been possible because staff willingly tackled biennial review in addition to their already significant workloads. In particular, congratulations go out to the biennial review team’s leadership: Mania Baghdadi, David Furth, Lisa Gelb, Anna Gomez, Jake Jennings, Cheryl Kornegay, Jeff Lanning, Michael Marcus, Pam Megna, Claudia Pabo, Richard Welch, and Jack Zinman. Each of these team members has gone above and beyond the call of duty. I would also like to take this opportunity to thank William Trumpbour, a former legal intern in my office, who devoted significant energies to producing the database that assisted in the preparation of the staff report. Finally, I would like to thank Anna, Jeff, Pam, Lisa and David for their leadership, hard work, and regular briefings on this important project. I look forward to working with them, the rest

³ Report at ¶¶ 207-209.

⁴ Report at ¶¶ 176-177.

⁵ In addition to these areas, the Wireless Bureau has announced its intention to begin a review to determine whether the spectrum cap is necessary. Report at ¶ 106. I have long voiced concern about the utility of the caps. See Separate Statement of Commissioner Harold Furchtgott-Roth in 1998 Biennial Regulatory Review – Spectrum Aggregation Limits for Wireless Telecommunications Carriers, Report and Order, 15 FCC Rcd 9219 (1999). I look forward to initiation of that proceeding and the development of a full record on spectrum cap issues.

of the staff and the public in the months ahead as we move to the next stage of the review.

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